

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2017

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THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

O.P.No.215 of 2016

Mr.Samikkannu C.

..Petitioner

Vs.

1.M/s Kotak Mahindra Bank Ltd.,
represented by its authorized signatory,
8th floor, TVH Agnitio Park,
Zone 2, Old Mahabalipuram Road,
Kandhanchavadi, Chennai-600 096.

2.D.Saravanan, Advocate and Arbitrator,
Orient Chambers, No.90/73,
4th & 5th Floor, Armenian Street,
Chennai-600 001.

3.Mr.V.Muthusamy, S/o Vaiyaburi,
Door NO.500, Ammankoil Street,
Thoppaiyankuppam Adur Kuppam Post,
Kurunjipadi Taluk-607 302.

... Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award which is passed by the second respondent/sole Arbitrator in A.C.P.No.(Kotak) No.836/2015 dated 02.01.2016 and dismiss the claim petition filed by the first respondent.

For Petitioner : Mr.M.Kalaiyaran

For Respondents : Mr.V.Jaiharisudhan
for M/s Ramalingam & Associates for R1
No appearance for R3

ORDER

This claim petition has been filed by the first respondent, who is a company incorporated under the Companies Act, 1956, being the financier. The first respondent sanctioned a loan of Rs.4,57,846/- including financial charges of Rs.1,90,082/- for the purchase of Mahindra vehicle. The petitioner herein, being the second respondent in the claim petition stood as a guarantor had executed necessary loan documents. The vehicle was also hypothecated in favour of the first respondent.

2.The borrower and the petitioner defaulted in making the payment. After several notices, the first respondent invoked the arbitration clause stipulated in the arbitration agreement. A notice was also sent to the borrower and the petitioner on 24.07.2015 intimating the reference of arbitral dispute.

3.Despite notice being received, neither the petitioner nor the borrower appeared before the Arbitrator. The learned Arbitrator, after considering entire materials, particularly, took into consideration of Exs.A2, A3, A9 and A10, passed an award.

4. This petition has been filed only by the guarantor. The only contention sought to be raised is want of notice. This, in the considered opinion of this Court, cannot be accepted, as the learned Arbitrator was satisfied with due service of notice both prior to the arbitral proceedings, appointment of the Arbitrator and pending proceedings. In any case, it is for the petitioner to substantiate the case before this Court, which has not been done. The petitioner not denied that he was the guarantor for the vehicle loan. Though the petitioner is a guarantor, he cannot be excused from the liability. The reference made by this Court to Tamil Nadu Mediation and Conciliation Centre also failed.

5. The learned counsel appearing for the petitioner would submit that concession may be shown by the Court in favour of the petitioner being the guarantor.

6. A perusal of the award itself would make it clear that the first respondent will have to take appropriate action to seize the vehicle and bring it for sale. In the event of any further dues, the award amount and the sale proceeds, then further action can be taken to recover it either from the borrower or the petitioner, as the case may be.

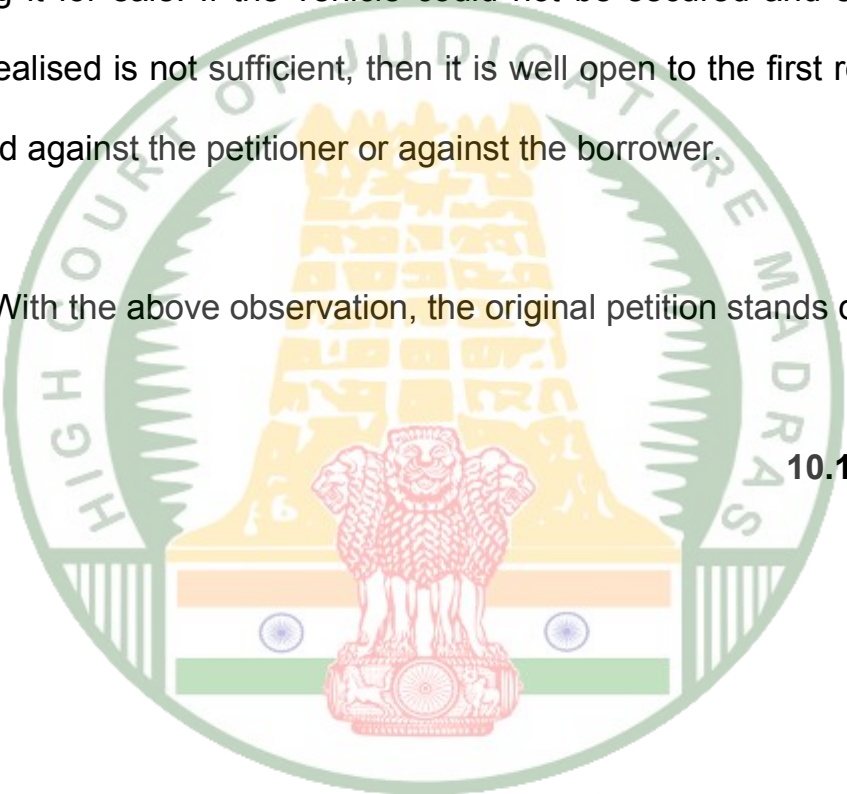
M.M.SUNDRESH,J.

raa

7. In such view of the matter, while dismissing this petition, the first respondent is directed to take appropriate action to seize the vehicle and then bring it for sale. If the vehicle could not be secured and sold or the amount realised is not sufficient, then it is well open to the first respondent to proceed against the petitioner or against the borrower.

8. With the above observation, the original petition stands dismissed.

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10.10.2017

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