



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Arbitration O.P.No.29 of 2023

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Petitioner

versus

1.M/s.Shriram Transport Finance Company Ltd.,
Represented by Chairman and Managing Director,
No.4, Lady Desikachari Road,
7th Floor, Moogambigai Complex,
Mylapore,
Chennai - 600 004.

2.The Branch Manager,
M/s.Shriram Transport Finance Company Ltd.,
No.4, Lady Desikachari Road,
7th Floor, Moogambigai Complex,
Mylapore,
Chennai - 600 004.

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Respondents

PRAYER: Arbitration Original Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, prays to appoint a sole arbitrator to resolve the disputes between the petitioner and the respondents arising in the hypothecated agreement dated 12.07.2011 between the parties herein and pass an award in respect therein.

For Petitioner : M/s.G.Vijayanand Associates

For Respondents : Mr.M.Peer Mohamed



ORDER

This Arbitration Original Petition has been filed seeking to appoint an Arbitrator to resolve the disputes between the petitioner and the respondents as per the Hypothecated Agreement dated 12.07.2011.

2. Heard the learned counsels for the petitioner and respondents and perused the materials available on record.

3. The petitioner had availed financial assistance from the respondents for purchasing a heavy vehicle for transportation of his goods; the respondents sanctioned a loan of Rs.7,00,000/- to the petitioner on 12.07.2011; the petitioner and respondents have entered into a Hire Purchase Agreement for purchase of a Tipper Lorry; according to the said loan agreement, the petitioner has to repay the loan amount in 48 equated monthly installments of Rs.24,028/- per month.

3.1. The petitioner was repaying the installments regularly without any default till August 2015 and paid Rs.8,07,356/- till date and the balance due amount as on August 2015 was Rs.2,96,770/-; during August 2017 the petitioner approached the second respondent and requested him that he



would pay the balance amount and get back his original documents related to the vehicle; however the respondents have stated that the documents were not traceable and they also refused to collect the payments from the petitioner.

3.2. During August 2017 the respondents tried to seize and take possession of the petitioner's vehicle bearing Registration No.TN 22 BB 8417 by forceful methods; hence the petitioner was constrained to file a suit for injunction in O.S.No.4943 of 2015 before the learned XIX Assistant Judge, City Civil Court, Chennai and obtained an order of interim injunction; during the pendency of the suit the respondents had filed an Application in I.A.No.2964 of 2018 by stating that there is an arbitration clause in the Hypothecation Agreement and hence the dispute should be referred to the Arbitrator.

3.3. During the pendency of the above proceedings in I.A.No.2964 of 2018, the respondents sent a communication through his Advocate by stating that one Mr.P.Ganesan, retired District Judge, has been appointed as an Arbitrator; the petitioner has stated that he objected to make his submission before the Arbitrator and stated that the person interested in either of the parties cannot be appointed as an Arbitrator and that the



Arbitrator is not found in the panel of the Arbitrators maintained by the Court; but the learned XIX Assistant Judge, City Civil Court, Chennai has referred the matter to the Arbitration Tribunal; since the Arbitrator appointed by the respondents was not accepted by the petitioner, he has taken out this petition for appointment of an Arbitrator to resolve the disputes between the petitioner and the respondents.

4. It is seen that the petitioner had availed some financial assistance from the respondents for purchasing a heavy vehicle and had entered a loan cum Hypothecation Agreement dated 12.07.2011. The dispute between the petitioner and the respondents arose in view of the difference of opinion between the two with regard to the repayment and that resulted in seizing the hypothecated vehicle by the respondents and subsequently the petitioner filed the suit in O.S.No.4943 of 2015.

5. Since the Hypothecation Agreement contains an arbitration clause the respondents filed an application in I.A.No.2964 of 2018 under Section 8 of the Arbitration and Conciliation Act, 1996 read with Section 151 CPC to refer the matter to mediation and got it allowed. Subsequent to



that the respondents appointed an arbitrator and informed the petitioner and it was not accepted by the petitioner.

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6. Notice sent by the respondents through their counsel on 15.07.2019 by informing the petitioner about the appointment of one Mr.P.Ganesan, retired District Judge as the sole arbitrator is produced as the fourth document. The petitioner had also given a reply on 12.08.2019 by not accepting the nomination given by the respondents and thereafter the petitioner himself has filed this petition seeking for appointment of an arbitrator through Court.

7. The Hypothecation Agreement entered into between the petitioner and the respondents contains the following arbitration clause and that has been agreed by the parties:-

“15. Arbitration: All disputes, differences and/or claims arising out of these presents or as to the construction, meaning or effect here of or as to the rights and liabilities of the parties hereunder shall be settled by arbitration to be held in Chennai. In accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof or any statute enacted for replacement thereof and shall be referred to the sole arbitration of a person to be nominated/appointed by Shriram. In the event of death,



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refusal, neglect, inability or incapability of the persons so appointed to act as an arbitrator. Shriram may appoint a new arbitrator. The award including the interim award/s of the arbitrator shall be final and binding on all parties concerned. The arbitrator may lay down from time to time the procedure to be followed by him in conducting arbitration proceedings and shall conduct arbitration proceedings. In such manner as he considers appropriate. Any proceedings to be initiated in any court of law in pursuance of this arbitration shall be instituted and held in the court at Chennai only.”

8. Petitioner has filed this Arbitration Original Petition by invoking Section 11(5) of the Arbitration and Conciliation Act. Since there is a dispute arose between the parties and the Arbitrator appointed by the respondents is not acceptable by the petitioner and the respondents have not come forward to appoint any other Arbitrator through Court, I feel the request of the petitioner should be considered.

9. In view of the above stated reasons, this Court appoints **Mr.M.Nazir Ahmed, (Retd.) District Judge**, residing at No.B-606, Altis Ashraya, Kundrathur Main Road, Mangadu, Chennai-600 122, Mobile Number: 94434 13106, as the Sole Arbitrator to enter upon the reference



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and adjudicate the disputes *inter se* the parties. The learned Arbitrator may, 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 Arbitrator is at liberty to fix his remuneration and other incidental expenses as per the schedule to the Arbitration & Conciliation Act, 1996. The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules. The disclosure and declaration may be made by the learned Arbitrator in the form specified in the Sixth Schedule to the Arbitration and Conciliation Act, 1996.

10. This application is **allowed** accordingly and the parties are liable to bear their own costs.

13.07.2023

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

sri

To

Mr.M.Nazir Ahmed,
(Retd.) District Judge,
No.B-606. Altis Ashraya,
Kundrathur Main Road,
Mangadu, Chennai - 600 122.

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R.N.MANJULA, J.

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