

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

O.P.No.725 of 2013

Mr.N.Muneendra, Son of Chinnaiah,
No.18-169A, Dammanapalli (V) and Post,
Porunamilla MD Kadapa District,
Andhrapradesh, Presently residing at
Nallabanda Bzar, Giddalur,
Prekasam District, Andrapradesh. ..Petitioner

Vs.

1.M/s Hinduja Leyland Finance Ltd.,
rep., by its authorised representative of
Mr.R.Kumaran, having its central process
Division at No.24, Sudharsanam Nagar,
MTH Road, Tirumullaivoil, Chennai-62.

2.Mr.Y.Pandu Ranga Reddy,
D-No.4-54, Anumalpalli (V) & (Post),
Racharla (MD) Prakasam District,
Andrapradesh.

3.Mr.S.Rajeni Ramadass,
The Sole Arbitrator,
New No.68, Bhasha Street,
Choolaimedu, Chennai-94. .. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award passed by the third respondent/sole Arbitrator in HLF/SRR/ACP No.1 of 2013 dated 14.06.2013.

For Petitioner : Mr.S.Arokiamaniraj

For Respondents : No appearance

ORDER

The petitioner herein is a borrower. A loan agreement was entered into on 13.06.2011 between the petitioner and the respondent. The first respondent is the lender as against the petitioner, who is the borrower.

2. The agreement was for the purpose of buying a vehicle in favour of the petitioner. As the petitioner has committed default in making payment, the vehicle was repossessed and sold by the first respondent. For the remaining amount due, the first respondent invoked the arbitration clause.

3. Before the learned Arbitrator, the petitioner did not appear as the notice sent was returned "as refused". An award was passed on 14.06.2013 placing reliance upon the documents filed viz., Exs.A1 to A5.

4. Heard the learned counsel appearing for the petitioner. There is no representation for the respondents.

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5. The learned counsel appearing for the petitioner would submit that here is the case, in which, unilaterally sale of vehicle was made. The petitioner was not issued with notice by the learned Arbitrator. Hence, the award passed by the learned Arbitrator is liable to be set aside.

6. This Court is not inclined to accept the said submission. As per Exs.A1 to A5, the petitioner was issued with the communication including the final demand letter under Ex.A3, which is also an intimation on the termination of the loan agreement and refers the dispute to the arbitration.

7. The fact that the petitioner is in default is not in dispute. A factual finding has been rendered by the learned Arbitrator stating that the petitioner has refused to receive notice which means a proper service of notice. Even according to the petitioner, the vehicle was repossessed and sold. The aforesaid action has not been challenged. Therefore, it is too late for the petitioner to contend that he has not issued with notice. Invoking Section 34 of the Arbitration and Conciliation Act, 1996, it is for the petitioner to substantiate the contentions raised as against the documents filed. It is not the case of the petitioner that Ex.A3 has not been served on him. Thus, this Court does not find any merits in the petition.

8. The learned counsel appearing for the petitioner has made one more submission that the interest at 18% per annum is excessive. This Court finds considerable force in the submission and normally, the Courts would award interest either at 9% or 12% as the case may be. In this case, the vehicle of the petitioner has already been repossessed. Therefore, this Court is inclined to modify the rate of interest from 18% to 9% per annum.

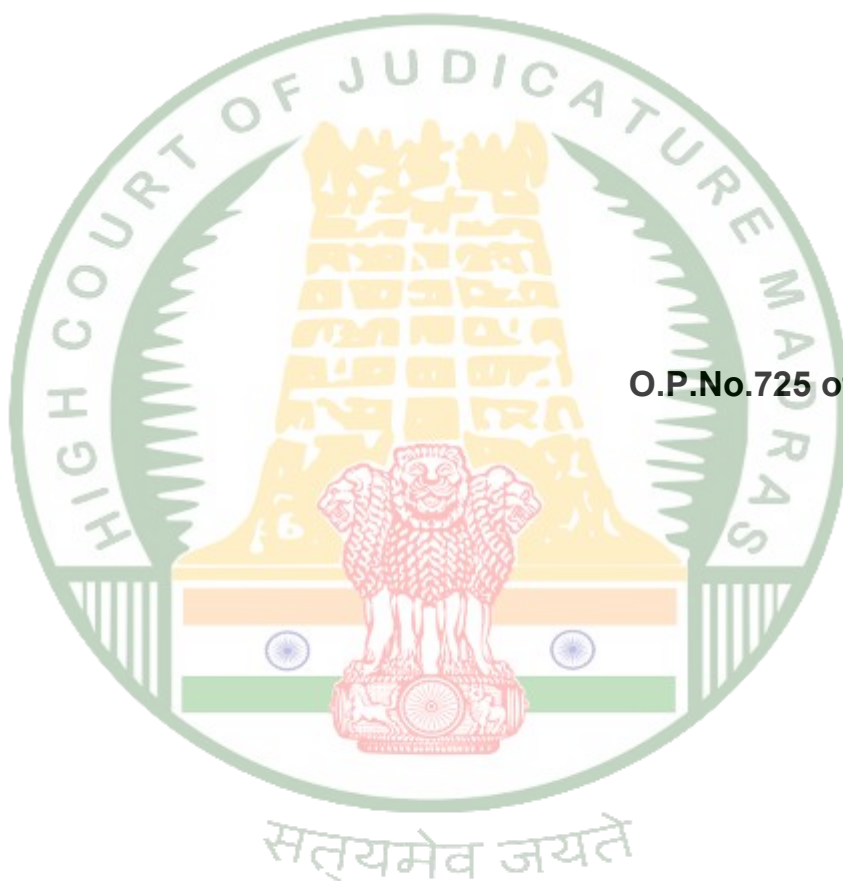
With the above said modification, the original petition stands dismissed. No costs.

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15.11.2017

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M.M.SUNDRESH,J.



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