

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2017

CORAM

THE HONOURABLE MR. **JUSTICE M.M.SUNDRESH**

**Original Petition No.341 of 2014**

G.Bhaskar Rao .. Petitioner

Vs.

1.M/s.Sundaram Finance Ltd.,  
Rep. by its Authorised signatory,  
21, Patullas Road,  
Teynampet,  
Chennai 600 002.

2.Mr.S.Santhanakrishnan,  
Retired District Judge,  
Arbitrator,  
Old No.5, New No.11/2,  
First main road, Jothi Nagar,  
Ekkattuthangal,  
Chennai 600 032.

3.G.Padmavathy

4.G.Sathyanarayana

5.G.Venkatalakshmi Sujatha .. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 23.12.2013 passed by the second respondent.

For Petitioner : Mr.Kaviyanathan  
For Respondent : Mr.M.S.Sampath  
for R.1.

### ORDER

Seeking to set aside the award dated 23.12.2013, the present Original Petition has been filed.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent.

3. The first respondent is the Public Limited Company. The petitioner, who is the borrower availed loan facility by entering into three contracts with the first respondent. These loans have been obtained for the purpose of purchasing vehicles. Accordingly, the vehicles were hypothecated and charge was created. The petitioner defaulted in making payment. Invoking the terms of the agreement, the vehicles were repossessed and sold. Thereafter, a claim was made for the remaining amount.

4. The learned Arbitrator issued a notice of hearing. The petitioner did appear on receipt of the same. But, discontinued his appearance and thereafter, he approached the Hon'ble High Court and obtained an order of stay. The stay was subsequently vacated and the matter was proceeded further. A further notice was also sent to the petitioner.

5. Even according to the petitioner, a communication dated 03.10.2013 was sent prior to the award passed on 23.12.2013 and the same was also received and by this communication, the petitioner was asked to file counter and to attend further hearing. The learned Arbitrator, appreciating the records submitted by the respondents under Exs.A.1 to A.3 and on considering the evidence of P.W.1, passed the award with 18% interest.

6. The learned counsel for the petitioner submitted that repossession was made without notice. The claim has been made without basis, especially with respect to interest portion. The petitioner was not put on notice.

7. The learned counsel for the first respondent submitted that the petitioner did not challenge the procedure adopted for repossession. Therefore, it is not open to him to contend to the contrary. The interest was calculated as per Article 14 Sub-Clause 14.1. The basis of the claim has been mentioned in the claim petition itself. The petitioner did not raise any objection to it under law.

8. Even according to the petitioner, he appeared before the learned Arbitrator. The learned Arbitrator was informed about the stay obtained, which was subsequently vacated. Even for subsequent communication, the petitioner did not reply. These facts would show that the petitioner was accordingly served. Therefore, no interference is required.

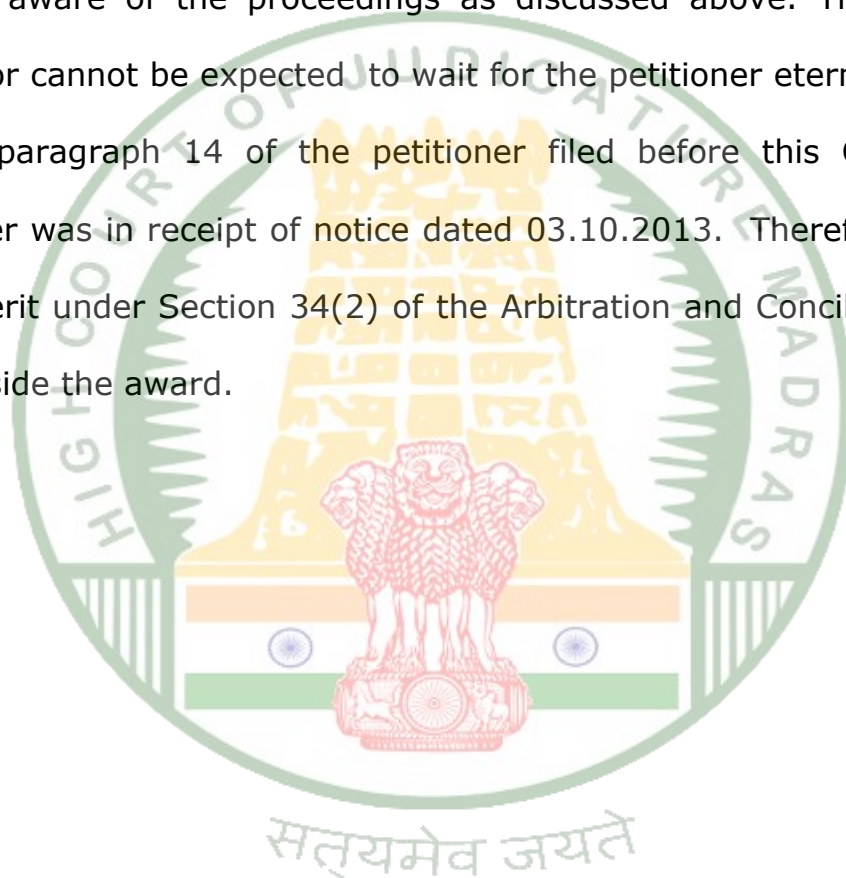
9. The learned counsel for the petitioner submitted that the award was passed with interest at the rate of 18% and the same cannot be sustained.

