IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-07-2026

CORAM

THE HON'BLE MR JUSTICE P. VELMURUGAN

AND

THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

OSA No. 38 of 2021

M/s.Hyundai Motor India Ltd,
Rep. by its Managing Director,
Having its Registered Office at
H-1, SIPCOT Industrial Park, Irungattukottai,
Sriperumbudur Taluk, Kancheepuram District,
Tamil Nadu.

..Appellant

Vs

M/s.St.Antonys Cars Pvt. Ltd.
Rep. by its Managing Director,
Mr.Haimer Reynolds,
Having its Registered Office At XII/268,
Mundakkal, S.N.College Junction,
Kollam 691 001, Kerala.

..Respondent

Prayer : Original Side Appeal is filed under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of Letters Patent, against the judgment and decree dated 26.02.2020 passed by this Court in O.P.No.1057 of 2019.

For Appellant:	Mr. A.R .L Sundaresan, Senior Counsel Assisted by Mrs. P.R. Vandana for M/S.Surana and Surana
For Respondent:	No appearance

Judgment

(Judgment of the Court was delivered by K.Govindarajan Thilakavadi J.)

Challenging the Order dated 26.02.2020 passed by this Court in O.P.No.1057 of 2019, the appellant who is the petitioner in the said petition, filed the present Original Side Appeal.

2. The respondent herein has filed the Claim Petition before the Tribunal on the following grounds:

2.1. The appellant, on considering the respondent /Claimant's rich experience, appointed them as its dealer in the Territory of Kollam. Though the Dealership Agreement mentioned that the relationship between the parties is a principal-to-principal basis, the relationship was really on principal-to-agent basis only. Though the Agreement was for a period of three years, the parties, by conduct, had extended the Agreement.

2.2. The respondent / Claimant did not have any say over any decisions including pricing or volume for the better business prospects except upon obtaining an in-principle approval from the appellant and had spent a considerable time and money to set up the 3S (Sales Service and Spares) showroom and service centre and the same can be used only for the appellant's business. The respondent/Claimant had spent Rs.2.40 Crores for the project which was evident from the books of account and since its business was growing, the appellant gave approval for them to start Rural Sales Outlets (RSO) at Anchal and Ochira and to start a dealership service branch operations at Attingal, Trivandrum. The respondent/Claimant had, invested more than Rs.13 Crores to set up all the necessary facilities for showroom, workshop, and for recruiting necessary skilled manpower, made huge investment believing that the Dealership was exclusive in nature as represented in Letter of Intent dated 09.08.2007, spent an amount of Rs.5,74,065/- for training its employees, taken steps for promoting and marketing the brand of the appellant by way of advertising the appellant's products from time to time and these expenses were incurred by the respondent/Claimant only at the instance of the appellant.

2.3. Despite an overall decline in the automobile market, its own business grew significantly, demonstrating satisfactory performance. The appellant acted unfairly by imposing unrealistic sales targets, failing to close nearby competing branches, withholding popular car models and approved service outlets, and not supplying vehicles despite advance payments. The appellant undermined respondent/claimant's business by inviting new dealerships in the same territory despite earlier assurances of support and ignored its explanations to warning letters and wrongfully terminated the agreement, causing substantial losses, which led to the arbitration proceedings.

3. The defence set up by the appellant herein before the Arbitral Tribunal is as follows:

3.1. The respondent /claimant was appointed as appellant's Authorized Dealer vide Dealership Agreement dated on 24.08.2009 on Principal to Principal basis and also on a non-exclusive basis for the sale and service of Hyundai products in the Territory of Kollam, Kerala The Agreement was for a period of three (3) years The agreement was neither renewed nor was a fresh Agreement entered into in its place.

3.2. The respondent/claimant committed several breaches and defaults, viz. not maintaining sufficient inventory or sufficient number of test drive vehicles, lack of response to the requests for test drives made by the potential customers, failure to develop and operate service branch at Attingal and Rural Sales Outlet at Ochira within the stipulated time, continuous poor performance, poor customer care service, customer complaints, diversion of funds, non repayment of loans availed by it and operation of unauthorized centers, which lead the appellant to issue two Show Cause Notices to the respondent/claimant. The appellant had issued letters to the respondent/claimant pointing out that there were unutilized funds of about Rs.150 lakhs which may be utilized to improve its inventory and improve sales performance. The respondent/claimant on several occasions failed to honour the commitments made by it. The inventory of the respondent/claimant kept decreasing and also there were defaults in repayment of the credit facility availed by it.

