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Arb.O.P. (Com.Div.) No.542 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.542 of 2023

and

A.No.6061 of 2023

Chandrashekhar Chintur

... Petitioner

Vs.

1.M/s.John Deere Financial India Private Limited,
Non Banking Finance Company having its
registered office at : Tower XIV, Cybercity,
Magarpatta City, Hadapsar, Pune – 411 013.
Area office at :
GKS Annexe,
O.No.3, N.No.20, Pycrofts Garden Road,
Next to State Bank of India Training Center,
Chennai – 600 006.

2.Sukhram Chintur

3.Atthi Sukhram

... Respondents

Prayer : Original Petition is filed under Section 34(2) of the Arbitration and Conciliation Act, 1996, praying to set aside the award dated 16.06.2023 made in Arbitration Case ID.5732 of 2022 passed by the Sole Arbitrator Mr.R.Venkatesan.



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For Petitioner : M/s.M.Geethapriya

For Respondents : No Appearance

ORDER

The respondents have been served with notice. Despite service of notice, there is no representation on behalf of the respondents.

2. The petitioner is the co-borrower under a loan agreement dated 16.04.2021, wherein, the first respondent has advanced a sum of Rs.9,10,000/- for purchase of a Tractor for agricultural purpose. The petitioner herein is the co-borrower along with his father. The second respondent herein has since deceased on 25.05.2021.

3. According to the third respondent after the loan was availed, defaults were committed by the petitioner and the second respondent and therefore the first respondent had issued a notice on 20.10.2022. After repossessing the hypothecated vehicle to the first respondent on 13.09.2022, the first respondent sold the same on 11.10.2022 for a sum of Rs.7,40,000/-. It is submitted that in the notices that was issued by the first respondent to the petitioner, the second respondent (since deceased on 25.05.2021) and to the third respondent on 20.10.2022, the first



respondent has merely demanded the balance amount of Rs.2,43,023/- (Rs.9,84,203/- - Rs.7,40,000/-). It is submitted that despite the amount due being Rs.2,43,023/-, the respondent has proceeded to file a claim statement on 31.10.2022 i.e within the period of 11 days before the learned arbitrator in ACP(JDF)No.R.Venkatesan of 2022 for entire amount of Rs.10,08,267/- without giving credit to the amount recovered from the sale after repossession of hypothecated vehicle for a sum of Rs.7,40,000/-.

4. That apart, it is submitted that the Award is also a nullity, as the Award has been passed against the second respondent who deceased on 25.05.2021. In any event, it is submitted that the Award has vacated to consider the objection of the petitioner dated 19.12.2022.

5. I have considered the arguments advanced by the learned counsel for the petitioner and also perused the post sale demand notice dated 20.10.2022 issued to the petitioner and the second and third respondents. It categorically concludes that the vehicle was repossessed and sold for a sum of Rs.7,40,000/- and the amount due from the second respondent (since deceased on 25.05.2021) and from the third respondent/guarantor



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as Rs.2,43,023/-. The Award that has been passed by the learned Arbitrator makes no reference to the aforesaid post sale demand notice dated 20.10.2022 of the first respondent.

6. Thus, there is a patent illegality in the Award that has been passed by the learned Arbitrator. It is open to the first respondent to approach the learned Arbitrator to pass a fresh Award in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The time between the date of the impugned Award and the date of receipt of this order shall stand excluded for computation of limitation for initiation of proceedings.

7. This Arbitration Original Petition stands allowed with the above observations. No costs. Consequently, connected application is also closed.

18.01.2024

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Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No



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C.SARAVANAN, J.

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