10. Regarding the submission made by the learned counsel for the first respondent, admittedly, the petitioner did not raise any objection at the time of repossession of the vehicles possessed from the petitioner and at that point of time, the petitioner could have raised any issue both legally or factually. Admittedly, vehicles were repossessed and sold and the petitioner did not raise this issue before the learned Arbitrator. Therefore, this Court cannot go into the same at this stage.

11. Then, coming to the basis on which, the claim is made. The claim statement made was not objected to by the petitioner.

12. As rightly submitted by the learned counsel for the first respondent the interest was calculated as per the terms of the agreement especially Article 14 Sub Clause 14.1. Therefore, as per the aforesaid Clause, penal interest was levied.

13. Hence, this Court does not find any error in the award passed. It is seen that the petitioner was accordingly issued notice. He was aware of the proceedings as discussed above. The learned Arbitrator cannot be expected to wait for the petitioner eternally. Even as per paragraph 14 of the petitioner filed before this Court, the petitioner was in receipt of notice dated 03.10.2013. Therefore, there is no merit under Section 34(2) of the Arbitration and Conciliation Act, to set aside the award.



WEB COPY

**M.M.SUNDRESH,J.**

cla

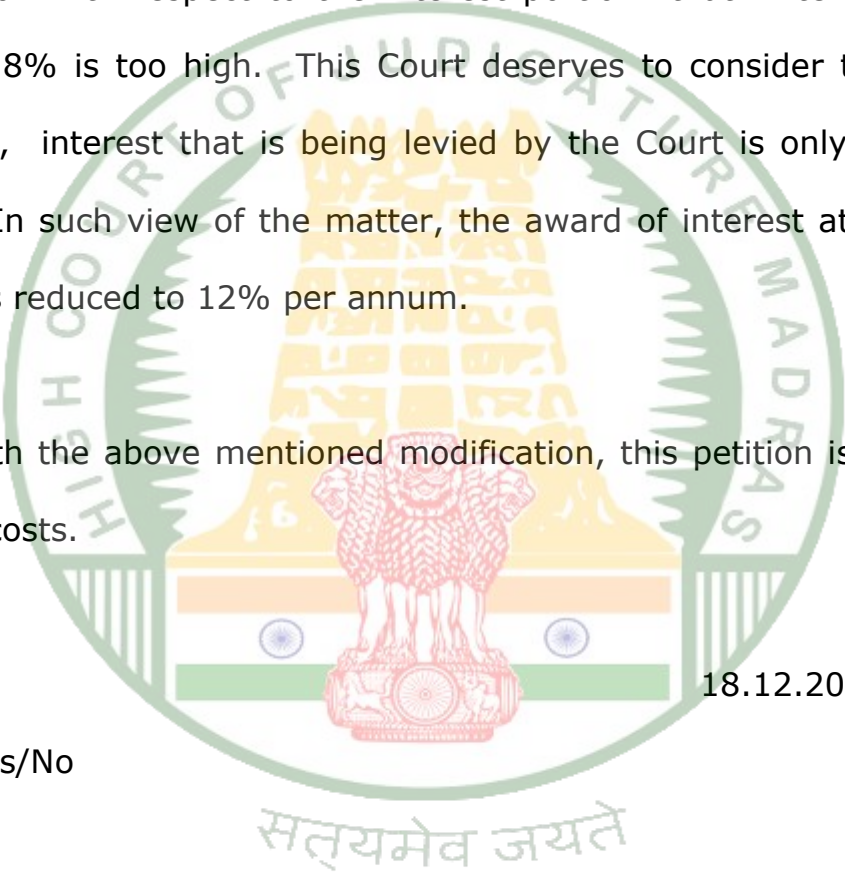
14. The learned counsel for the petitioner has made one more submission with respect to the interest portion that interest at the rate of 18% is too high. This Court deserves to consider the same. Normally, interest that is being levied by the Court is only 12% per annum. In such view of the matter, the award of interest at 18% per annum is reduced to 12% per annum.

With the above mentioned modification, this petition is disposed of. No costs.

18.12.2017

Index:Yes/No

cla

  
WEB COPY

O.P.No.341 of 2014