IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **12.10.2022**

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THE HONOURABLE MS. JUSTICE P.T.ASHA

CMA.No.2187 of 2022
and
C.M.P.No.16957 of 2022

Rahul Mahadev Kawle

... Appellant/Petitioner/Respondent

Vs.

1. M/s.Nissan Renault Financial Service Indian Pvt. Ltd.,
   Registered Office at VBC Solitaire,
   5th Floor No.47, and 49, Bazullah Road,
   T.Nagar, Chennai, Tamil Nadu - 600017,
   Represented by its Authorised Signatory,
   Mr.P.Kasi Viswanathan.

... 1st Respondent/ 1st Respondent/ Claimant

2.Nissan Motor Indian Private Limited,
World Mark, Unit No.301, 3rd Floor, Tower 1,
Maidswas Road, Sector-65, Haryana, India.

3.Swasti Nissan, M/s. Ballard Auto Mobile Private Limited,
Bellard Chambers II, Unkal Cross,
Vidya Nagar, Hubli,
Karnataka - 580021.

... 2nd & 3rd Respondents/Proposed 2nd & 3rd Respondents

PRAYER : Appeal filed under Section 37 of the Arbitration and Conciliation Act to set aside the order dated 05.09.2022 passed by the Arbitral Tribunal in IA.No.2 of 2022 in claim petition No.CS/NRFSI/57/2021.

For Petitioner : Mr.Anil Belwani

JUDGEMENT

Aggrieved by the dismissal of his application to implead respondents 2 and 3 herein as the respondents 2 and 3 in the Arbitral Proceedings the respondent/ petitioner has filed the above appeal.

The brief facts are as follows:-

2. The appellant herein had approached the 1st respondent for financial assistance for the purchase of a Redmi Go car belonging to the M/s.Datsun Company. A Loan cum Hypothecation Agreement dated 27.10.2017 was entered into between the appellant herein and the 1st respondent in and by which the 1st respondent had offered a loan facility of a sum of Rs.2,88,642/-. Disputes arose between the parties with reference to

the payment of the dues of the monthly installments, since the default had continued, the 1st respondent had recalled the loan facility by issuing loan recall notice dated 14.10.2019 and calling upon the appellant to pay a sum of Rs.2,06,614/- together with interest. Despite the receipt of the notice the appellant had failed to regularize the loan account. Therefore, invoking the arbitration clause in Loan cum Hypothecation Agreement dated 27.10.2017, the 1st respondent had initiated an arbitral proceeding.

3. The appellant had entered appearance before the Arbitrator and had filed a counter. The only defence that has been put forward is that the dealer had insisted on the appellant to avail financial facility from the 1st respondent for taking delivery of the vehicle but however the registration of the vehicle had not been done till date. The appellant had been paying the monthly installment till May, 2020 but even then since he was unable to drive the car in a public place as it did not possesses registration certificate, the appellant had approached the dealer, the 3rd respondent herein to take steps to immediately register the vehicle. The appellant would submit that the dealer did not evince any interest in this regard.

4. The appellant had also taken a stand that the dealer along with the 1st and the 2nd respondent had colluded together to make the appellant avail the financial services from the 1st respondent. The appellant would submit that he had stopped driving the vehicle with effect from 23.01.2019 when he was challaned for the non-possession of the registration number/ not registering the vehicle.

5. Pending the above arbitral proceedings the appellant had come forward with a petition to bring on record the proposed respondents 2 and 3 herein. In the affidavit filed in support of the said application the appellant would submit that he purchased Datsun Redi Go car from the 3rd respondent, Bellard Automobile Private Limited vide Invoice dated 27.10.2017. The said dealer was appointed by the 2nd respondent, M/s.Nissan Motor Indian Limited and the said dealer had induced the appellant to take loan from the 1st respondent herein, M/s.Nissan Renault Financial Services India Pvt Ltd. They would further submit that the loan application which was signed by the claimant was forwarded to M/s. Datsun Finance as part of the loan agreement. The reason for filing the petition has

been set out in Paragraph No.6 of the affidavit filed in support of the implead application as follows:-

> *" 6. I submit that the proposed defendants/respondents 2 and 3 belong to the same group company of the claimant, hence it is necessary to bring them as respondents/defendants."*

6. The 1st respondent had resisted the above application inter alia contending that the proposed parties have not signed the Arbitration Agreement and further they are not the parent company of the 1st respondent herein. The 1st respondent would submit that the proposed 2nd respondents and the 1st respondent are separate legal entities and the proposed 3rd respondent is the dealer/agent of the proposed 2nd respondent. The 1st respondent would further submit that the proposed 2nd respondent is a wholly owned subsidiary of M/s.Nissan Motor Company Limited, Japan and the proposed 3rd respondent is the dealer of the proposed 2nd respondent. The 1st respondent would submit that the proposed respondents are neither necessary nor proper parties to the proceedings and they need

not be brought on record.

7. The Tribunal below on considering the arguments and the records had dismissed the application for impleadment. The Arbitral Tribunal has also observed that the subject matter of dispute between the appellant and the 1st respondent would show that the issue that is now causing concern to the appellant is the non-registration of the vehicle from the concerned RTO and this does not form the subject matter for initiating the Arbitral Proceedings as contended by the appellant. Challenging the same the appellant is before this Court.

8. Mr.Anil Relwani, learned counsel appearing on behalf of the appellant would submit that the finding of the Arbitral Tribunal that the proposed respondent dealer, the 3rd respondent had not signed the agreement is erroneous since the loan application form which the appellant had signed with the 1st respondent clearly indicates that it is a part of the Loan Agreement and therefore, the Arbitral Tribunal ought to have allowed the application.

9. Heard the counsel.

10. The party to the Loan Agreement is only the appellant and the 1st respondent. The document which the appellant relied upon is only an application for availing the loan and the application clearly states that the same is submitted to the 1st respondent. The dealer is signing the said application only in a capacity of a dealer to confirm the fact that the appellant has indeed booked the car for which the loan facility is being availed of. Though there is reference to the same being a part of the agreement it appears to be only in the context of showing proof of purchase of the vehicle to enable the 3rd respondent to receive the loan. The Tribunal below has rightly rejected the application by stating that the dispute between the appellant and the 3rd respondent would not fall within the contours of the Arbitral Clause found in the agreement and I see no reason to interfere with this well considered judgement and decree of the Courts below. Consequently, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

12.10.2022

Index : Yes/No
Internet: Yes/No

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To

1. The Principal District Judge, Tiruvallur.

2.The Section Officer,
V.R.Section,
High Court, Madras.

P.T. ASHA, J,

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