

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2017

CORAM,

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

O.P.No.32 of 2010

1.Ranbirsingh Balbirsingh Tomar,
502-A Block, Sarthi Complex,
Near Visat Petrol Pump,
Gandhi Nagar, State of Gujarat.

2.Navinbhai Kansibhai Prajapati,
18, Gaurav Society, Near Prakash Nagar,
Near Rampire Temple, Chandlodia,
Ahmedabad, State of Gujarat.

..Petitioners

Vs.

1.M/s IndusInd Bank Limited,
Represented by its Manager/Executive-Legal,
Old Nos.115 & 116, New No.34,
G.N.Chetty Road, T.Nagar, Chennai-18.

2.D.Saravanan(Sole Arbitrator),
Advocate, Old No.161, New No.346,
I Floor, Thambuchetty Street, Chennai-1.

... Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award in A.C.P.No.163 of 2007 dated 07.01.2009 made in the Arbitration of the disputes arising out of the agreement No.GAAA08430H dated 14.10.2005 passed by the learned Arbitrator.

For Petitioners : Mr.V.Manohar

For Respondents : Mr.K.Moorthy for R1

ORDER

An agreement was entered into between the parties for the purchase of the vehicle. The petitioners, thereafter purchased the vehicle. As the petitioners, being the borrowers, made default. After notice issued, the vehicle was repossessed. The petitioners said to have given ** lease agreeing for sale, while handing over possession. For the remaining amount, the respondent invoked the arbitration clause.

2. The learned Arbitrator issued notices to the parties. During the second hearing, a counsel sent a communication on behalf of the petitioners that dated 13.07.2007 along with reply statement. On receipt of the same, the matter stood adjourned. On the next hearing, none appeared for the petitioners. Thereafter, with the relevant materials, the learned Arbitrator has passed an Award.

3. The learned Arbitrator while passing the award considered the relevant documents apart from the contentions raised in the reply

statement. On the contentions raised that the case has been filed for a dishonour of the cheque, it is to be seen that the petitioners have not produced any document. Regarding the second contention, it was held that the first petitioner has surrendered the vehicle and produced a letter of consent. Reliance has been made on Clause 15.3 of the loan agreement, which provides for sale of the vehicle. Accordingly, an Award was passed.

4. The learned counsel appearing for the petitioners would submit that the Arbitrator has not taken into consideration the relevant materials. On a perusal of the Award, this Court is of the view that the said contention cannot be countenanced. Though the petitioners did not appear for the reasons known to them, the learned Arbitrator had taken into consideration the contentions raised in the reply statement. Thus, this Court does not find any merit in this original petition. Even before this Court, no document is available on the case filed for dishonour of cheque and its result. Having given a letter of consent for the sale of the vehicle after surrendering it, it is not open to the petitioners to raise any contrary plea.

5. However, considering the facts of the case, the interest levied at 18% per annum by the learned Arbitrator is modified to 12% per annum.

Accordingly, with the above modification, the original petition stands dismissed. No costs.

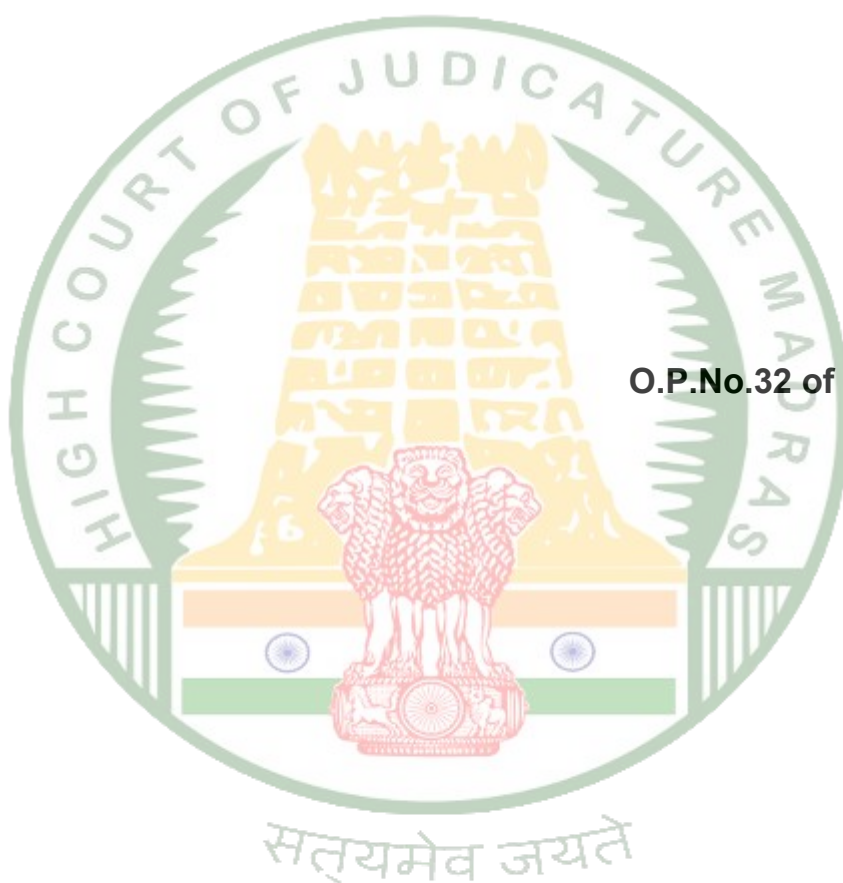
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M.M.SUNDRESH,J.
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