

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.01.2017

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THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

O.P.No.612 of 2016
and A.No.4302 of 2016

K.Saraiah

... Petitioner

vs.

1.M/s.Sundaram Finance Ltd.,
No.21, Patullos Road,
Chennai - 600 002.

2.Md.Rafi

3.Md.Fahima

... Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 05.05.2016 made in Arbitration Case No.MS/SF/231/2014 and to direct the 1st respondent to pay the cost.

For Petitioner : Mr.T.L.Thirumalaisamy

For Respondent : Mr.M.S.Sampath

ORDER

Heard Mr.T.L.Thirumalaisamy, learned counsel appearing for the petitioner and Mr.M.S.Sampath, learned counsel appearing for the 1st respondent.

2.This application has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the Award passed by the Arbitrator dated 05.05.2016. The matter arises out of a financial transaction between the petitioner and the 1st respondent - Finance Company. The petitioner approached the 1st respondent for extension of loan facility for purchase of TATA 2515, 2005 Model vehicle. The 1st respondent entered into a Loan Agreement dated 25.08.2012 and sanctioned a sum of Rs.6,33,517/-, repayable in 35 installments and the 1st installment commenced on 03.10.2012 and the last installment ended on 03.08.2015. The hypothecation endorsement was also recorded in the Registration Certificate of the said vehicle. It is not in dispute that the petitioner and respondents 2 & 3 committed default in paying the loan amount, as a result of which the vehicle was re-possessed on 15.06.2013. After affording enough opportunity to the petitioner and giving paper publication, the vehicle was sold in as is where is condition on 13.03.2012, for a sum of Rs.2,50,000/-, which according to the 1st respondent is based on the offers received by them. For the balance amount payable towards the loan amount of Rs.3,50,948.87p and other expenses, the 1st respondent filed a claim statement before the Arbitrator.

3.The Arbitrator, by the impugned Award, has awarded a sum of Rs.3,50,948.87p with interest at the rate of 18% per annum from 13.12.2013 till the date of realization with Rs.5,500/- being the cost of arbitration proceedings, made up Rs.4,000/- as the remuneration for the Arbitrator and Rs.1,500/- as expenses of the Arbitrator.

4.The petitioner challenged the impugned Award stating that it is an exparte Award and the petitioner did not have an opportunity before the Arbitrator. Further, it is submitted that within ten months of availing loan, the vehicle was re-posessed and it was sold after a period of six months, that too, without proper notice to the petitioner and without opportunity. Firstly, it has to be pointed out that this Court, exercising the jurisdiction under Section 34 of the Act, will not examine the impugned Award as if it is an Appellate Court. The grounds of challenge to the Award have to be brought within the four corners of Section 34 (2) of the Act. If the petitioner fails to bring the grounds of challenge within the aspects pointed out in the statutory provisions, challenge to the Award should necessarily fail. Challenge is on the ground of lack of opportunity and violation of principles of natural justice, which would violate the fundamental policy of Indian Law.

5.To examine whether the petitioner had due opportunity before the Arbitrator, this Court perused the original files of the Arbitrator as well as the impugned Award and it could be seen that the Arbitrator, after considering the documents, has clearly brought out in paragraph no.4 as regards the date of re-possession of the vehicle, when intimation was sent to the petitioner/borrower and the date of paper publication and what was the best price, which the Finance Company was able to secure. Therefore, it was not the case where the petitioner did not have opportunity.

6.Furthermore, in paragraph no.15 of the Award, the Arbitrator has stated that the claimant/1st respondent, by letter dated 19.06.2013 Ex.A13, intimated the fact of re-possession of the vehicle to the petitioner and called upon him to settle the account. The said letter was acknowledged by the petitioner, as seen from Exs.A4 to A6. Thus, only after affording enough opportunity, the 1st respondent invited offers for sale of the vehicle and gave paper publication in Newspapers and those documents as well as the offer letters were marked as Exs.A7 to A10. The 1st respondent intimated the fact of sale of the vehicle to the petitioner, by way of letter dated 12.01.2014, Ex.A11 and called upon him to settle the contract and once again, through their counsel, the 1st respondent/claimant sent another notice dated 07.08.2014, Ex.A12, which has also been acknowledged by the petitioner.

7.The original files show that the claim statement was received by the counsel for the petitioner on 08.01.2015 and subsequently, it appears that the counsel did not attend the proceedings and therefore, the 1st respondent - Company sent a copy of the claim statement to the petitioner, who has received the same, as could be seen from the postal acknowledgment card. Therefore, this is not a case where there is violation of principles of natural justice and despite opportunity, the petitioner did not utilize the same. That apart, the Award is a reasoned one and calls for no interference.

8.For all the above reasons, the petition fails and the Original Petition stands dismissed and the application is closed.

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T.S.SIVAGNANAM, J.
va

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