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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 12.12.2022

+ **FAO (COMM) 11/2022 & CM APPLs. 3498/2022, 3500/2022**

SHRIRAM TRANSPORT FINANCE CO. LTD. Appellant

Through: Mr. Bharat Singh, Mr. Suraj Kumar
Singh & Mr. Divish, Advocates.

Versus

HARPAL SINGH

..... Respondent

Through: Mr. M.D. Kamal, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

VIBHU BAKHRU, J. (ORAL)

1. The appellant has filed the present appeal impugning an order dated 18.03.2021 (hereafter 'the impugned order') passed by the learned Commercial Court in an application filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the A&C Act'). The respondent had filed the said application impugning the arbitral award dated 12.10.2018 (hereafter 'the impugned award') passed by the learned Arbitrator (the arbitral tribunal) unilaterally appointed by the respondent.
2. The appellant-company is engaged in the business of lending financial assistance including financing commercial vehicles. The appellant claims that the respondent had approached the appellant seeking financial

assistance to purchase a commercial vehicle. The appellant had verified the relevant details and thereafter had entered into a loan cum hypothecation agreement dated 10.01.2013 (hereafter 'the Agreement'). In terms of the Agreement, the appellant had extended a loan of ₹4,22,000/- to the respondent for purchasing a vehicle bearing registration no. HR38K6415.

3. It is the appellant's case that the respondent failed to pay the equated monthly installments (EMIs) in time to service the loan. The appellant repossessed the said vehicle and had sold the same for a sum of ₹1,20,000/-. Thereafter the appellant invoked the arbitration clause under the Agreement and claimed an amount of ₹3,62,928/-, which according to the appellant was outstanding as on 25.11.2014. The arbitral proceedings initiated by the appellant culminated in the impugned award. The arbitral tribunal accepted the claim and entered an award in favour of the appellant.

4. One of the principal controversy between the parties was the manner and the value at which the repossessed vehicle was sold. It is the respondent's defence that the said vehicle had been sold at less than its market value and in a non-transparent manner. It is also brought on record that the insurance value of the said vehicle was ₹3.5 lakh at the material time.

5. The learned Commercial Court allowed the respondent's application under Section 34 of the A&C Act and set aside the impugned award. The learned Commercial Court faulted the procedure adopted by the arbitral tribunal and found that it violated the principles of natural justice. In particular, the court noted that the learned arbitrator had acceded to the respondent's request for cross examination of the authorized representative of the appellant. But had subsequently denied the said opportunity.

6. The procedural order passed by the learned arbitral tribunal on 02.08.2017 reads as under:-

“Present Sh. Manoj Kumar Ld. Counsel for the claimant. Present Sh. V.P. Malik Ld. Counsel for respondent no.1 respondent no.1 in person. Respondent no.2 is already ex-parte. The counsel for the respondent no.1 has drawn my attention to the inventory which was prepared at the time of seizing the vehicle wherein it is mentioned that the insurance policy (which was for Rs. 3,50,000/-) and permit beside the other documents had been taken by the persons who received the vehicle at the time of seizing the vehicle. He has further pointed out that the claimant had not placed on record any document as to how and which manner and for what amount the said vehicle was sold by the claimant. The parties are given 15 days for filing documents if any with advance copy to the other party. I have perused the file and I have heard the argument and I hold there is no necessity of leading oral evidence by both the parties. Now to come for filing arguments on 23.08.2017 at 3:00 pm”.