3.3. The appellant gave the respondent/claimant ample opportunities and support to improve its performance, including reducing sales targets, conducting meetings, and suggesting action plans. However, the respondent/claimant allegedly failed to follow these plans or meet its commitments, resulting in declining inventory, poor performance, financial losses, and ultimately the termination of the dealership.

3.4. The appellant provided additional support by regularizing the respondent/Claimant's unauthorized service centres and granting extensions to make them operational. However, the respondent/claimant allegedly failed to improve its performance or comply with the prescribed timelines, leading to repeated breaches and non-performance. Consequently, the appellant terminated the dealership agreement in accordance with the contractual clause permitting termination upon 30 days' notice, and therefore denies any liability for damages claimed by the Claimant.

4. The learned Arbitrator allowed the claim petition partly and concluded as follows:

i.The appellant is not liable to pay the respondent/Claimant a sum of Rs.4,72,025.12/-on account of warranty claims.

ii.The appellant is not liable to pay the respondent/Claimant a sum Rs.8,76,62,173/- on account of SARPAESI of proceedings.

iii.The appellant is liable to pay a sum of Rs. 35,96,271/ on account of the business transactions between the respondent/Claimant and the appellant.

iv.The appellant is liable to pay Rs.3,82,710/- towards part of the training expenses.

v.The appellant is liable to compensate the loss of investment to the tune of Rs.75,30,235/ made by the respondent/Claimant at the behest of the appellant.

vi.The appellant is liable to compensate the respondent/Claimant for the expenses incurred towards creation of appellant's Goodwill in marketing and promotion to the extent of Rs.31,49,560/-.

vii.The Appellant is liable to compensate the respondent/claimant towards loss of future profit for a sum of Rs. 18,00,000/-

In all, the appellant is liable to pay a sum of Rs.1,64,58,776/- to the respondent/claimant together with interest at the rate of 12% per annum from 29.04.2014 the date of filing the claim petition till the date of the Award and a further interest thereafter at the rate of 9% per annum till realization in full along with the cost of the proceedings.

5. Aggrieved over the same, the appellant filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (in short “A&C Act, 1996) before this Court in O.P. No.1057 of 2019. The learned Single Judge partly allowed the petition by setting aside Award in so far as it relates to paragraph 18(vii) and confirmed the Award in all other aspects. Challenging the same, the present Original Side Appeal is preferred by the appellant.

6. Mr. AR L Sundaresan, the learned Senior Counsel, appearing for the appellant would contend that the impugned Award is contrary to provisions of law and terms agreed between the parties. While so, the learned Single Judge ought to have set aside the impugned Award as patently illegal, unfair and totally unreasonable. He would submit that the appellant is in the business of manufacturing, selling and servicing of automobile vehicles under the house/brand name "Hyundai" and has been doing business in India since 1997. The Appellant allotted the dealership to the Respondent by signing a Letter of Intent dated 09.08.2007 and subsequently the Dealership Agreement was entered into on 24.08.2009 as a dealer on a non-exclusive basis for the sales and service of the Appellant's products for the Territory of Kollam, Kerala. The

Agreement was for a period of Three (3) years. The Agreement was neither renewed nor a fresh Agreement executed between the Parties.

6.1. The Respondent committed several breaches and defaults, viz. not maintaining sufficient inventory or sufficient number of test drive vehicles, lack of response to the requests for test drives made by the potential customers, failure to develop and operate service branch at Attingal and Rural Sales Outlet at Ochira within the stipulated time, continuous poor performance, poor customer care service, customer complaints, diversion of funds, non repayment of loans availed by it and operation of unauthorized centers and therefore, a warning letter dated 13.08.2012 was issued by the Appellant, despite which the Respondent failed to submit the detailed action plan in response to the same.

6.2. Thereafter, the Appellant, in its letter dated 27.10.2012, informed that a Show Cause Notice would be issued if the Respondent failed to improve the sales performance and rectify the other deficiencies. The Appellant did not receive any reply from the Respondent about the action plan till the date which lead the Appellant to issue Show Cause Notice dated 28.11.2012 to the Respondent informing the various deficiencies committed by the Respondent and calling upon the Respondent to show cause, amongst others, as to why the Agreement should not be terminated.

6.3. The Respondent vide its reply dated 11.12.2012 admitted to its poor performance in sales and various other deficiencies, but attributed them to the poaching activities by fellow dealers. The Respondent also admitted the uncomfortable financial situation in running the dealership. In view of the above, the Respondent requested the Appellant to take a lenient view of the matters and sought continued association with the Appellant.

