

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

O.P.No.808 of 2016

1.Babu(Borrower)

No.31, Y Block, 69th Street,
R.V.Nagar, Jafferkhanpet, Chennai,
Tamil Nadu-600 083.

2.Karthick(Guarantor)

No.17/9, R.V.Nagar,
Jafferkhanpet, Chennai.

..Petitioners

Vs.

1.M/s Mahindra and Mahindra Financial Service Ltd.,
Having its registered office at Gateway building
Apollo Bunder, Mumbai-400 001 with its
Corporate Office at Sadhana House,
2nd floor, 570, P.B.Marg behind Mahindra Towers,
Worli, Mumbai-400 018.

2.Mr.A.Srinivasan,

Sole Arbitrator,
No.121/3, Flat-4, Baba Foundations,
N.T.R.Street, Rangarajapuram,
Kodambakkam, Chennai-24.

... Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Arbitration Award dated 30.01.2016 in the proceedings of Arbitration Case No.AP15-NPA-ARB-AS/S:5/BR 250/REF.CB1895/YA1129/AGG No.2354361 of 2015 passed by the second respondent.

For Petitioners : Mr.S.Saravanan

For 1st Respondent : Mr.Solai Geethan
M/s Pass Associates

ORDER

The first respondent and the petitioners entered into a Hire Purchase Agreement dated 11.12.2012. In pursuant to the abovesaid agreement, the first respondent sanctioned loan, which was received by the petitioners. On the failure of the petitioners to make the payment, the first respondent has initiated arbitration proceedings. The learned Arbitrator passed an award after recording that despite notice having been issued, the petitioners did not respond. The Award was passed by the learned Arbitrator at Mumbai. However, the original petition has been filed before this Court on the sole premise that the award was received by the petitioners within the jurisdiction of the Court.

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2. Admittedly, the award has been passed by the learned Arbitrator at Mumbai. No record is available to hold that the

jurisdiction of this Court is available. It is for the petitioners to prove, which has not been done. The petitioners have also not produced the agreement signed *inter se* parties, which is stated to have contained the arbitration clause. Curiously, the petitioners did not deny the agreement *inter se* parties. Therefore, the petitioners have not proved the jurisdiction of this Court, especially when the award was passed at Mumbai. Thus, the petitioners are unable to cross the first hurdle in maintaining the petition before this Court.

3. In such view of the matter, the original petition stands dismissed. However, liberty is given to the petitioners to approach the jurisdictional Court at Mumbai. No costs.

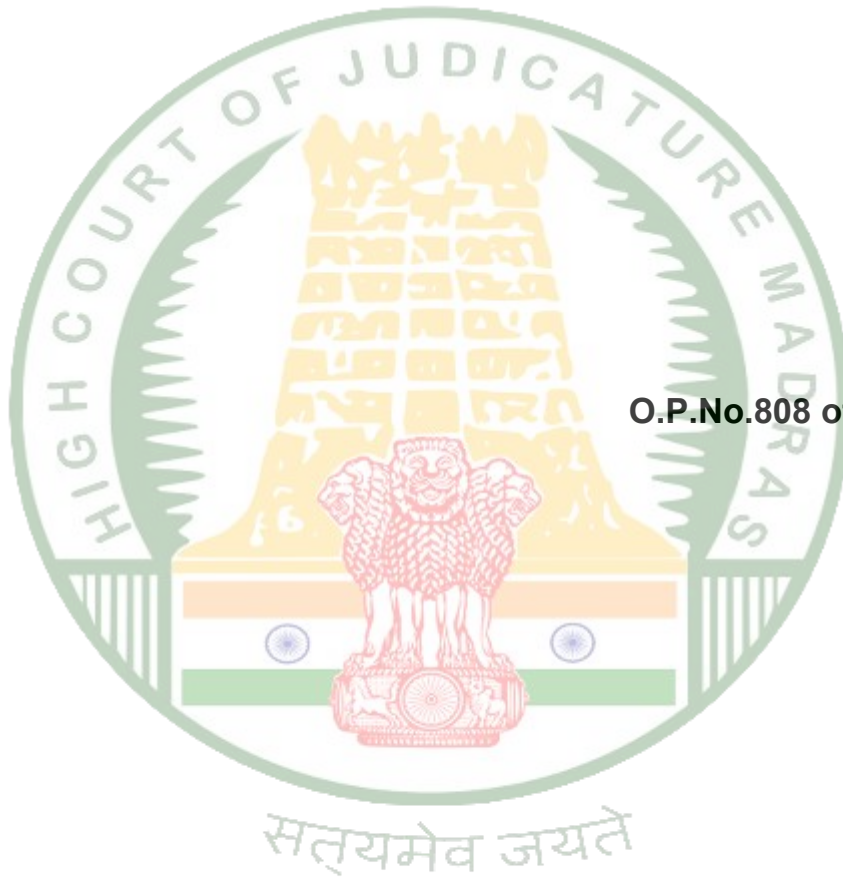
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M.M.SUNDRESH,J.

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