7. It appears from the said order that the arbitral tribunal was of the view that no oral evidence was required to be led by the parties. However, on the next date of hearing, that is, on 20.09.2017, the learned arbitral tribunal acceded to the request of the respondent and allowed the application for calling the authorize representative of the appellant for cross examination. The procedural order passed on 20.09.2017 reads as under:-

“Present Sh. Mohd. Khadim Khan proxy counsel for Sh. Manoj Kumar Ld. Counsel for the claimant. Present Sh. V.P. Malik Ld. Counsel for respondent no.1. Respondent no.2 is already ex-parte. Counsel for the respondents has addressed part of the final arguments. At this stage it is revealed that the application for calling the A.R for cross examination has not yet been allowed. Counsel for the respondent no.1 states that besides the other cross examination he wants to ask as to when, by

which more and for what amount the vehicle was sold by the claimant company. Heard. The application is allowed. Now to come for cross examination of A.R on 11.10.2017 at 3:30 pm:”.

8. On 11.10.2017, the statement of counsel for the claimant was recorded and the arbitral tribunal held that in view of the said statement, there was no requirement to call the authorized representative of the appellant (claimant) to be cross examined. The order sheet for the said date reads as under:-

“Present Sh. Manoj Kumar Ld. counsel for the claimant. Present Sh. V.P. Malik Ld. Counsel for respondent no.1 alongwith respondent no.1. Respondent no.2 is already ex-parte. The counsel for the claimant give the following statement.

Statement of Sh. Manoj Kumar counsel for the claimant.

Without Oath:

I have seen the inventory. Therein it is mentioned that the insurance policy and permit besides the other documents were handed over to the purchaser of the vehicle, which was seized and sold by the claimant company. I cannot tell as to whom and in which manner the vehicle was sold to the purchaser. As the documents were handed over to the purchaser, I cannot produce the same. After going through the statement of account filed by the claimant, I say that the vehicle was sold for and amount approximately Rs.1,20,000/- There are two entries in the statement of account, in this regard i.e one for Rs.14,328/- and one for Rs. 1,05,672/-.

In view of this statement of the counsel for the claimant there is no necessity to call the A.R for cross examination. Counsel for the claimant states that he is not prepared to addressed the final argument because it was not get clarified as to how these two different orders were passed. Now to come for final arguments for 08.11.2017 at 3:30 pm”.

9. It is apparent from the above that the arbitral tribunal has not taken a consistent view. First, it held that no oral evidence was required, then it allowed the application for cross examination and thereafter again denied the same. The respondent's grievance that he was denied full opportunity to present its defence is justified.

10. In terms of Section 19 of the A&C Act, the provisions of Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872 Act do not apply to arbitral proceedings. Notwithstanding the same, the arbitral tribunal is required to follow the principles of natural justice in adopting the procedure for conducting the proceedings. Such procedure cannot be whimsical or arbitrary. Given the manner in which the proceedings were conducted, we find no infirmity with the decision of the learned Commercial Court to set aside the arbitral award on the ground that the respondent was not afforded adequate opportunity to defend the case.

11. The learned counsel for the appellant has also raised the grievance regarding the directions passed by the learned Commercial Court granting the respondent an opportunity to pay the admitted amounts in four equated installments. He contended that the learned Commercial Court had no power to grant any installments.

12. The scope of proceedings under Section 34 of the 'A&C' Act is limited to considering whether the arbitral award is required to be set aside in part or in whole. The Hon'ble Supreme Court in the recent judgment of ***N.H.A.I. v. M. Hakeem: (2021) 9 SCC 1*** has held that it is not permissible for a Court to modify the arbitral award in proceedings under Section 34 of A&C Act.

13. We are unable to concur with the submission that the learned Commercial Court has modified the impugned award; the court has merely observed that if the respondent wishes it can pay the admitted amount in four installments. The learned counsel for the appellant is right in his submission that the learned commercial court was not required to make any further observations enabling the respondent to pay the admitted amount in installments after concluding that the impugned award was to be set aside. The observation to that effect needs to be interfered with. Thus, the operative part of the impugned order is required to be read as confined to setting aside the impugned award only.

14. The appeal is disposed of in the aforesaid terms. The pending applications are also disposed of.

15. The parties are left open to bear their own costs.

VIBHU BAKHRU, J

PURUSHAINDRA KUMAR KAURAV, J

DECEMBER 12, 2022

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