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Arb.O.P. (Com.Div.)Nos.488 and 489 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.)Nos.488 and 489 of 2023

1.Mr.Margic Ali

Proprietor of M/s.Margic Travels,
No.2-20, New Street, Valuthur Papanasam,
Valoothoor, Thanjavur – 614 210.

2.Ms.M.Hawa Bibi

Wife of Mr.A.Mergic Ali,
No.2-20, New Street, Valuthur Papanasam,
Valoothor,
Thanjavur – 614 210.

... Petitioners in both Original Petitions

Vs.

M/s.Sundaram Finance Limited,
No.21, Patullos Road,
Chennai – 600 002.

... Respondent in both Original Petitions

Prayer in Arb.O.P.(Com.div)No.488 of 2023: Original Petition is filed under Section 34(2) of the Arbitration and Conciliation Act, 1996, praying to set aside the Arbitral Award dated 12.05.2023 passed in Arbitration Case No.KER/SF/74 of 2022 by the sole Arbitrator Mrs.K.Elaiyarani in its entirety and to direct the respondent to pay the costs of this petition.



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Prayer in Arb.O.P.(Com.div)No.489 of 2023: Original Petition is filed under Section 34(2) of the Arbitration and Conciliation Act, 1996, praying to set aside the Arbitral Award dated 18.07.2023 passed in Arbitration Case No.KER/SF/75 of 2022 by the sole Arbitrator Mrs.K.Elaiyarani in its entirety and to direct the respondent to pay the costs of this petition.

For Petitioners : Mr.M.A.Murthuza Ali
(in both Petitions)

For Respondent : Mr.M.Arunachalam

COMMON ORDER

The respective Awards both dated 12.05.2023 and 18.07.2023 are challenged before this Court under Section 34 of the Arbitration and Conciliation Act, 1996. It appears that the petitioners herein had availed a loan for purchase of vehicle from the respondent. These loans were to be repaid as per the terms of the respective loan agreements both dated 25.12.2019 due to the outbreak of Covid – 19 pandemic. There was a re-scheduling in repayment period. The petitioners however appears to have defaulted in repaying the loan and therefore the respondent had issued notice to the petitioners asking the petitioners to regularize the default.



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2. To this effect, notices dated 20.10.2021 were issued to the petitioners by the respondent through their counsel and thereafter the respondent proceeded to approach Madras Chamber of Commerce and Industries (MCCI) to appoint an Arbitrator. In the Arbitral proceedings, the petitioners have remained absent which has now culminated in the impugned Awards dated 12.05.2023 and 18.07.2023.

3. The Award record shows that the vehicle that were financed by the respondent to the petitioners by two separate loan agreements dated 25.12.2019 and were sold for a sum of Rs.45,00,000/- (Rupees Forty Five Lakhs only) and the amounts have been adjusted against the outstanding dues of the petitioners for the respective loan.

4. The Award is challenged primarily on the ground that the learned Arbitrator has failed to comply with the requirements of Section 12 of the Arbitration and Conciliation Act, 1996. That apart, it is submitted that the petitioners were not served with notice either before the institution of the arbitral proceedings or during the course of the arbitral proceedings. Thus, there is a patent illegality.



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5. It is submitted that the petitioners are entitled to refund as the vehicles that were sold for a paltry sum of Rs.45,00,000/- (Rupees Forty Five Lakhs only) and the amounts have been wrongly adjusted towards interest, the amounts recovered from the sale ought to have been adjusted towards principal due from the petitioners in respect of the respective agreements.

6. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent and also perused the Award passed by the learned Arbitrator and also perused the documents that have been filed.

7. The Award that was passed on 12.05.2023 indicates that a sum of Rs.45,00,000/- (Rupees Forty Five Lakhs only) was recovered from the sale of the hypothecated vehicles under the respective agreement. It also records that the petitioners had paid a sum of Rs.4,29,100/- on 31.03.2022.



8. The Award is silent with regard to the appropriation made pursuant to the sale of the hypothecated vehicle in favour of the respondent under the aforesaid loan agreement. The details ought to have been given before arriving at the amounts due from the petitioners. Thus, there is a patent illegality in the Award. Therefore, the Award is set aside for the parties to approach the learned Arbitrator to pass a fresh Award on the same dispute. The learned Arbitrator shall pass fresh Award un-influenced by the Award already passed which are subject matter of these orders.

9. The petitioners are directed to file a counter, if any, within a period of 30 days from the date of receipt of a copy of this order. The learned Arbitrator shall thereafter endeavour to pass a fresh award within a period of 12 months from the date of receipt of a copy of this order. It is open for the petitioners to move appropriate application before the learned Arbitrator for lifting the order of attachments that was passed on 27.01.2023 and the order under Section 17 of the Arbitration and Conciliation Act, 1996.



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10. These Original Petitions are allowed with the above observations, leaving the parties to bear their own costs.

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Index : Yes / No
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Neutral Citation : Yes / No



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C.SARAVANAN, J.

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