

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Original Petition No.627 of 2015

K.Vijaya Kumar

... Petitioner

Vs.

1.M/s.Shriram Transport Finance Co. Ltd.,
Represented by its Power of Attorney Holder Mr.S.Vardhan,
Registered office at No.123,
Angappa Naicken Street,
Chennai - 600 001.

2.Mr.V.Paul Das,
Arbitrator,
Civil Judge Senior Division,
No-124, Kutchery Road,
Near Raja Kalyana Mandapam,
Mylapore, Chennai - 4.

3.Sadik

... Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Exparte award dated 30.11.2012 in Arbitration case No.379 of 2012.

For Petitioner : M/s.R.Jayasree

For 1st Respondent : Mr.K.S.Ramakrishnan

For 3rd Respondent : No appearance

* * * * *

ORDER

This Petition has been filed seeking to set aside the Exparte award dated 30.11.2012 passed by the Sole Arbitrator in Arbitration Case No.379 of 2012.

2. The sum and substance of the issue on hand is that a Loan-cum-Hypothecation Agreement was entered into between the Petitioner viz. K.Vijaya Kumar, who is the principal borrower and the 1st Respondent/Finance Company on 01.12.2005 for purchase of a TATA vehicle. A sum of Rs.15,63,900/- was sanctioned as loan to the Petitioner, which was agreed to be repayable in 72 instalments. The 3rd Respondent herein viz. Sadik stood as Guarantor to the said Agreement. As there was default in repayment of loan amount, in order to settle the outstanding dues, the 1st Respondent/Finance Company repossessed the vehicle in question and sold the same for the highest price offered, for a sum of Rs.2,00,000/- and credited the amount in the accounts of the Borrower and Guarantor.

3. Thereafter, the 1st Respondent/Finance Company issued registered Notices to the Respondents on 21.12.2009, calling upon them to settle the amount due to them. As the Petitioner herein failed and neglected to pay the outstanding dues, Arbitration proceedings were initiated and the Arbitrator

came to the conclusion that the petitioner herein, who is the principal borrower along with the 3rd Respondent/Guarantor, are jointly and severally liable to pay the outstanding dues of a sum of Rs.14,43,673/- (Fourteen Lakhs Forty Three Thousand Six Hundred and Seventy Three only) with further interest at 18% per annum from the date of Claim Petition till the date of realization, to the 1st Respondent herein.

4. Learned counsel for the Petitioner contended that the Award under challenge has been passed without serving any notice to the Petitioner herein and without effecting Paper publication as regards the Arbitration proceedings. He went on to contend that unclaimed notice cannot be treated as proper service and that except endorsement of 'refusal', no other endorsement can be treated as proper service on the person against whom Arbitration proceedings have been initiated.

5. Learned counsel appearing for the first respondent/Sriram Transport Finance Co. Ltd., produced the original Agreement signed by the petitioner and the 3rd Respondent/Guarantor and also the Notices sent to the parties by Registered Post and submitted that the 3rd Respondent/Sadiq has refused to receive the said Notice.

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

7. From the endorsement made by the Postal authorities, it is seen that the 3rd Respondent/Sadik has refused to receive the notice. Even prior to that, several notices were served on Sadik, which were returned as 'unclaimed'. Also, the Petitioner herein has not claimed service of notice and the endorsement made by the postal authorities clearly indicates that intimation has been given to him.

