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Arb. O.P(Com.Div). No.654 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2023

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div). No.654 of 2022

T.Suresh

... Petitioner

Vs.

1.The Regional Manager,
Axis Bank,
No.2, Ground Floor, Anna Salai,
Club House Road, Chennai – 600 002.

2.The Regional Manager,
Axis Bank,
No.41/2 First, Ramakrishna Road,
Salem – 636 007.

3.The Branch Manager,
Axis Bank,
No.171 A, TS No.80/1,
Nethaji by Pass Road,
Dharmapuri – 636 701.

... Respondents

PRAYER : Original Petition is filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, praying to pass an order of appointing a sole arbitrator to decide the dispute and differences between the petitioner and respondents in terms of loan agreement in A/c.No.CVR 017005660790 dated 19.12.2020.



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For Petitioner : Mr.T.Sundaravadanam

For Respondent : Mr.D.Sathyaraj

ORDER

This petition has been filed under Section 11(5) of Arbitration and Conciliation Act, 1996, seeking to appoint Sole arbitrator to decide the dispute and differences between the petitioner and respondents in terms of loan agreement in A/c.No.CVR 017005660790 dated 19.12.2020.

2.Learned counsel appearing for the petitioner would submit that the petitioner purchased Bolero Pick Up transport vehicle bearing No.TN29 CX 1339 for commercial purpose through Tamilnadu Adi Dravidar Housing & Development Corporation Ltd., as subsidized vehicle from the 3rd respondent for a sum of Rs.7,23,557/- at the rate of 14% interest for the total 47 EMIs of Rs.20,087/-. The petitioner had been provided with vehicle loan on 21.12.2020 and the petitioner had been regularly paying the EMI of Rs.20,087/-, nearly to the extent of Rs.2,41,044/- and other payment in total Rs.5,20,957/- towards the liabilities of the loan amount. While so, during the month of September 2021, since there was delay in paying the due, the respondents Bank Official without



giving any opportunity to clear the dues, has seized the vehicle. The petitioner had cleared the dues as on 24.11.2021, but still the respondent had not released the vehicle.

3.He would further submit that as per Clause 45 of the loan agreement dated 19.12.2020 executed with the respondents, before initiating any coercive steps in order to repossess the vehicle, the respondent has to initiate Arbitration Proceedings by appointing Sole Arbitrator. Therefore, the petitioner has also sent legal notice to the respondents for appointment of Sole Arbitrator to resolve the disputes but there was no reply for the legal notice sent by the petitioner. Hence, he prayed to allow the present petition.

4.Learned counsel appearing for the respondents would submit that, the respondents have no objection to appoint Sole Arbitrator in terms of Clause 45 of the loan agreement dated 19.12.2020.

5.Heard the learned counsel appearing for the petitioner as well as the respondents.

6.Upon hearing, it is seen that the respondents have sanctioned a loan of



Rs.7,23,557/- at the rate of 14% interest for a EMI's of Rs.20,087/- for a purchase of commercial vehicle. Due to the default committed by the petitioner, the respondents have seized the vehicle. According to the petitioner, even then the petitioner has cleared the dues, the respondents had not released the vehicle and therefore, he seeks to appoint a Sole Arbitrator as per Clause 45 of the loan agreement to resolve the disputes.

7.For better appreciation, Clause 45 of the Loan Agreement dated 19.12.2020, is reproduced hereunder:

“45.All disputes, differences and/or claim or questions arising out of these presents or in any way touching or concerning the same or as to constructions, meaning or effect thereof or as to the right, obligations and liabilities of the parties hereunder shall be referred to and settled by arbitration, to be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof, of a sole arbitrator to be nominated by the lender/bank, and in the event of death, unwillingness, refusal, neglect, inability or incapability of a person so appointed to act as an arbitrator, the lender/bank may appoint a new arbitrator to be a sole arbitrator. The arbitrator shall not be required to give any reasons for the award and the award of the arbitrator shall be final and binding on all parties concerned. The



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arbitration proceedings shall be held
Mumbai/Delhi/Chennai/Kolkata. In fact the petitioner
bank branch is situated at Dharmapuri within the regional
jurisdiction of Chennai of the 1st respondent and the
proceedings ought to have initiated in Chennai.”

8.In view of the above submissions and a perusal of Clause 45 of the
Loan Agreement dated 19.12.2020, it is clear that the present dispute is
arbitrable in terms of the said agreement. Hence, this Court is inclined to appoint
an Arbitrator to adjudicate the dispute between the petitioner and the
respondents.

9.Accordingly, Ms.Anu Ganesan, Advocate, Enrolment No.1881 of 2015,
office at New No.325, 3rd Floor, Linghi Chetty Street, George Town, Chennai
600 001 (Mobile No. 9941542415), is appointed as the Arbitrator to enter upon
reference and adjudicate the disputes *inter se* the parties. The learned Arbitrator
appointed herein, shall after issuing notice to the parties and upon hearing them,
pass an award as expeditiously as possible, preferably within a period of six
months from the date of receipt of the Order. The learned Sole Arbitrator
appointed herein shall be paid fees and other incidental charges, fixed by her
and the same shall be borne by the parties equally.



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10.This Original Petition is ordered accordingly, leaving the parties to bear their own costs. Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

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