

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 10.08.2016

CORAM:

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER

Original Petition No.24 of 2008

1. Mrs.Neeraj Dixit
2. Mr.Harsh Vardhan Dixit .. Petitioners

Versus

1. M/s.Ashok Leyland Finance
(A Division of Indus Ind Bank Limited)
rep. by its Executive Legal "Sudarsan Building",
No.92, (Old No.86), Chamiers Road,
Chennai.

2. Mr.D.Saravanan .. Respondents

Prayer: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, seeking to set aside the Award dated 18.2.2006 passed by the Arbitrator.

For Petitioners : Mr.Saravanan for
M/s.V.Vijay Shankar

For Respondents: Mr.K.Moorthy for
M/s.K.Moorthy Association-R1

ORDER

1. By virtue of this petition, challenge has been laid to the award dated 18.2.2006 passed by the learned Arbitrator.

2. Record reveals that the petitioner No.1 has availed loan facility qua loan agreement, dated 26.4.2004, for purchase of a vehicle described as TATA LP 1510. Petitioner No.2 stood as a guarantor for repayment of the loan availed by the petitioner No.1. Under the loan agreement, the petitioner No.1 borrowed a sum of Rs.7,60,131/- (inclusive of finance, insurance and other dues) repayable in 35 Equated Monthly Instalments (EMIs). As indicated above, the petitioner No.2 guaranteed the repayment of the aforementioned amount.

3. It appears that after having paid 8 EMIs, the petitioner No.1 committed defaults, which resulted in respondents seeking to raise demands for repayment of the balance amount. The final demand was raised by the respondents on 3.11.2005. On account of failure of the petitioners to repay the loan amount, arbitration proceedings were triggered. The Arbitrator, upon

entering reference, issued notice to the petitioners herein on 5.11.2005, wherein, it was indicated that the hearing in the matter, would be held on 14.12.2005. Record shows that the notice was dispatched to the petitioners on 10.11.2005. However, the petitioners refused service. There is an endorsement dated 17.11.2005 to that effect on the postal cover, which shows that the notice was issued to the petitioners herein.

4. It appears that on 14.12.2005, the learned Arbitrator did not close the proceedings, but gave a final opportunity to the petitioners to contest the matter. Notices issued to the petitioners were once again returned with the endorsement "refused". This endorsement dated 27.5.2005, is seen on the postal cover. The learned Arbitrator thus, proceeded to examine the contentions of the respondent/claimant. Upon perusing the evidence placed before him, he came to the following conclusion,

- i) That the petitioners are liable to pay a sum of

Rs.6,02,220/- to the respondent with interest at the rate of 18% p.a., this interest is to run, however, on the sum of Rs.5,54,075/- from the date of claim petition.

ii) That the petitioners are to pay aforementioned amounts within a period of one month, failing which, the respondent would have liberty to execute the award for recovery of the amount indicated above from the petitioners jointly and severally.

iii) That the petitioners are to surrender the subject vehicle within 7 days from the date of receipt of a copy of the award, failing which, the respondent would have liberty to sell the subject vehicle and adjust the sale proceeds towards the amount due and in case the sale proceeds fall short, then, the respondent would claim recovery of the balance amount.

iv) The petitioners are to pay a sum of Rs.1000/- towards costs of the proceedings. Furthermore, the petitioners are required to pay 50% towards the Arbitrator's fee, which was pegged at Rs.4000/-.

5. I am informed that an execution petition has been filed by the respondent being E.P.No.34 of 2007, before the District Court situate at Kanpur Nagar, Kanpur District, Uttar Pradesh. Furthermore, my attention has been drawn to the averments made in the Execution Petition, wherein, there is a reference to the fact that Rs.2,50,000/- has been paid, and accordingly, the decretal amount stands reduced from Rs.7,60,131/- to Rs.2,50,000/-.

6. Learned counsel for the respondent says that the adjustment of Rs.2,50,000/- has been carried out on account of proceeds received from the sale of the subject vehicle. I am also informed that the subject vehicle was sold on 31.3.2006.

