

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2018

CORAM

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

Original Petition No.371 of 2014

C.Sudamani

.. Petitioner

Vs.

1.M/s.Kotak Mahindra Prime Ltd.,
rep. by its Authorised Signatory,
1st Floor, CEE Bros Centre,
No.45, Montieth Road, Egmore,
Chennai - 8.

2.K.Inbavijayan,
Sole Arbitrator.

.. Respondents

Petition filed under Section 34 (2) of the Arbitration and
Conciliation Act, 1996 to set aside the Award dated 28.09.2011 in ACP
No.(KMP VI) 38 of 2009.

For Petitioner :

Mr.T.K.S.Gandhi

For Respondents :

Mr.Abdul Hameed
for M/s.AAV Partners for R1

ORDER

Challenging the award dated 28.09.2011, the petitioner has come forward with the present Original Petition.

2.The petitioner, who is the hirer, entered into an hire purchase agreement dated 20.09.2003 with the first respondent. As there was a default, the vehicle owned by the petitioner was repossessed and pursuant to the order of this Court in the application filed under Section 9 of the Arbitration and Conciliation Act, 1996, the same was sold. Seeking payment of the remaining amount, after deducting the amount realised from the sale, the first respondent initiated arbitration proceedings.

3.Before the learned Arbitrator, the first respondent marked ten documents. A plea was taken by the petitioner stating that the hire purchase agreement was replaced by a personal loan agreement. Therefore, repossession and sale of the vehicle was illegal and thus the very basis of the claim cannot be sustained in the eye of law.

4.Learned counsel appearing for the first respondent would submit that the said assertion is without any basis and that is the reason why the learned Arbitrator rejected it.

5.Learned counsel appearing for the petitioner would submit that even the valuation of the petitioner was not considered. The mere fact that the vehicle was sold cannot be a factor to hold that there was no subsequent agreement.

6.The petitioner did accept the hire purchase agreement dated 20.09.2003. It is his specific case that it was revised by subsequent loan agreement. If that is the case, it is for the petitioner to substantiate it before the learned Arbitrator with some documentary evidence, which he failed to do. Repossession and sale of the vehicle pursuant to the order passed by this Court by itself would be sufficient to hold that recovery sought for by way of claim was only under the hire purchase agreement dated 20.09.2003. In such view of the matter, this Court does not find any error in the award passed.

7.Learned counsel appearing for the petitioner also would submit that interest at 18% per annum post award would be excessive. This

Court finds some force in the submissions made. We are dealing with the case where the vehicle has been repossessed. Considering the above, this Court is inclined to modify the interest portion post award at 9% per annum.

8. With the above modification in the rate of interest, the original petition stands dismissed. No costs.

13.03.2018

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

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