

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2017

CORAM

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

Original Petition No.12 of 2013

R.Arun

.. Petitioner

Vs.

1.M/s.Indus Ind Bank Limited
rep. By its Authorised Representative
P.Ramalingam

2.S.Sathish,
Arbitrator,
No.11, Lake View Road,
B-1 Dhanalakshmi Apartments,
West Mambalam, Chennai – 33.

3.N.Ranganathan

.. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 14.08.2012 passed by the second respondent in arbitration matter A.C.P.No.SS.IBL-XII-18 of 2011.

For Petitioner : Mr.S.T.Varadarajulu

For Respondents : Mr.K.Moorthy for R1
No appearance for R3

ORDER

This Original Petition has been filed seeking to set aside the award passed by the learned Arbitrator, directing the petitioner to pay the sum of Rs.4,32,867/- along with interest apart from interest.

2.The loan agreement was entered into between the parties for a sum of Rs.10,75,000/- for the purchase of vehicle. The petitioner has defaulted the payment of instalment as agreed upon. This factum is not in dispute as the petitioner himself fairly submitted before the learned Arbitrator that the dues could not be paid during off-season and therefore, it was not wilful and deliberate.

3.Before the learned Arbitrator, the first respondent/claimant marked eight documents. The statement of accounts was also marked as Ex.A3. It was contended before the learned Arbitrator by the petitioner that vehicle has been forcibly taken, the petitioner did not know English language and the first respondent has acted as a power agent and sold the vehicle for a lower price.

4.The learned Arbitrator accepted the case of the first respondent and awarded the amount. He took into consideration Ex.A3. The amount realised in the sale was also taken into consideration. Though interest was sought for at 36% per annum, the same was ordered at 18% per annum.

5.Learned counsel appearing for the petitioner would submit that it is a case of possession having been taken by force. The claim statement was bereft of material particulars. There is nothing to indicate about the credit given to the payment made. In support of his contention, he has placed reliance on the following decisions:

(i)Manager, I.C.I.C.I. Bank Ltd., Vs. Prakash Kaur and Others (2007 (2) CTC 334)

(ii)K.Venkateswaran Vs. Sudheesh Kumar (2010-1L.W. 951)

6.This Court does not find any merit in this petition. This Court cannot treat this petition as an first appellate authority but go by the statute and the limitation prescribed under Section 34 of the Arbitration and Conciliation Act, 1996.

7.The question of forcible possession followed by a sale is outside the jurisdiction of the learned Arbitrator. Even otherwise, the petitioner has not proved the aforesaid allegations made. He has not even challenged the possession and the sale. He only seeks to raise it by way of defence before the learned Arbitrator. The power of attorney is one coupled with interest. Not only that, the petitioner does not dispute the agreement and in fact tried to comply with the terms for some time after taking possession of the vehicle. Therefore, it is not open to him to contend to the contrary. The petitioner also did not specifically question Ex.A3. At least, the petitioner was aware of Ex.A3, which was also marked before the learned Arbitrator. A factual finding has been given by the learned Arbitrator that the sale consideration of the vehicle has been given due credit.

8.The decisions relied upon by the learned counsel for the petitioner are not necessary for deciding the petition and admittedly, the petitioner is a defaulter. There is no material on record to come to the conclusion that the award warrants interference under Section 34 of the Arbitration and Conciliation Act, 1996. It is a simple case of payment to be made by the petitioner for not acting in accordance with

the terms and conditions of the agreement entered into between the parties.

9. In such view of the matter, the original petition stands dismissed. No costs.

12.10.2017

mmi

Note: Issue copy of the order on 20.10.2017



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M.M.SUNDRESH,J.

mmi



O.P.No.12 of 2013

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