

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2017

Coram

The Hon'ble Mr.Justice T.S. SIVAGNANAM

O.P.No.380 of 2007

Mr.Ratuji Bhemaji Rajput
Village: Magar Vada,
Taluk : Vadgam
District:Banaskantha
Gujarat

.. Petitioner

vs

1.Indusind Bank Ltd.,
Rep., by V.Govindarajan,
Sudarsan Building,
86, Chamiers Road,
Chennai - 600018.
(Substituted as per order dated 14.08.2008
in Application No.3502/08)

2.Mrs.Subha Kumar,
Sole Arbitrator,
New No.8, Old No.19,
'Sri Nruhari Priya',
Flat No.2, Rukmani Street,
West Mambalam,
Chennai -600033.

3.Mr.Amrubhai S.Mand,
M/s.Keshad Transport,
Highway, Patanpur,
Banaskantha.

.. Respondents

Prayer: Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Arbitral Award dated 10.06.2004, passed by the Sole Arbitrator, the second respondent herein.

For Petitioner : Mr.K.Bala Murali for
Mr.Shivakumar & Suresh

For Respondent : Mr.S.R.Sundar

ORDER

Heard Mr.K.Bala Murali, learned counsel appearing for the learned counsel for the petitioner and Mr.S.R.Sundar, learned counsel for the respondents.

2. This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, (Act), challenging the award passed by the second respondent Arbitrator.

3. The first respondent is a finance company initially known as Ashok Leyland Finance Ltd and they had filed a claim petition before the learned Arbitrator on account of a default committed by the petitioner herein in repayment of a loan, which was borrowed by him for purchase of a vehicle. A Hire Purchase Agreement was entered into between the parties for a sum of Rs.7,00,000/- which was repayable in 35 installments. On the date, when the

claim petition was filed before the learned Arbitrator, there was an over due of Rs.5,29,172/- and in terms of clause 16 of the Hire Purchase Agreement, delay in payment attracts additional finance charges. Thus, totally the first respondent company claimed Rs. 6,21,916/-.

4. It is not in dispute that the petitioner herein had effective notice of the Arbitration proceedings, as he had filed a counter to the claim statement. In the counter to the claim statement, the petitioner raised a plea that the signature has been forged by the third respondent herein and in this regard, he has filed a complaint before the Gujarat Police. One conspicuous fact, which is missing in the counter affidavit is the date of the complaint and crime number have not been mentioned except to state the alleged offences. The Arbitrator, after having considered the said stand taken by the petitioner, considered the other documents placed by the first respondent company and observed that it is evident from the records that the first respondent have signed the Hire Purchase Agreement, cheques drawn on the petitioner's bank account have been given to the first respondent company, the certificate of registration issued by the RTO authorities is in the name of the petitioner with endorsement in favour of the claimant for hire purchase and the insurance policy and even the invoice, are in the name of the petitioner and therefore, concluded that the transaction is a genuine one. Even according to the

allegation in the counter statement, the petitioner's case is that the third respondent had taken certain unsigned documents. However, with the unsigned documents, insurance papers and registration of the vehicle with the Regional Transport Authority cannot be done. Therefore, the Arbitrator was fully justified in recording the factual finding that the transaction is a genuine one.

5. The learned counsel for the petitioner placed reliance on the decision of the *Thiruvengadam pillai vs. navaneethammal & Anr.*, reported in **(2008) 4 SCC 530**, with regard to the proper mode of determination of finding/comparison by court without benefit of an expert opinion. Firstly, the said decision can have no application to the facts of the present case, which is an arbitration proceedings, which is an ADR mechanism agreed to between the parties. Therefore, factually, the said decision is clearly distinguishable.

6. On the earlier hearing, this Court adjourned the matter at the instance of the petitioner's counsel, who sought adjournment on the ground of verifying the outcome of the criminal case. However, the learned counsel for the petitioner fairly submits that he has no instructions from his client as regards the fate of the criminal proceedings. In any event, this Court, exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act,

cannot examine the impugned award, as if, it is an appellate Court. Thus, no grounds have been made by the petitioner to set aside the impugned award and accordingly, the Petition stands dismissed.

19.01.2017

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To

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T.SIVAGNANAM,J.

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