

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.12.2017

CORAM,

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

O.P.No.245 of 2015

A.Govindarajan
S/o Arthanari,
Old No.51/15, New No.89/15,
Cauvery Nagar Area, Mettur,
Salem-636 401.

..Petitioner

Vs.

1.M/s Citicorp Finance (India) Limited,
rep., by its Manager Legal,
1st Floor, Angson Centre,
153, Greams Road, Near Thousand Lights,
Chennai-600 006.

2.Mr.R.Kanagaraj,
S/o Arumugam,
Mutthaliyar Street, Kuyavar Goundar Street,
Sowdapuram, Namakkal-637 505.

3.Mr.K.G.Gowthaman,
Arbitrator/Advocate,
New No.49, 224-B, IV Cross Street,
Natesa Nagar, Virugambakkam,
Chennai-600 092.

... Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award made in Claim Petition No.KSG/CCFIL/23/2008 dated 28.08.2014 on the file of the 3rd

respondent.

For Petitioners : Mr.K.Premkumar

For Respondents : Mr.M.Arunachalam for R1

ORDER

The petitioner is a guarantor to the Loan cum Hypothecation Agreement dated 27.02.2007 entered into between the respondents 1 and 2 and the same was marked as Ex.A2. Ex.A3 is the irrevocable power of attorney and Ex.A4 is the demand promissory note. Ex.A5 is the copy of the invoice dated 14.09.2004 in favour of the Sree Rajarajeswari Earth Movers. Exs.A6 is the copy of the sale agreement of the second respondent dated 11.01.2007 for the purchase of asset with Sree Rajarajeswari Earth Movers. Ex.A7 is the copy of the insurance certificate. Ex.A8 is the copy of the demand notice dated 05.03.2008. Ex.A9 is the copy of the loan recall notice dated 17.03.2008. Ex.A10 is the copy of the post repossession notice dated 29.08.2008. Ex.A11 is the copy of the statement of accounts and Ex.A12 is the copy of the statement of total amount due. As the petitioner and the second respondent, despite notices of demand, followed by other notices, did not make the payment, the first respondent invoked the arbitration clause. Before the learned Arbitrator, the petitioner and the second respondent had been set ex-parte initially

and thereafter, it was set aside. However, the borrower did not appear. The petitioner filed counter affidavit inter alia alleging that despite the loan agreement, no amount was actually paid. The learned Arbitrator, by taking into consideration of Exs.A1 to A12, was pleased to pass an Award, rejecting the case of the petitioner. Challenging the same, the present original petition has been filed.

2. The learned counsel appearing for the petitioner submitted that no specific finding has been given on the averments made by the petitioner. The petitioner is only a guarantor. Though the borrower has remained ex-parte, he adopted the counter affidavit of the petitioner. Hence, the award requires interference.

3. The learned counsel appearing for the first respondent would submit that the award has been passed by placing reliance upon the records. The petitioner has not produced any evidence to controvert the same. The documents were not questioned by way of cross-examination. Hence, no interference is required.

4. Inasmuch as Exs.A1 to A12 have not been seriously questioned, the credibility and genuineness cannot be assailed before this Court. The

petitioner has admitted Ex.A2. If the petitioner wants to commence the averment making a new statement, it is for him to prove it to the satisfaction of the arbitration Tribunal. The Arbitration Tribunal has considered Exs.A1 to A12 and took note of the fact that the borrower viz., the second respondent, made some payment towards loan amount. Exs.A1 to A12 would show that the vehicle was purchased from a third party, which was insured and there was also an invoice. If the petitioner's case is true, nothing prevented him to raise his plea. After knowing Ex.A2 has come into being the demand notice was not replied nor loan recall notice ExA8. Therefore, the Arbitration Tribunal has rightly rejected the contention of the petitioner. There is no need to answer every contention raised. After all, the Tribunal is only required to adjudicate upon the claim. The petitioner, for the reasons known, did not even seriously question by cross-examining the witness of the first respondent, who marked Exs.A1 to A12. Therefore, the contention sought to be raised can at best be an after thought. Hence, the original petition stands dismissed. No costs.

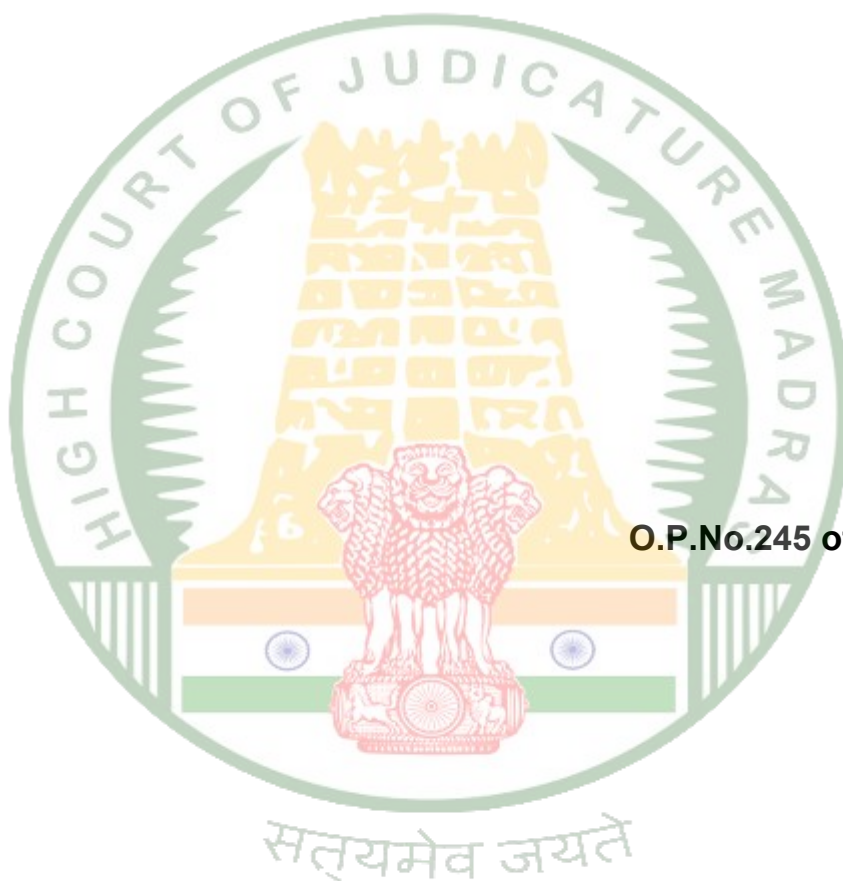
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M.M.SUNDRESH,J.

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