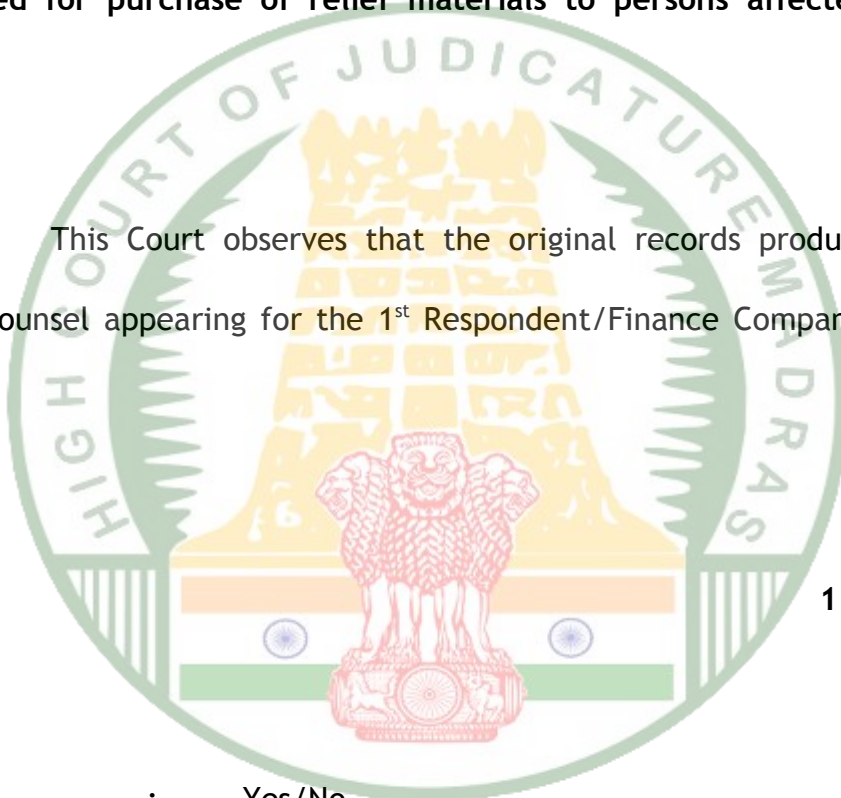
8. The contention of the learned counsel for the Petitioner that the vehicle could have been sold at a higher price cannot be accepted and at no point of time, the Petitioner and the 3rd Respondent herein evinced interest in contesting the proceedings and by hook or crook, they have been avoiding receipt of notices. Though the argument of the learned counsel for the petitioner that in case of non-service of notice, paper publication has to be effected, appears to be sound, the decision relied on by the learned counsel appearing for the 1st Respondent in the case of **P.T.Thomas vs. Thomas Job, (2005 (4) CTC 30)**, is against the Petitioner and the 3rd Respondent herein, as the Apex Court, while considering the issue with regard to service of notice, has held that when the postal authority returns a cover with the endorsement 'unclaimed', a presumption can be drawn that it has been served on the party.

9. In the decision rendered by the Bombay High Court in the case of **Francisco A. D'souza vs. L & T Finance Ltd., Mumbai (2015 SCC OnLine Bom 6864)**, it has been categorically held that when notices are sent at the last known addresses of the parties and the same have not been returned by the postal authority, it would amount to a deemed service of such notices. It was further held therein that it is suffice that notice has been sent to the last known address of the party as mentioned in the Agreement, unless and otherwise the party is able to produce a document to the effect that change of address was duly communicated.

10. In the case on hand, notices have been sent to the last known addresses of the Petitioner and the 3rd Respondent herein. Hence, the contention of the Petitioner that the Award under challenge is an Exparte Award, cannot be accepted. Even assuming for the sake of argument that the contention of the Petitioner is going to be accepted, the Petitioner may have to pay the outstanding dues liable to be paid by him as on date together with interest up to the date of the Award, as was agreed in the Agreement, if Arbitration proceedings again commences. Hence, this Court is of the view that the learned Arbitrator has passed the Arbitral Award purely on merits, which needs no interference by this Court.

11. In the result, this Original Petition is dismissed with costs of Rs.5,000/- (Rupees Five Thousand only) payable to the Secretary, Madras Bar Association, High Court Buildings, Chennai, within a period of two weeks from the date of receipt of a copy of this order, and the said amount shall be utilized for purchase of relief materials to persons affected by Gaja Cyclone.

12. This Court observes that the original records produced by the learned counsel appearing for the 1st Respondent/Finance Company has been returned.



11.12.2018

Index : Yes/No

Speaking Order : Yes/No

(tsg/aeb)

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S.VAIDYANATHAN,J.

(tsg/aeb)



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