IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2018

CORAM:

THE HONOURABLE MR. **JUSTICE S.VAIDYANATHAN**

Original Petition No.182 of 2012

K.S.Ramasamy ... Petitioner

vs.

1. M/s.HDFC Bank Ltd.,
rep. By its Authorized Representative,
4th Floor, "Abdullah Complex",
No.22, Thirumurthy Nagar, I Street,
Nungambakkam, Chennai 600 034.

2. M/s.Senthil Kumaran Borewell Service,
rep. by its Managing Partner Mr.K.S.Ramasamy,
Dyankadu, Karuvappampatti Post,
T.P.Palayam Village,
Tiruchengode, Salem – 637 304.

3. T.P.Venkatachalam

4. K.Moorthy ... Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Arbitral Award dated 19.12.2011 passed by the Sole Arbitrator in A.C.P.(HDFC) No.280 of 2011.

For Petitioner	:	Mr.T.L.Thirumalaisamy
For 1st Respondent	:	Ms.E.Malini, for M/s.PASS Associates
For Respondents 2 to 4	:	No appearance

ORDER

This Petition is filed seeking to set aside the Arbitral Award dated 19.12.2011 passed in A.C.P.(HDFC) No.280 of 2011.

2. The 1st Respondent herein/HDFC Bank Ltd. is the Claimant before the Arbitrator. According to the 1st Respondent/HDFC Bank, the 2nd Respondent herein/M/s.Senthil Kumaran Borewell Service, who is the Borrower and the Petitioner herein viz. K.S.Ramasamy, who is the Co-Borrower, entered into a Commercial Vehicle Loan Agreement No.1041323 with the 1st Respondent/HDFC Bank on 07.12.2004 for the purchase of AL ALCO 1616 vehicle and a sum of Rs.11,50,000/- was financed to the Borrower and Co-Borrower, who took delivery of the vehicle directly from the Dealer. The 3rd Respondent herein stood as Guarantor for the said Loan. In terms of the Loan Agreement, the Borrower, Co-Borrower and the Guarantor are due and liable to repay the amount financed i.e. Rs.11,50,000/- together with finance charges of Rs.1,32,250/- and insurance charges, all totalling to a sum of Rs.12,82,250/- in 23 instalments along with additional finance charges at 36% per annum in the event of default. The instalments commence from 05.01.2005 and the last instalment falls due on 05.11.2006.

3. As the Borrowers paid only a few instalments, that too belatedly and have been evading payment of instalments, thereby committing wilful default of payment of dues, the 1st Respondent/HDFC Bank initiated Arbitration proceedings against the Borrowers and Guarantor and had also sent a communication to them on 20.07.2011 in that regard. In spite of the same, there was no response from the Borrowers.

4. After perusing the oral and documentary evidence available on record, the learned Arbitrator, passed the Arbitral Award dated 19.12.2011, which reads as under:

> "7. For all the foregoing reasons, this Arbitral Tribunal finds that the Claimant has established its case and IN THE RESULT, IT IS AWARDED THAT the claim is allowed and consequently, the Respondents are jointly and severally directed to pay the sum of Rs.8,09,215/-. The said sum of Rs.8,09,215/- shall carry interest at 18% per annum from the date of this Award, as held above, till its realization which the Respondents are directed to pay together with a sum of Rs.2,500/- towards cost of arbitration within a period of 30 days from the date of passing the Award. In non-compliance thereof, it is open to the claimant, to repossess and sell the vehicle being of AL ALCO 1616 vehicle with Engine No.TLE350177; Chassis No.TLR122617 and Registration No.KA 01 MB 4244 in open market for the highest price and adjust the sale proceeds towards the amount due. If the sale proceeds short fall, the amount due under this

> Award, the claimant may recover the same by executing this Award from all the three respondents jointly and severally. If the sale proceeds exceed the due, the balance shall be returned to the 1st and 2nd Respondents."

5. Learned counsel for the Petitioner contended that the Arbitral Award is bad in law, as the Arbitrator has failed to take note of the fact that the delay in initiating Arbitration proceedings was not at all explained in the Claim statement. He submitted that the vehicle has been re-possessed by the Bank in terms of the Arbitration Award. Hence, according to the learned counsel, the Arbitrator ought to have dismissed the Claim Petition on the ground that after repossessing the vehicle, the 1st Respondent/Bank has no right or interest whatsoever, to invoke the Arbitration clause.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. Admittedly, from the narration of facts, it is very clear that dehors other aspects, the Arbitration Proceedings were initiated only in 2011 and that there was a default clause. The Petitioner has defaulted in making payments after 18.09.2006 and the Arbitration Proceedings were initiated by the Petitioner only in 2011.

8. In support of his case, learned counsel for the Petitioner has relied on a Division Bench judgment rendered by this Court in the case of **M/s.Shriram Transport Finance Company Ltd., Chennai vs. V.Balanisamy,** reported in **2018 (5) MLJ 1.** A reading of the said judgment makes it very clear that the cause of action available for initiation of recovery proceedings commences from the date of default and limitation commences only from that date.

9. In any event, as the limitation period is three years in terms of Article 37 of the Limitation Act, without going into other aspects, this Court is of the view that the claim made by the 1st Respondent/Bank is beyond three years and the same is not maintainable. In view of the above, the Arbitral Award dated 19.12.2011 passed by the Sole Arbitrator in A.C.P.(HDFC) No.280 of 2011 is set aside and **the Original Petition is allowed.** No costs.

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Index : Yes/No

Speaking Order : Yes/No

(aeb)

S.VAIDYANATHAN,J.

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