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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Arbitration Application No.26 of 2023

1.Prabeese
2.Prakash Rao
3.Geetha Keerthisvasan ... Petitioners

Vs.

M/s.Kotak Mahindra Prime Ltd.,
rep by its Authorised Signatory,
Mr.Muruganantham ... Respondent

PRAYER: Petition filed under Section 345 (1) (2) of the Arbitration and Conciliation Act, 1996, prays

(a) to set aside the Arbitral Award dated 25th November 2021 bearing No.ARC/KMPL/288/2020 passed by Mr.S.S.Mariappan, Sole Arbitrator in its entirety (or) to the extent to which it is challenged.

(b) to direct the respondent to pay the costs

For Applicant : Mr.D.Jagadesh

ORDER

The Arbitration Original Petition has been filed to set aside the
Arbitral Award dated 25th November 2021 bearing



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No.ARC/KMPL/288/2020 passed by Mr.S.S.Mariappan, Sole Arbitrator in its entirety (or) to the extent to which it is challenged and to direct the the respondent to pay the costs.

2. Heard the arguments of the petitioner and perused the materials available on record. The respondent remained ex-parte.

3. The petitioners borrowed loans from the respondent by a Loan agreement No.15501209 dated 09.03.2018 entered into between the petitioner and the respondents for purchasing a vehicle being Model Maruti Celerio VXi A, vide Engine No.K10BN1849711 and Chasis No.MA3ETDE1S00198489 bearing Registration No.TN11 M 2544. The total loan amount availed by the petitioners is Rs.3,65,057/- and the same is repayable in 36 equal monthly instalments at the rate of Rs.12,550/- per month and the instalments are payable from 05.04.2018 to 05.03.2021. After receiving the entire loan amount the respondent had given No-Objection to cancel the Hypothecation on 12.08.2021 and accordingly the petitioners approached the Regional Transport Office, Tambaram and cancelled the hypothecation endorsement in the Registration Certificate of the vehicle. But all of a sudden the respondent sent a notice, the copy of the impugned arbitration award dated 25.11.2021 in ARC/KMPL/288/2020.



The petitioner submitted that the said award has been obtained by suppressing the real facts and by playing fraud and coercion; hence, it will not bind the petitioners. Since the award has been obtained by suppressing the materials facts and playing fraud, the same should be set aside.

4. On perusal of the statement of accounts would show that the loan availed by the petitioner from the respondent has been discharged already. From the statements of the accounts, it is seen that the petitioner had paid 36 instalments. Though the statement of account reflects that there are some dues of Rs.1,17,916.50 as on 22.04.2021, the respondent has given no objection to cancel the hypothecation endorsement made in the Registration Certificate, meaning to say that the entire loan amount has been paid.

5. So, it is submitted by the learned counsel for the petitioner that the No Objection can be obtained only after discharging the entire loan amount. Accordingly the petitioner had paid the dues to be paid to the respondent and got No Objection Certificate on 12.08.2021. By utilizing the No Objection Certificate. The endorsement made in the Registration Certificate has also been cancelled. Having given No Objection Certificate to cancel the hypothecation made in the name of the respondent, the respondent cannot claim that the petitioner had further dues payable to the



respondent.

6. Since the award has not been dealt about the No Objection Certificate issued to the petitioners and the same was also already brought to the attention of the Arbitrator, it can only be concluded that the award has been obtained by suppressing the materials facts that the loan has already been discharged.

7. The respondent did not make his presence despite the notice has been served upon through Court to give any explanation about the contradictory stand taken by him. The petitioner had proved that the award has been obtained by suppressing a material facts that the loan was repaid fully and hence the same is liable to be set- aside.

In the result, this Arbitration Original Petition is **allowed** and the Arbitral Award dated 25th November 2021 bearing No.ARC/KMPL/288/2020 passed by the Sole Arbitrator is set-aside.

24.07.2023

jrs



To
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Mr.Muruganantham,
The Authorised Signatory,
M/s.Kotak Mahindra Prime Ltd.,
No.27BJCM, C27, G Block,
Bandra Kurla Complex,
Bandra (E) Mumbai-400 051.



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R.N.MANJULA, J.

jrs

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