

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.208 OF 2016**

Shri Gurudas Gaonkar,
of major age, Indian National,
resident of House no.250, Xiganwal
Nirankal, Dabal-Goa,
South Goa District,
Ponda- 403 401.
(Registered Address)

... Petitioner

v e r s u s

1) Mahindra & Mahindra
Financial Services Ltd.,
through its Power of Attorney,
Mr. Paresh Shivaji Narvekar, aged
about 35 years, occupation, service,
having registered office at Mahindra &
Mahindra Financial Services Ltd.,
Gateway, Building, Apollo Bunder,
Mumbai-400001, having its Branch
Office at S2-207/208, Nova Cidade
Complex, Alto Porvorim,
Bardez-Goa-403 521.

2) Hazrat Sayed, of major age,
Indian National, resident of House No.29B,
Pratap Nagar, Pilim,
Sanguem-Goa.
(Registered Addresses)

..... Respondents

Shri D. Pangam, Advocate for the Petitioner.
Shri V. Rodrigues, Advocate for the Respondent no.1.

CORAM: C. V. BHADANG, J.
DATE: 1st February, 2017.

ORAL JUDGMENT:

Rule, made returnable forthwith. The learned counsel for the respondents waives service. Heard finally by consent of parties.

2. The petitioner is challenging the order dated 17/12/2015 passed by the learned Principal District and Sessions Judge, South Goa at Margao in Execution Application No.164/2012. By the impugned order, the Executing Court had directed the petitioner to make payment as claimed under the Award, which is sought to be executed.

3. The brief facts are that the petitioner had obtained financial assistance from the first respondent for purchase of a vehicle. Eventually as the petitioner did not abide by the scheme of repayment of installments the dispute was referred to the sole arbitrator on 12/11/2009, who passed

the award on 15/7/2011, the operative part of which reads as under :

- a) The claim petition is allowed.
- b) The Respondents, jointly and severally, to pay to the claimant:
 - i) sum of Rs.682334/- together with interest at the rate of 3% per month, from November 12, 2009 till date of this Award, and with further interest at 18% per annum from the date of this award till the date of payment;
 - ii) a sum of Rs.10000/- towards costs of the arbitral proceedings.
 - iii) The claimant is also directed to adjust the sale proceeds of the seized asset based on the interim order passed by the tribunal which is made absolute by this award.
 - iv) The claimant is also directed to adjust any other amount received during the pendency of the arbitration proceedings from the award amount."

4. Indisputably, the said Award has not been challenged by the petitioner any further.

5. The first respondent sought execution of the Award

before the learned District Judge claiming Rs.6,82,334/- along with interest, as awarded by the learned arbitrator.

6. It appears that by an order dated 25/11/2009, the vehicle which was subject matter of the loan agreement was seized. It is further undisputed that the petitioner sold the vehicle to one Ujwala Velip for a consideration of Rs.3,50,000/-.

7. The petitioner raised two contentions before the Executing Court. Firstly it was contended that the sale proceeds of the vehicle have to be adjusted in terms of the Award. Secondly, it was contended that there were certain repayments made during the pendency of the Arbitration proceedings which have also to be adjusted in terms of the said Award. The petitioner produced in all 16 receipts showing such repayments.

8. The petitioner examined himself before the learned District Judge. The learned District Judge found that the

receipts produced do not bear a revenue stamp and it cannot be accepted that the petitioner would have made such payments without ascertaining what was the amount outstanding. In short, the learned District Judge disbelieved the evidence of the petitioner and directed the payment of the amount as per the said Award.

9. I have heard Shri Pangam, the learned counsel for the petitioner and Shri Rodrigues, the learned counsel for the first respondent. With the assistance of the learned counsel, I have gone through the record and impugned order passed.

10. During the course of hearing the learned counsel for the respondents has produced a statement of loan account which is taken on record and marked "X" for identification.

11. It can be seen that the only dispute is as regards the adjustment of the sale proceeds of the seized vehicle and the amount which has been repaid during the pendency of

the arbitration proceedings i.e. in terms of para 10(b) (iii) and (iv) of the Award of the learned Arbitrator. In so far as the sale proceeds of the vehicle are concerned, it appears that there are two receipts i.e. dated 8/7/2011 and 9/7/2011 by which a total amount of Rs.3,50,000/- has been deposited by the husband of Ms. Ujwala Velip, who had purchased the vehicle. The learned counsel for the first respondent does not dispute the receipt of a total amount of Rs.3,50,000/-, which is reflected in the statement of account.

12. In so far as repayment during pendency of the proceedings is concerned the following repayments appear to be made, as claimed by the petitioner .

	<u>Date</u>	<u>Amount</u>	<u>Receipt No.</u>
(i)	14/11/2009	Rs.20,000/-	12926312
(ii)	30/11/2009	Rs.20,000/-	12926435
(iii)	29/12/2009	Rs.40,000/-	13279659
(iv)	30/01/2010	Rs.18,000/-	13279931

13. These amounts are also reflected in the statement of loan account and as such are not disputed by the learned

counsel for the first respondent. In such circumstances, the petition is partly allowed. The Executing Court shall give set off for the amount of Rs.3,50,000/- (towards the sale price of the vehicle) and Rs.98,000/- towards the repayments made during the pendency of the arbitration proceedings and shall proceed to recover the balance amount in terms of the award. Rule is partly made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

Ap/