

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :10.01.2017

Coram

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

O.P.No.411 OF 2016

1.Mr.A.S.K.Ashraf Ali Kadarmoideen
2.Mr.A.Sathik Ali .. Petitioners

vs.

1.M/s.Indus Ind Bank Limited,
Rep. By its Manager-Legal,
No.34, G.N.Chetty Road,
T.Nagar, Chennai - 600 017.

2.Mr.G.Ashokapathy ... Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the award dated 02.02.2016 in A.C.P.No.CV 1358 of 2015 passed in favour of the 1st respondent and direct the 1st respondent to pay the petitioners the costs of this petition.

For Petitioners : Mr.K.Balaji
For Respondents : Ms.Meena Gnanasekaran for R1

ORDER

Heard Mr.K.Balaji, learned counsel appearing for the petitioners and Ms.Meena Gnanasekaran, learned counsel appearing for the first respondent.

2. This petition has been filed under Section 34 of

the Arbitration and Conciliation Act, 1996 to set aside the award passed by the sole Arbitrator appointed by the parties.

3. The Arbitration proceedings arose out of a financial transactions between the petitioners and the first respondent bank. The petitioners borrowed a loan from the first respondent bank for purchase of a Chevrelet Sail LT ABSTCDI car for a sum of Rs.6,15,000/-, repayable in 48 installments of Rs.16,500/- per installments and the first instalment commenced from 28.01.2013 and will end by 21.08.2017. According to the first respondent bank, the petitioners paid only 8 installments and thereafter they have defaulted in payment. The first respondent had exercised the right under the agreement and had repossessed the vehicle. In between, the other collateral proceedings initiated between them, which also did not yield any result in their favour and it appears that an appeal has been filed before the appellate authority. The arbitrator had sent three notices and since the petitioners did not appear before the arbitrator, the award came to be passed. This is impugned in this petition.

4. The learned counsel appearing for the petitioners

submitted that the impugned award is liable to be set aside on two grounds. Firstly, it is an exparte award without notice to the petitioners. Secondly, arbitrat has granted two reliefs, i.e. one for making the petitioner jointly and severally liable for the amount claimed and the other to repossess the vehicle.

5. I have heard the submission of the learned counsel appearing on either side.

6. On a perusal of the impugned award, it is evidently clear that the petitioner had adequate opportunity and knowledge of the proceedings. The notices which were sent by the Arbitrator is to the same address which was in the agreement as well as in the legal notice which was issued by the petitioners to the respondent bank dated 14.11.2014. The first hearing notice of Arbitrator dated 27.8.2015 was returned. The second notice dated 24.09.2015 was unclaimed and the third proceedings dated 24.09.2015 was unclaimed by the first petitioner and received by the second petitioner. This is sufficient to hold that the notice of hearing and proceedings have been sent to the petitioners to the address mentioned in the agreement, which is the last known address and the same is

in accordance with the terms of the agreement and Section 3 of the Arbitration and Conciliation Act. Therefore, the first ground raised by the learned counsel for the petitioner is not maintainable. The second ground raised is equally not sustainable for the simple reason that the arbitrator has not granted two reliefs. The arbitrator has accepted the claim of the respondent bank and directed that a sum of Rs.6,84,670/- with interest at 18% p.a. from 25.06.2015 till the date of realisation is payable jointly and severally by the petitioners. Paragraph 17(a) award states that the petitioners herein, who were the respondents before the arbitrator are not entitled to be in possession of the vehicle and they have to surrender the vehicle. Therefore, paragraph 17(a) of the impugned award cannot be stated to be a separate award or a separate direction of that the Arbitrator has declared that because the petitioners are defaulters, they are not entitled to be in possession of the vehicle. Therefore, there is no illegality in the said proceedings.

7. One more aspect of the matter, which this Court has to point out at this juncture is that the first petitioner entered into a memorandum of settlement with the respondent bank dated 26.08.2016. There is an

acknowledgement of liability and the bank was willing to accept the principal amount alone and the parties agreed to pay a total sum of Rs.6,25,000/- in four installments. The petitioners failed to adhere to the terms of the memorandum of settlement. During the hearing of these proceedings, the petitioners produced a valuation report issued by one G.Ashok Immanuel, he is an approved surveyor, No.74A, New Street, C.S.I.I.T.I. Campus, Church Corner, Karur stating that the value of the vehicle as on 30.11.2016 is Rs.7,50,000/-. The valuation report submitted by the respondent states that the value is Rs.3,50,000/-. However, the petitioners have produced a copy of the proforma/retail invoice for a new vehicle of the same model dated 07.01.2017, which shows that the on road price is Rs.10,03,207/-

8. In the considered view of this Court the vehicle inspection and valuation report given by Mr.G.Ashok Immanuel, who is an approved surveyor is prima facie incorrect and reflects an inflated value. Admittedly the value of the vehicle purchased by the petitioner in September 2013 was Rs.7,42,339/- and it is beyond one's comprehension that the value of the vehicle would have increased after the period of three years, that too,

considering the present market conditions with regard to the vehicle.

9. For the reasons assigned in the preceding paragraph, the petitioners have not been able to make out any case to set aside the impugned award under Section 34 of the Arbitration and Conciliation Act, 1996.

10. Accordingly, the Original Petition is dismissed.

sd/.T.S.S.J

10.01.2017

//Certified to be a true copy//

Dated this the day of 2017

R.s/22.03.2017

COURT OFFICER

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