

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2018

CORAM

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

O.P. Nos. 471 & 472 of 2012O.P. No. 471 of 2012

1.M/s.Vilco Cell Point
 2.Mr.J.Pinto Villavarayar
 3.Mr.Celestine Villavarayar J.
 4.Mr.J.Jesiah Villavarayar
 All at No.28, W.G.C. Road
 Tuticorin - 628 002.

Petitioners

Vs.

1.M/s.Citicorp Finance (India) Limited
 1st Floor, Angson Centre
 153, Greams Road, Near Thousand Lights
 Chennai - 600 006.

2.K.S.Gowthaman

... Respondents

Prayer :: Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the ex-parte award of the sole Arbitrator, Mr.K.S.Gowthaman, the Second Respondent herein, dated 03.03.2012 made in C.P. No. KSG/CCFIL/85/2008, with costs.

For Petitioners : Mr.D.Jawahar
 For Respondent No.1 : Ms.B.Hamsadhwani

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For Petitioners : Mr.D.Jawahar

For Respondent No.1 : Ms.B.Hamsadhwani

COMMON ORDER

As the issue involved in both these petitions is one and the same, the cases are taken up for disposal by a common order.

2. The First Respondent /Citicorp Finance (India) Limited, was the claimant before the Arbitrator, with whom the Petitioners had entered into Hypothecation Agreements dated 18.11.2008 and 03.08.2007, and availed loan of a sum of Rs.11,37,000/- for purchase of TATA LPT 2515 EX vehicle and a sum of Rs.53,000/- for purchase of the body of TATA LPT 2515 EX vehicle.

3. The only point raised by the learned counsel for the Petitioners herein is that the claim made by the Citicorp Finance/First Respondent had been settled and that on account of non-payment of dues, the vehicle was re-possessed and it was sold at Rs.6,75,000/-. Learned counsel for the Petitioners further submitted that insofar as O.P. No. 472 of 2012 is concerned, the claim made by the Finance Company is barred by limitation, as the date of agreement is 03.08.2007 and the Arbitrator has sent first notice only on 11.03.2011. Learned counsel went on to state that the amount of Rs.6,75,000/- paid by the Petitioners was appropriated towards the vehicle loan and the balance sum of Rs.5,000/- was appropriated towards body building contract.

4. According to the learned counsel for the Petitioners when the vehicle has been re-possessed by Citicorp Finance Limited and a memo vide Ex.A2 has been sent to the Arbitrator, and that the claim has been settled it has to be presumed that the earlier proceedings has to be terminated. Learned counsel contended that the First Respondent herein has not informed the Arbitrator that the matter has been settled, which made the Arbitrator to issue a fresh notice to the Petitioners herein and hence, the award has to be interfered with.

5. Ms.B.Hamsadhwani, learned counsel appearing for the First Respondent contended that merely signing a Memo by one party and sending the same to the

Arbitrator cannot be construed that the matter has been settled between the parties. It is not a fresh notice and it is only an intimation for the parties to appear before the Arbitrator as there are no proceedings between 09.10.2009 and 11.03.2011 and that would not be termed as termination of proceedings. It is also submitted by the learned counsel for the First Respondent that after issuance of notice by the Arbitrator on 11.03.2011, the representatives of the Petitioners appeared before the Arbitrator, however, they did not raise any objection to the proceedings being conducted and the award being passed. Learned counsel further contended that any objection that has not been raised before the Arbitrator cannot be raised before this Court and hence, the Award passed by the Arbitrator is perfectly correct.

6. Heard both parties and perused the material documents available on record.

7. It is not in dispute that the Petitioners have availed vehicle loan by entering into Hypothecation Agreements with the First Respondent herein. Admittedly, the Petitioners had failed to repay the loan amount and arbitration proceedings were initiated against the Petitioners by the First Respondent/Claimant. That apart, re-possession of the vehicle was done in the year 2009, which was sold at Rs.6,75,000/-. As could be seen from the pleadings, there is no conclusion of the

earlier proceedings and as rightly contended by the learned counsel for the First Respondent /Claimant, a communication to the arbitrator that the matter has been settled between the parties cannot make the Arbitrator to conclude the proceedings and that the Arbitrator has rightly proceeded with the issue on hand and came to the conclusion and passed the award under challenge.

8. As long as there is no conclusion of proceedings and merely there were no proceedings for 1 ½ years does not mean that the proceedings have lapsed and the notice sent to the parties to appear before the Arbitrator would not amount to fresh notice in the arbitration proceedings. I find much subsistence in the arguments of the learned counsel for the First Respondent and hence, this Court is not inclined to interfere with the Arbitration Award.

9. Accordingly, these Original Petitions stand disposed of. No costs.

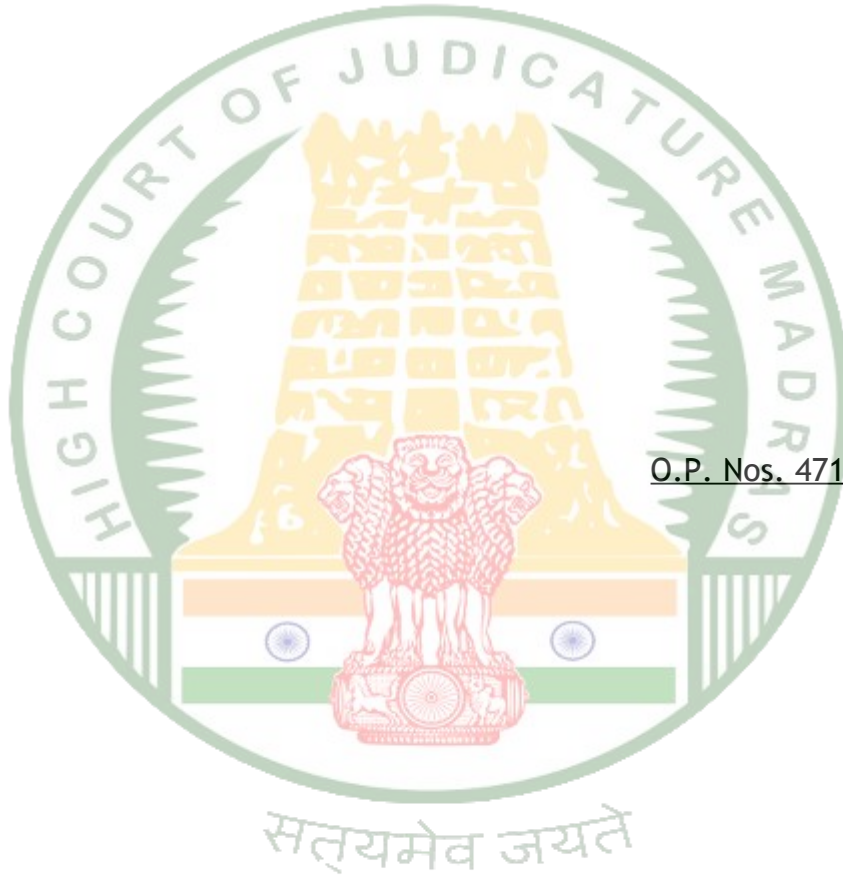
10. Ms.Hamsadhwani, the learned counsel, who had appeared for the First Respondent has represented the case in a neat and pleasant manner.

17.12.2018

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Index: Yes/No
Internet:Yes/No
Speaking/Non-speaking order

S.VAIDYANATHAN, J.

maya



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