6.4. Subsequently, a meeting was held between the parties on 23.01.2013, wherein the Respondent had made the commitments of infusing funds of Rs.150 Lakhs by 15.02.2013 and increasing the Inventory Funding to 850 Lakhs from the current 450 Lakhs by April, 2013. Further the Respondent committed to maintain minimum sales of cars, maintain minimum number of test drive cars and sufficient manpower. Despite the aforesaid commitments by the Respondent, the Respondent's performance did not show improvement and continued to be a non- performer. Thus, the Appellant was constrained to issue a Second Show Cause Notice dated 18.04.2013 to the Respondent to show cause as to why the Dealership Agreement dated 24.08.2009 should not be terminated. The Respondent's reply dated 05.05.2013 failed to satisfy the concerns of the Appellant and decided not to continue the relationship with the Respondent.

6.5. In view of the above said breaches, defaults and non performance committed by the Respondent, the Appellant was forced to terminate the Dealership Agreement with the Respondent vide Termination letter dated 02.08.2013 which was received by the Respondent on 17.08.2013 as per Clause 13 of the Agreement by which the Appellant and the Respondent were entitled to terminate the Agreement by giving 30 days notice. Thereafter, an Arbitral tribunal was constituted, issues were framed and an Award was passed by the Arbitral Tribunal on 15.03.2019. Aggrieved by the Impugned Award, the Appellant preferred an appeal under Section 34 of the Arbitration and Conciliation Act, 1996. The, Hon'ble court vide its order dated 26.02.2020 passed the impugned order.

6.6. He would submit that, the Award passed in patently illegal as the Arbitrator has adopted the Emden formula for a sale transaction and that this formula is used in construction contract and therefore, submits that the very basis of the Award being erroneous, the entire Award deserves to be set aside. The learned single judge failed to take note of the above facts and passed the impugned order, warrants interference by this Court.

7. Despite notice, there is no representation on the side of the respondent/claimant.

8. Heard Mr. A.R L Sundaresan, the learned Senior Counsel, appearing for the appellant Records perused.

9. This appeal under Section 37 of the A&C Act,, 1996, is directed against the order of the learned Single Judge dismissing the appellant's petition under Section 34 of the A&C Act, 1996, and affirming the Arbitral Award except for paragraph 18(vii) in the Abritral Award. The impugned order is challenged on the ground that the learned Single Judge failed to note that Emden formula is essentially a tool for computing the extent of loss or damages in construction Industry. Thus, the application of Emden formula is not justified in the present case and the learned Single Judge failed to consider that the agreement between the parties is a commercial contract i.e., a Dealership Agreement and not an Engineering Construction Contract to apply the Emden formula which is used to calculate over head charges.

10. The factual matrix is that the appellant and the respondent entered into a deal agreement for distribution and sale of the appellant's products. Dispute arose regarding the premature termination of dealership. The learned Arbitrator held that the termination was wrongful and awarded damages by applying the Emden formula treating the respondent's loss of business and

expected profits as analogous to loss of profit in the contract.

11. The appellant contends that the Award suffers from patent illegality because the Emden formula is confined to construction contracts involving prolongation of work and overhead costs. Before the 34 court, the respondent argued that the formula is merely a scientific method of estimating loss of profit and can be extended to commercial contracts which was also accepted by the learned Single Judge.

12. Now the question arises whether the Emden formula can be applied for assessing damages arising from a dealership agreement.

13. The Emden formula was evolved in the field of construction law for assessing head office overheads and loss of profit resulting from prolongation of construction contracts due to employer caused delay. It proceeds on the premise that the contractor's resources remain committed to the delayed project, thereby depriving the contractor of opportunities to undertake other works.

14. In **McDemott International Inc. V. Burn Standard Co. Ltd (2006) 11 SCC 181,** the Hon'ble Supreme Court explained the Emden, Hudson and

Eichleay formulae as recognised methods for quantifying damages in construction contracts. The Court accepted that such formulae may be used where employer caused delay and consequent loss are established. However, the Hon'ble Apex Court did not lay down that the Emden formula is an universal method applicable to every commercial contract.

