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Arb.O.P(Com.Div.) No.440 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.) No.440 of 2022

and

A.No.4044 of 2022

Ganesh Karthikeyan

... Petitioner

Vs.

M/s.HDFC Bank Limited,
Represented by its Authorised Signatory,
Having its Registered Office at
No.110, Ceebros Building,
4th Floor, Nelson Manikkam Road,
Aminjikarai, Chennai – 600 029.

... Respondent

Prayer: Original Petition is filed under Section 34(2)(b)(iii) and Section 3 of the Arbitration and Conciliation Act, 1996, praying to pass an order setting aside of the Arbitral Award dated 17.02.2022 passed in A.No.33 of 2019 by Ms.Deepa Vasumithran, Sole Arbitrator.

For Petitioner : Mr.Akhil Bhansali

For Respondent : Mr.T.Jayakumar



Arb.O.P(Com.Div.) No.440 of 2022

ORDER

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This case is listed under the caption “For Dismissal” as there was no representation on behalf of the petitioner and the respondent on 31.01.2024.

2. Today, there is a representation on behalf of the petitioner that the counsel is not available and therefore, this case be adjourned to a subsequent date.

3. The learned counsel for the respondent on the other hand would submit that the respondent has filed written submissions and the same may be taken on record for passing order.

4. Both the parties are having assisted the Court on facts and therefore this case is being disposed after reading the Award and the grounds filed by the petitioner and the written submissions filed by the respondent.



Arb.O.P(Com.Div.) No.440 of 2022

WEB COPY

5. The facts on record indicates that the petitioner herein had availed a loan from the respondent under an Agreement for Auto Loan dated 21.04.2018.

6. The aforesaid Agreement for Auto Loan was advanced by the respondent for purchase of a Hyundai I 20 ELITE ASTA 1.2, bearing Chassis No.2, Engine No.2 .

7. The aforesaid Loan is for a sum of Rs.8,43,000/-. However, the petitioner defaulted in making repayments and therefore the respondent had issued a Loan Recall Notice on 23.02.2019 and demanded a sum of Rs.9,24,395.76/- being the amount of foreclosure as on 14.02.2019.

8. Under these circumstances, the respondent has proceeded to appoint an Arbitrator in accordance with Clause 26 of the aforesaid Agreement for Auto Loan dated 21.04.2018. It reads as under:-

“26. Governing Law, Jurisdiction and Arbitration :

This agreement shall be construed in accordance



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with the laws of India.

The Parties hereto expressly agree that all disputes arising out of and/or relating to this Agreement including any Collateral Document shall be subject to the exclusive jurisdiction of the Courts/Tribunals of the city in which the Lending Office is situated. Provided that to the extent allowed by law, the Bank shall be entitled to take proceedings relating to a dispute in any Court/Tribunal of any place with jurisdiction. Provided further that if any dispute arising under this Agreement is below the pecuniary jurisdiction limit of the Debt Recovery Tribunals established under Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993), then such dispute shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 as may be amended, or its re-enactment, by a sole arbitrator, appointed by the Bank. The arbitration proceeding shall be conducted in English language. The award passed by the arbitrator shall be final and binding on the Parties. The costs of such arbitration shall be borne by the losing Party or otherwise as determined in the arbitration award. The venue of the arbitration shall be the city in which the Lending Office is situate or such other place as may be determined by the Bank. If a party is required to enforce an arbitral award by legal action of any kind, the party against whom such legal action is taken shall pay all reasonable costs and expenses and attorney's fees, including any cost of additional litigation or arbitration taken by the party seeking to enforce the award.”

9. In the proceedings before the learned Arbitrator, the petitioner has also filed a Memo under Section 12(1) of the Arbitration and Conciliation Act, 1996 seeking certain queries regarding impartiality of the learned Arbitrator. The learned Arbitrator has thereafter passed an order on



Arb.O.P(Com.Div.) No.440 of 2022

WEB COPY

29.01.2021 defiling all the objections raised by the petitioner. Thereafter, Claim Statement was filed and therefore the petitioner herein who was the respondent before the Arbitral Tribunal made certain other submissions seeking for details from the learned Arbitrator.

10. Ultimately, there have been several exchange of messages. However, nothing has moved forward from the petitioner's side. It appears the petitioner has informed the learned counsel for the respondent that the petitioner had moved a petition under Section 14 of the Arbitration and Conciliation Act, 1996 vide SR.No.33158 of 2021 dated 09.12.2021 and owing to Covid-19 Pandemic, the case could not been numbered.

11. It is in this background, the Arbitral Tribunal has proceeded to pass the Award on 17.02.2022, which is now subject matter of challenge. In the challenge before this Court, the learned counsel for the petitioner has submitted that the impugned Award was passed in violation of the provisions of the Arbitration and Conciliation Act, 1996 and was without any merits.

12. The further case of the petitioner is that appointment of the



Arb.O.P(Com.Div.) No.440 of 2022

WEB COPY

Arbitrator was contrary to the decision of the Hon'ble Supreme Court in **Perkins Eastman Architects DPC & Another Vs. HSCC (India) Limited**, 2019 SCC Online SC 1516.

13. A reference was also made to the decision of the Hon'ble Supreme Court in **Voestalpine Schienen GmbH Vs. Delhi Metro Rail Corporation Limited**, AIR 2017 SC 939/(2017) 4 SCC 655. Barring the above ground, no other subsequent grounds have been raised by the petitioner to challenge the Award.

14. The petitioner has also not disputed availing of loan and the failure on the part of the petitioner to service the loan. The petitioner on the other hand has merely resorted to dilatory tactics before the learned Arbitrator by filing frivolous petition under Section 12 of the Arbitration and Conciliation Act, 1996 and therefore had sought to delay the proceedings by stating that the petitioner has filed the petition for terminating the mandate of the learned Arbitrator under Section 14 of the Arbitration and Conciliation Act, 1996.

15. As a matter of fact, there are no documents filed by the



Arb.O.P(Com.Div.) No.440 of 2022

WEB COPY

petitioner, nor any communication from the petitioner with reference to the status of the pending petition nor any summons from the Court regarding the admission of the petition filed under Section 14 of the Arbitration and Conciliation Act, 1996.

16. I do not find any reasons to set aside the Award dated 17.02.2022 passed in A.No.33 of 2019. Hence, this Original Petition is dismissed on merits. No costs. Connected Application is closed.

05.02.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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C.SARAVANAN, J.



WEB COPY



Arb.O.P(Com.Div.) No.440 of 2022

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