

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2017

CORAM

THE HONOURABLE MR. **JUSTICE M.M.SUNDRESH**

Original Petition No.376 of 2010

Devarajan

.. Petitioner

Vs.

1.M/s.Sundaram Finance Ltd.,
No.21, Patullos Road, Chennai - 2.

2.A.Selvaraj

3.S.Santhanakrishnan,
Retired District Judge,
Old No.5, New No.11/2,
First Main Road, Jothinagar,
Ekkattuthangal, Chennai - 32.

.. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation
Act, 1996 to set aside the Award dated 30.10.2009.

For Petitioner : Mr.K.V.Prakash

For Respondents : Mr.S.Vasudevan for R1

ORDER

Seeking to set aside the award dated 30.10.2009, the present Original Petition has been filed.

2.The first respondent was the claimant. It is dealing in the business of hire purchase of motor vehicles and machineries and leasing of equipments and machineries. The borrower approached the first respondent company seeking loan finance facility for the purchase of Mahindra three wheeler. The petitioner stood as a guarantor by executing a separate guarantee letter dated 25.12.2006.

3.As the borrower committed default, reminders have been sent followed by a legal notice. The petitioner herein, who is the guarantor, sent reply on 04.12.2008 stating that he was not aware of the loan transaction and he was not the guarantor. However, the borrower sent a reply saying that he will make the payment.

4.The learned Arbitrator issued notices on 02.07.2009 to the petitioner and the borrower. Though the notices have been served, the petitioner did not appear. Thereafter, fresh notice was sent and the same was returned unserved. The petitioner was called absent. At that point of time, the first respondent and the borrower viz., the second

respondent filed a joint compromise memo. Taking note of the absence of the petitioner, paper publication was ordered and effected. But the second respondent went back on the compromise memo. The learned Arbitrator accordingly passed an award. Challenging the same, the present original petition has been filed.

5.Learned counsel appearing for the petitioner would submit that the petitioner is not the guarantor. The compromise memo having been signed between the respondents 1 and 2 would not bind him. Therefore, the original petition will have to be allowed.

6.This Court does not find any merit in this petition. It is the petitioner who has not chosen to appear before the learned Arbitrator. A factual finding was recorded that notice was duly served on the petitioner. It is also to be seen that the petitioner was informed about the liability. That is the reason why the petitioner gave reply taking the stand that he was not the guarantor. All the prior communications have been sent to the very same address. It is the petitioner who seeks to set aside the award on the ground of want of notice and therefore, it is for him to establish it. The notice as recorded above would show that the petitioner was duly served atleast on the first occasion and therefore he cannot feign ignorance.

7.The award passed was based on the claim. The compromise memo was for a lesser relief. The learned Arbitrator was pleased to hold that in view of the failure to fulfill the compromise memo, the first respondent is entitled to recover the entire amount as claimed in the claim statement. It is also to be noted that the borrower has not challenged the award. Therefore, looking from any perspective, the petitioner cannot wriggle out of his contractual obligation. The petitioner has missed the bus. The question as to whether he is a guarantor or not cannot be adjudicated for the first time before this Court, having failed to appear and raise it before the learned Arbitrator, though raised by way of reply to the legal notice given by the first respondent.

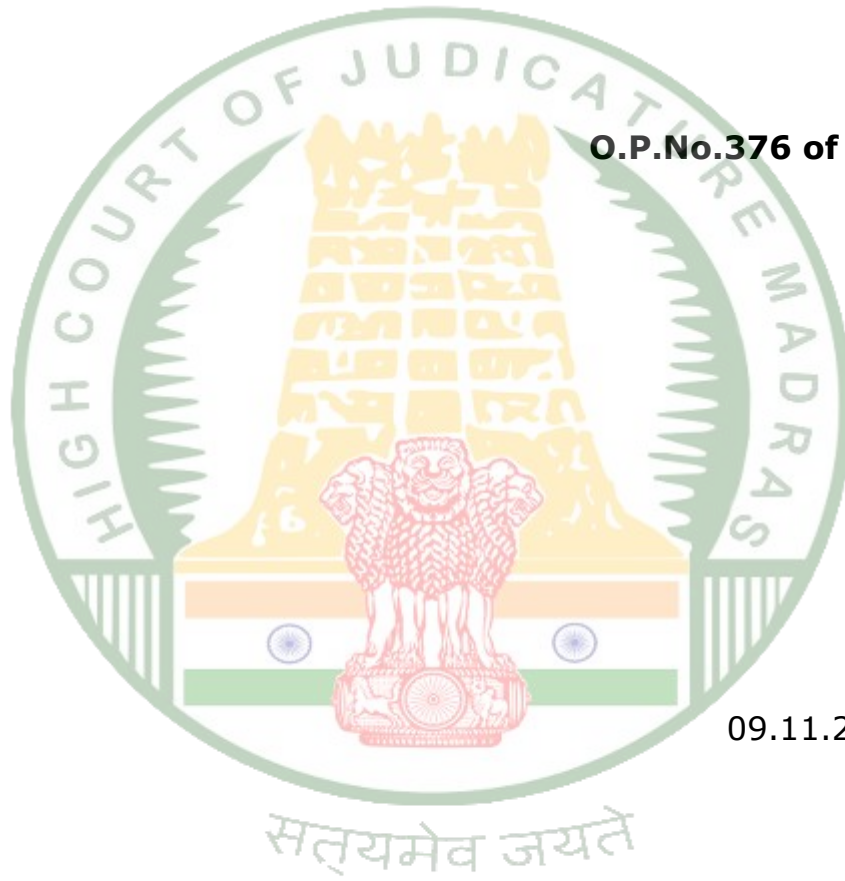
8.In such view of the matter, this Court does not find any merit in the Original Petition and the same is dismissed. No costs.

Index:Yes/No
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M.M.SUNDRESH,J.

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