

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2017

CORAM

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

O.P.Nos.314, 315 and 641 of 2009

1.V.C.Muninarayana Chetty
2.V.Mahesh

... Petitioners
(in all petitions)

Vs

1.Indusind Bank Limited
No.86, Chamiers Road,
Chennai-600 018.
Rep. by its Manager.

2.N.C.Vijairagavan
Arbitrator
Door No.89/1, 5th Street,
Anna Nagar, Chennai-600 040.

... Respondents
(in all petitions)

Prayer in O.P.No.314 of 2009: Original Petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award dated 26.11.2007 in Award No.2047 as the same is against the petitioner by the second respondent in the disputes between the petitioner and the first respondent as illegal, without jurisdiction and not a proper disposal of the case and directing the first respondent to pay the cost of this petition.

Prayer in O.P.No.315 of 2009: Original Petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award dated 18.04.2008 as the same is against the petitioner by the second respondent in the disputes between the petitioner and the first respondent as illegal, without jurisdiction and not a proper disposal of the case and directing the first respondent to pay the cost of this petition.

Prayer in O.P.No.641 of 2009: Original Petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award dated 26.11.2007 in so far as the same is against the petitioner by the second respondent in the disputes between the petitioner and the first respondent as illegal, without jurisdiction and not a proper disposal of the case and directing the first respondent to pay the cost of this petition.

For Petitioner : Mr.M.Sriram
(in all petitions)

For Respondents : Mr.V.V.Gridhar for R-1
(in all petitions)

COMMON ORDER

As the issue involved in all these matters are between the same parties, being the same issue, they have been taken up together and disposed of by a common order.

2. The petitioners and the first respondent entered into an agreement for the purpose of purchasing vehicles. The agreement contains arbitration clause. As the petitioners did not make payment and after issuance of notices, the arbitration clause was invoked. The learned Arbitrator after perusing the records available was pleased to pass awards. Despite the notice have been served, the petitioners did not appear. Challenging the above said awards, the present petitions have been filed.

3. The learned counsel for the petitioners would submit that it is a case where no notice was served on the petitioners prior, during and after the Awards. There is an order passed by the District Consumer Forum by which the first respondent was asked to issue no objection certificates to the vehicles belonging to the petitioners.

4. The learned counsel for the first respondent placing reliance upon the records would submit that the submission made on the ground of notice having been not served is factually incorrect as against the order passed by the District Consumer Forum, the appeal has been filed and an order of interim stay has been obtained. Hence, no interference is required.

5. The existence of the agreement between the parties is not in dispute. The learned Arbitrator has made a factual recording that the petitioners have been served and the records also establish the same. In order to succeed under Section 34 of the Arbitration and Conciliation Act, 1996, it is for the petitioners to establish that they have not been served with notices. Since this Court is satisfied with the service of the notices, the contention raised in this regard stands rejected.

6. Coming to the next contention, the District Consumer Forum passed an order after the Award passed against the petitioners. Therefore, there is nothing wrong in the Award passed. Further more, the orders passed are also under challenge. In such view of the matter, the above said orders would not be a bar to adjudicate the matter on merits before this Court. This Court is concerned with the legality of the Award passed. On a perusal, this Court is satisfied that the learned Arbitrator has taken into consideration all relevant materials. Thus, no ground is made out to interfere with Awards passed under Section 34 of the Arbitration and Conciliation Act, 1996.

7. However, this Court finds that the third submission made by the learned counsel for the petitioners with respect to the interest levied only is to be considered. The learned Arbitrator has awarded 18% interest per annum from the date of Award which is not only excessive but also not based upon legal principles. The interest awarded at 18% is not governed by the agreement *inter se* parties. In such cases, the Courts are awarding interest between 9% and 12 % per annum. Therefore, considering the facts and circumstances of the case, this Court is inclined to award interest at 9% per annum as against 18% per annum.

8. Accordingly, these original Petitions are dismissed subject to the above modification. No costs.

सत्यमेव जयते

21.11.2017

rrg

WEB COPY

M.M.SUNDRESH,J

rrg



**O.P.Nos.314, 315 and
641 of 2009**

WEB COPY

21.11.2017