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Arb.Original Petition 90 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Arb.Original Petition (Com.Div.) No.90 of 2022
and Application No.717 of 2022

M.Gnanamani

... Petitioner

Vs.

1. M/s.Shriram Transport Finance Co.Ltd.,
Represented by its authorized
Representative T.Vijayakumar,
No.221, CLC Works Rd.New Colony,
Chrompet, Chennai - 044.

2. P.Kumaran

... Respondent

PRAYER: The Original Petition has been filed under Section 34(a)(2)(ii)&(iii) of Arbitration and Conciliation Act, 1996, to set aside the purported Ex-parte Arbitration Award passed on 16.11.2021 by the Sole Arbitrator vide Arbitration case No.792 of 2020 and direct the first respondent to pay the costs of the petition.



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For Petitioner : Mr.R.Vasudevan

For Respondent : Mr.Peer Mohamed

ORDER

This Original Petition has been filed to set aside the Arbitration Award passed on 16.11.2021 by the Arbitrator vide Arbitration Case No.792 of 2020.

2. The contention of the petitioner was that the present claim made before the Arbitrator is barred by limitation. According to the petitioner, in terms of loan agreement dated 28.09.2010, the petitioner borrowed a sum of Rs.4,20,000/-. The first due started on 05.11.2010 and the last due date is 05.10.2013. According to him, so far, he has paid eight installments, which comes to Rs.1,48,243/- and the last payment made by the petitioner was on 27.05.2011. The vehicle was seized on 30.09.2011 and the same was sold for Rs.2,90,000/-. Therefore, the realized amount comes to Rs.4,38,243/-. In the said circumstances, the Arbitration Award was passed on 16.11.2021.



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3. The main contention of the petitioner is that the entire claim is barred by limitation. Therefore, referring the matter before the Arbitrator and passing of the Award is not sustainable. Thus, he prays to set aside the Award passed by the Arbitrator dated 16.11.2021.

4. In support of his contention, he would rely on the judgments of the Hon'ble Supreme Court in *Visakhapatnam Port Trust Vs. M/s.Continental Construction Company [2009 (4) SCC 546]*, *Mangla Advisory P.Ltd. Vs. Cybizcal (International) and another [2009 (Sup2) ArbiLR 335]* and *Bharat Sanchar Nigam Ltd. and Anr. Vs. M/s.Nortel Networks India Pvt. Ltd. [SLP(c) No.1531-32/2021]*.

5. The learned counsel for the respondents submits that admittedly, notice under Section 21 of the Arbitration and Conciliation Act, was issued on 31.10.2020 and the last due date is 05.10.2013. He fairly submits that after a period of seven years from the date of commencement of the limitation period, the claim was made by the respondent.



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6. Considering the submission made by the learned counsel appearing on either side, it is very clear that the present claim was made after a period of seven years from the date of commencement of the limitation period. It is seen that the last due date for the repayment of loan is 05.10.2013 and hence, the claim petition should have been filed on or before 04.10.2016. However, the present claim petition was filed subsequent to the Section 21 notice dated 31.10.2020. The Section 21 notice was issued after the expiry of three years. Therefore, the present claim is barred by limitation and the Award passed by the Arbitrator is not sustainable. Since the Award is passed against time barred claim, without notice of the same the award came to be passed, hence, the same is liable to be set aside. Accordingly, the Award is set aside and this Original Petition is allowed. Consequently, connected application is closed. There shall be no order as to costs.

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KRISHNAN RAMASAMY, J.

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