15. A dealership agreement stands on a fundamentally different footing. A dealer ordinarily purchases or markets goods for the principal. The losses arising from wrongful termination generally consists of loss of commission, loss of business, unsold inventory, investment in infrastructure, and proved loss of future profits. Such losses are governed by Sections 73 and 74 of the Indian Contract Act, 1872, which require proof of laws flowing naturally from the breach. Unlike a construction contract, a dealership agreement does not involve prolonged deployment of construction equipment, labour force, site establishment or head office overheads attributable to a delayed project. The assumption underlying the Emden formula are therefore, absent.

16. In the present case, the termination is with regard to dealership agreement for sale of automobiles for a period of three years, which can be terminated by either party by giving 30 days notice without assigning any reason. The learned Arbitrator, after quoting the “Termination Clause” of

Dealership Agreement in the Award has held that the appellant was not within his rights to terminate the contract appears to be patently illegal, when the termination is in accordance with the terms agreed upon. The learned Arbitrator has travelled beyond the terms of agreement which amounts to rewriting the terms of the commercial contract between the parties, which is also against public policy and law of land. The Arbitrators are governed by the terms of the agreement between the parties and the Arbitral Tribunal is not a Court of Equity. Arbitrator being a creature of agreement is bound by the terms of the contract.

17. Further the allegations of loss of business, loss of profits, etc., cannot be sustained when the contract contains a clause granting authority to one party to terminate the contract. The said termination cannot be called in question and therefore, holding the termination to be illegal is incorrect. Further, the burden to establish loss is on the person claiming the damages. In fact, the respondent did not let in evidence of any independent witness to prove the loss for the application of the Emden formula. The Hon'ble Supreme Court in ***Kailash Nath Associates v. Delhi Development Authority*** reported in ***(2015) 4 SCC 136***, reiterated that compensation for breach of contract must bear a reasonable nexus with the actual loss proved and cannot be awarded arbitrarily. Likewise, in ***Braithwaite Burn and Jessop Construction Company Limited vs. Ril Vikas***

Nigam Ltd., (O.M.P. No. (Comm) 127/2019 – High Court of Delhi decided on 15.04.2019), it was held that in the absence of proof of loss, one cannot claim compensation merely on the strength of Emden formula. In the present case, the respondent has not produced any evidence to establish the quantum of actual loss claimed by it. In ***Shah Jethabhai vs. J.N. Construction*** reported in ***2012 (114) BOM LR 785***, it was held that damages cannot be awarded on the basis of unagreed formula and clauses. The Division Bench of this Court in the ***Tamil Nadu Handloom Weavers Cooperative Society Limited vs. Vijayaraghavan and others – Manu/TN/3710/2011***, held that in the absence of any agreement between the parties Hudson formula cannot be invoked.

18. Therefore, the Emden formula cannot be transplanted mechanically into a dealership dispute. If the Arbitrator awards damages by applying the Emden formula without evidence establishing its relevance to the commercial relationship, the award rests on a legally inapplicable principle. Further, a dealership agreement is a commercial distribution contract and not a construction contract. Damages under a dealership agreement must be proved under Sections 73 and 74 of the Indian Contract Act, on the basis of actual evidence, such as loss of profits, commission, business opportunities or investments, and cannot ordinarily be assessed through the Emden formula.

19. While an Arbitrator enjoys discretion in assessing damages, such discretion must be exercised within the frame work of the governing contract and applicable law. Adoption of a methodology developed exclusively for construction contract, without any evidentiary or legal foundation connecting it to a dealership arrangement, amounts to a patent error of law. The learned Arbitrator committed a patent illegality by applying the Emden formula without any legal or factual basis. The learned Single Judge failed to notice this jurisdictional error while exercising powers under Section 34 of the A&C Act, 1996.

20. In the result, the appeal is allowed. The order dated 26.02.2020 passed by this Court in O.P.No.1057 of 2019 under Section 34 of the Arbitration and Conciliation Act, 1996, is set aside. Consequently, the Award passed by the Arbitral Tribunal under paragraph 18(i) and 18(ii) is confirmed and other claims awarded under paragraph18(iii) to 18(vii), are set aside. There is no order as to cost.

(P.V.,J.) **(K.G.T.,J.)**

27-07-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
BGA

To

1. M/s.St.Antonys Cars Pvt Ltd
Rep. By Its Managing Director, Mr.Haimer
Reynolds, Having Its Registered Office At Xii/268,
Mundakkal, S.N.College Junction,
Kollam 691 001, Kerala.

2. The Sub Assistant Registrar,
Original Side, High Court, Madras.

P.VELMURUGAN J.
AND
K.GOVINDARAJAN THILAKAVADI J.

BGA

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