

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.11.2017

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THE HON'BLE MR. JUSTICE M.M.SUNDRESH

Original Petition No.339 of 2010

1. Mr.Amit Kumar Shgarma
2. Mrs.Sushila Sharma .. Petitioners

vs

1. M/s Sundaram Finance Limited
No.21, Pattulos Road,
Chennai 2.
2. Mr.P.M.Ramani,
Sole Arbitrator,
B-28, Plaza Manor,
Sri Karumari Amman Koil Street,
Vadapalani, Chennai 600 026 .. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the impugned order dated 12.08.2008 passed by the learned Sole Arbitrator Mr.P.M.Ramani in Arbitration Case No.PMR/198/UD 2438/2007.

For Petitioners

... Mr.Shameer Shah

For Respondents

....Mr.M.S.Sampath (R1)
No appearance for R2

ORDER

This Original Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the impugned order dated 12.08.2008 passed by the 2nd respondent in Arbitration Case No.PMR/198/UD 2438/2007.

2. The 1st respondent is involved in the business of extending hire purchase of Motor Vehicle and Machinery. The 1st petitioner approached the 1st respondent seeking extension of loan finance facility for the purchase of a vehicle. An agreement was entered into on 31.12.2002. Admittedly, the 1st petitioner has defaulted. The 2nd petitioner is the guarantor. On 13.11.2003, preceded by notice issued, the vehicle was re-possessed. It was accordingly informed to the 1st petitioner on 22.11.2003. A sale was ultimately made, after number of notices issued, in the year 2004 - 08.03.2004. Thereafter, once again notices were issued with last one being 13.02.2007 to pay the remaining amount. As the amount claimed was not paid, a notice was issued informing the petitioners about the invocation of Arbitration clause. Thereafter, the learned Arbitrator, passed an award after recording a finding that the petitioners did not appear for hearing. Challenging the same, the present Original Petition has been filed.

3. Heard the learned counsel for the petitioners and the learned counsel for the 1st respondent and perused the materials available on record.

4. The learned counsel for the petitioners submitted that (i) the claim is barred by limitation; (ii) the petitioners have not been heard; (iii) there was a finding rendered by the Consumer Forum, which would operate as *res judicata* and (iv) the interest levied is excessive.

5. On the other hand, the learned counsel for the 1st respondent would submit that the period of limitation has to be reckoned either from the date of sale or from the date of last notice issued. Therefore, the claim is not barred by limitation. Further, the notices have been sent to the last known address. Thus, the presumption under Section 114 of the Evidence Act will have to be drawn. That apart, the order passed by the Consumer Forum has been set aside by the higher forum. Besides, according to the learned counsel for the 1st respondent, as there is no serious dispute on the liability, no interference is required.

6. The fact that the 1st petitioner is the borrower and the 2nd petitioner is the guarantor is not disputed. The 1st petitioner is none

other than the husband of the 2nd petitioner. Notices have been issued to the last known address. If the petitioners have changed their address, it is for them to intimate the same to the 1st respondent, which they have not done so. The petitioners cannot say ignorance of the proceedings. Admittedly, the vehicle has been re-possessed and sold. The petitioners were aware of it. Therefore, even on that score, they cannot claim that they have been kept in dark throughout. When the petitioners claim that no notice was served, it is for them to establish before this Court while seeking setting aside the award under Section 34 of the Act. The fact that notices were sent both by the 2nd respondent and the learned Arbitrator is not in dispute. Therefore, this Court is of the view that since the contention urged either on the limitation or want of notice cannot be accepted.

7. Coming to the other issue of *res-judicata*, as rightly pointed out by the learned counsel for the 1st respondent, the order of the Consumer Forum has been set aside. Therefore, there is no question of *res-judicata* involved. Hence, the said contention is also rejected.

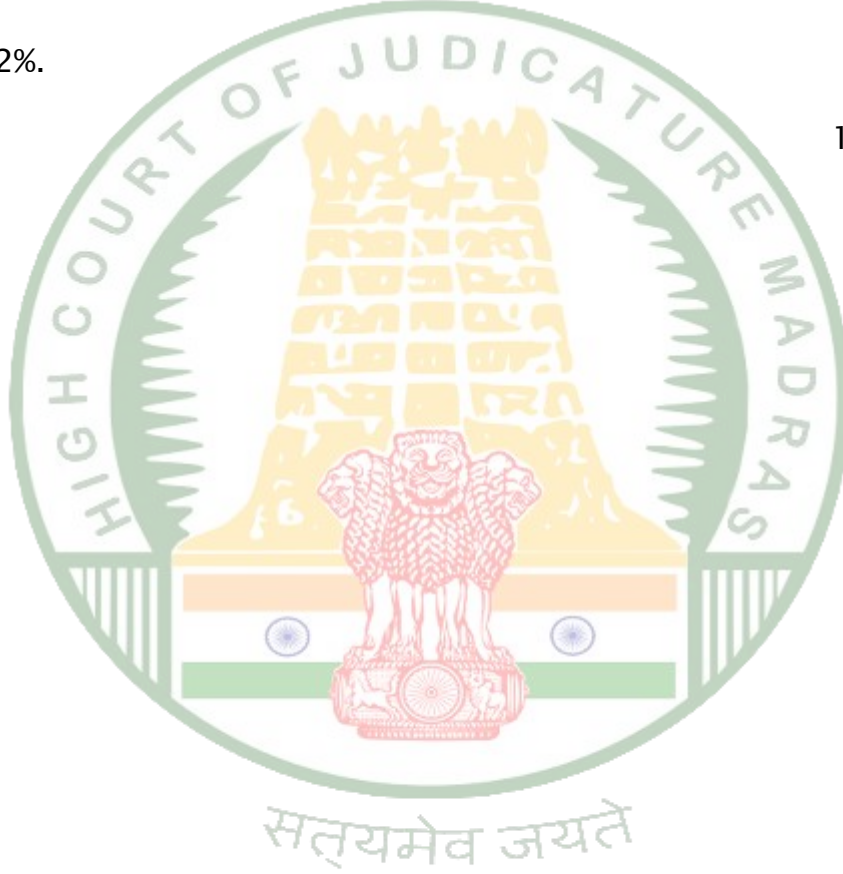
8. However, this Court finds some force in the submission made by the learned counsel for the petitioners insofar as the levying of 18%

interest. The said rate of interest is excessive and the Courts are levying only 12% interest.

9. In such view of the matter, while dismissing the Original Petition, the interest award by the learned Arbitrator at 18% is modified to that of 12%.

10.11.2017

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M.M.SUNDRESH,J.
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