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Arb.O.P.(Comm.Div.) No.688 of 20__



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.02.2023

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The Honourable Mr.Justice KRISHNAN RAMASAMY

Arb.O.P.(Comm.Div.) No.688 of 2022

Kusum Kuwar

...Petitioner

Versus

Raghavi Rajasekar

...Respondent

Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 praying to appoint an arbitrator as per terms set out in Section 11(6) of the Arbitration and Conciliation Act, 1996 to decide the dispute between the petitioner and the respondent arising out of the Loan-cum-Hypothecation Agreement dated 17.06.2020.

For Petitioner	:	M/s.Anukriti Anand
For Respondent	:	No Appearance

ORDER

The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a sole arbitrator to decide the dispute between the petitioner and respondent arising out of the Loan-cum-Hypothecation Agreement dated 17.06.2020.



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2. The learned counsel for the petitioner submitted that during the month of June 2020, the respondent approached the petitioner for financial assistance of Rs.5,00,000/- (Rupees Five Lakhs only). Therefore, the petitioner gave a sum of Rs.5,00,000/- as loan to the respondent by way of entering into a Loan-cum-Hypothecation Agreement dated 17.06.2020 with the respondent, for a sum of Rs.5,00,000/-. As per the said Agreement, the respondent shall repay the borrowed amount together with interest at the rate of 16% per annum, divided into 24 Equated Monthly Installments (EMIs) of Rs.27,500/- each commencing from July 2020. After obtaining the said loan, the respondent had hypothecated a white Toyota Fortuner car bearing Registration No.TN 22 BR 7777 in the name of petitioner.

2.1. The learned counsel further submitted that out of 24 EMIs, the respondent has paid only 5 EMIs. From 25.12.2020 onwards, the respondent has stopped paying the EMIs. Since the respondent has defaulted in payment of EMI, petitioner sent a written communication dated 18.06.2021 to the respondent, requesting to either surrender the hypothecated vehicle or clear the outstanding EMI dues, however, the



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respondent did not respond for the said communication. While so, the respondent sold the said hypothecated vehicle to a third person, without repaying the outstanding EMI dues. Hence, the petitioner lodged a complaint before the Vepery G7 Police Station, for tracing the said vehicle. Thereafter, the petitioner sent a Loan Recall Notice dated 21.10.2022 to the respondent via e-mail as well as RPAD, however, the respondent did not respond for the same. Hence, the petitioner sent Arbitration Notice dated 10.11.2022 to the respondent, even for which, there was no response from the respondent.

2.2. The learned counsel drew the attention of this Court to Article 22 of the Loan-cum-Hypothecation Agreement dated 17.06.2020 entered into between the petitioner and respondent, which reads as follows:

“(a) All disputes, differences and/or claim arising out of this Agreement whether during its subsistence of thereafter shall be settled by arbitration in accordance with the provision of the Arbitration and Conciliation Act, 1996, or any statutory amendments thereof and shall be referred to the sole arbitration of an Arbitrator nominated by the Lender. The award given by the Arbitrator shall be final and binding on the parties to this Agreement. It is a term of this agreement that in the event of such



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an arbitrator to whom the matter has been originally referred dying or being unable to act for any reason, the Lender, in such circumstances, shall appoint another person to act as arbitrator. Such a person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

(b) The venue of arbitration proceedings shall be at Chennai.

(c) The arbitrator so appointed herein above, shall also be entitled to pass an Award on the hypothecated asset and also, on any other securities furnished by or on behalf of the Borrower.”

2.3. As per the above Article, the dispute involved herein is arbitrable in terms of the Agreement entered into between the parties and the same shall be resolved by an Arbitrator as per the provisions of the Arbitration and Conciliation Act 1996. Therefore, the learned counsel prayed this Court to appoint an Arbitrator to adjudicate the dispute between the petitioner and respondent.

3. Despite the service of notice and the name is being printed in the cause list, none appeared on behalf of the respondent. This shows that the respondent is not interested in prosecuting the case.



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4. Heard the learned counsel for petitioner and perused the materials placed before this Court.

5. From a perusal of the records, it is seen that the petitioner lend a sum of Rs.5,00,000/- to the respondent by virtue of Loan-cum-Hypothecation Agreement dated 17.06.2020. After receiving the said loan from the petitioner, the respondent hypothecated a vehicle in the name of the petitioner. As per the said Agreement, the respondent has to repay the loan amount along with interest at a rate of 16% p.a, divided into 24 EMIs of Rs.27,500/- each commencing from July 2020. However, the respondent has paid only 5 EMIs out of 24 EMIs and thereafter, she committed default. Though the petitioner requested the respondent to pay the outstanding EMIs, the respondent did not come forward to settle the same. The respondent did not send any reply even to the Arbitration Notice sent by the petitioner. Therefore, the petitioner prays this Court to appoint a Sole Arbitrator as per Article 22 of the Loan-cum-Hypothecation Agreement dated 17.06.2020 entered into between the parties, to resolve the dispute



herein.

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6. Considering the facts and circumstances of the case and also, having regard to the submissions made by the learned counsel for petitioner, it is crystal clear that the dispute involved herein is arbitrable as per the terms of Article 22 of the Loan-cum-Hypothecation Agreement entered into between the parties. Hence, this Court is inclined to pass the following order:

(i) **Mr.S.Sidhartha Vishnu, Kriish Law Associates, No.337 (Old No.164), No.S.4A, Singapore Plaza, 3rd Floor, Linghi Chetty Street, Chennai 600 001, Contact No. 9840605450** is appointed as the Arbitrator to enter upon reference and adjudicate the dispute *inter se* the parties.

(ii) The learned Arbitrator shall pass award within a period of six months from the date of receipt of a copy of this order, only after issuing notice to the parties and hearing them.

(iii) The parties shall pay fees and other incidental charges to the learned Arbitrator fixed by him, equally.

(iv) In the event of non-appearance of the respondent before the learned Arbitrator, petitioner shall pay the entire remuneration and other expenses at first instance and thereafter, petitioner can recover the same



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KRISHNAN RAMASAMY, J.

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