7. Learned counsel for the petitioners has assailed the award on two grounds. First, that no notice was issued to the petitioners with regard to the arbitration proceedings. Second, that the respondent failed to disclose to the learned Arbitrator the fact that the subject vehicle had been seized.

7.1 Learned counsel submitted that the fact that the respondent kept back this information from the Arbitrator, rendered the award illegal, and therefore, stood vitiated on this short ground alone.

7.2 In support of this submission, learned counsel for the petitioners relies upon a certified copy of the document titled "Reposessed Vehicle Inventory list". The learned counsel for the petitioners further says that the subject vehicle was reposessed by the respondent as early as on 15.10.2005.

8. Learned counsel for the respondent, on the other hand, relies upon the impugned award to sustain his arguments. Insofar as repossession of the vehicle is concerned, he says that he does not have instructions from the respondent.

9. Having heard the learned counsel for the parties and on a perusal of the entire record, it is quite clear that there is no dispute about the fact that a loan agreement was executed between the petitioner No.1 and the respondent. It is also not in dispute that the petitioner No.2 is a guarantor for the money

owed by the petitioner No.1 to the respondent. It is admitted fact that out of 35 EMIs, only 8 EMIs were paid. Therefore, Issue No.1 which was struck by the learned Arbitrator with regard to "whether or not, the petitioners were jointly and severally liable to pay the sum of Rs.6,02,220/- along with interest", has been rightly found in favour of the respondent as against the petitioners. The only caveat that the learned Arbitrator has entered is, with regard to the payment of interest, that is, as to the amount on which interest was to be paid.

10. For the sake of convenience, conclusions reached qua Issue No.1, is extracted hereunder:

"13. It is, therefore as concluded above the respondents have committed breach of Loan Agreement by default in payment of instalments and is therefore liable to pay the claimant a sum of Rs.6,02,220/-. Further, the respondents are also liable to pay interest @ 18% p.a. On 5,54,075/- as per the Statement of Accounts, viz., Ex.A7 from the date of claim petition which this Tribunal observes reasonable to grant as the transaction is of commercial nature. Hence, the

issue No.1 is answered accordingly.”

11. In my view, no fault can be found *qua* the conclusion reached by the learned Arbitrator *vis-a-vis* Issue No.1.

12. At this juncture, let me deal with the grounds of challenge raised by the learned counsel for the petitioners. It is stated by the learned counsel for the petitioners that no notice was issued to the petitioners. As indicated in my narration above, notice dated 5.11.2005 was issued to the petitioners. The petitioners refused service of notice on 17.11.2005. Therefore, quite clearly that service is deemed to have been effected on the petitioners. As a matter of fact, a second notice was issued to the petitioners, which was also refused on 27.12.2005.

12.1 In these circumstances, this ground does not sustain, and therefore, is rejected. Accordingly, the conclusions reached by the learned Arbitrator *qua* Issue No.1, which I have made a reference to above, would have to be sustained.

13. As regards the conclusions reached by the learned

Arbitrator qua Issue No.2, i.e., "as to whether the petitioners have to surrender the loan vehicle and other documents". The learned Arbitrator proceeded on the basis that the subject vehicle had not been surrendered. The petitioners were accordingly, directed to surrender subject vehicle.

13.1 However, the certified copy of the document titled "Repossessed vehicle Inventory list" shows that the vehicle was seized on 15.10.2005. It appears that this fact was not brought to the notice of the learned Arbitrator. However, the respondent *suo motu*, appears to have made amends qua the same by bringing this fact to the notice of the Executing Court while filing the Execution Petition. Therefore, in my opinion, the interest of the petitioners was taken care of. The fact that the respondent, somehow did not bring it to the notice of the learned Arbitrator that it had custody of the subject vehicle, can only be labelled as an "irregularity" in the given facts and circumstances, which, in my opinion, will not render the award legally unsustainable.

RAJIV SHAKDHER, J.

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14. To be noted, as regards other Issues, viz., Issue Nos. 3 and 5, which pertain to payment of costs and other reliefs, no arguments have been advanced by the learned counsel for the petitioners. Therefore, in my view, the petition is without merit and is accordingly dismissed. The parties shall, however, bear their own costs.

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10.08.2016

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