

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

O.S.A.No.241 of 2013

Chandulal Aggarwal .. Appellant

Vs

1.M/s.Indus Ind Bank Ltd.,
rep. by V.Govindarajan
having its Office at
Sudharsan Building,
No.86, Chamears Road,
Alwarpet, Chennai - 18.

2.S.K.Srinivasan,
Arbitrator ... Respondents

(Name of the first respondent amended
as per the order of the Court dated
26.10.2017 made in C.M.P.No.5154
of 2017 in O.S.A.No.241 of 2013)

Appeal preferred under Order XXXVI Rule 1 of O.S. Rules r/w
Section 37(1)(b) of the Arbitration and Conciliation Act, 1996
and Clause 15 of Letters Patent against the order dated
29.06.2012 made in Tr.O.P.No.449 of 2006.

For Appellant .. Ms.Elizabeth Ravi
For Respondents .. Mr.S.R.Sundar for R1
R2 - Arbitrator

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal is filed against the order passed under Section
34 of the Arbitration and Conciliation Act, 1996, by the
claimant.

2.The claim was originally made by the appellant on the basis of hire purchase agreement entered into between the appellant and the first respondent. Thereafter, an assignment deed was given by the appellant in favour of one Pawan Anand along with the first respondent. Pursuant to the same, possession of the vehicle was given in favour of the said Pawan Anand. For the reasons known, the first respondent did not want to pursue the proceedings before the learned Arbitrator. However, the appellant wanted to substitute himself as claimant, which was accordingly allowed. Notices sent to Pawan Anand were returned as addressee not available and the Tribunal, by proceedings dated 14.02.2001 recorded its decision to strike down the name of Pawan Anand as claimant. This is for the reason that even the said Pawan Anand was originally substituted as claimant.

3.Before the Tribunal, an objection was raised with respect to the locus of the appellant. The appellant relied upon the affidavit said to have been sent by Pawan Anand. This was disputed by the first respondent. As there was no dispute with respect to the execution of assignment deed coupled with the fact that the first respondent was not a party to the affidavit, which was given in favour of the appellant, the Tribunal rightly rejected it. Incidentally, the Tribunal went into the merits and rejected the claim.

4.Challenging the award of the Tribunal, the appellant invoked the jurisdiction of this Court under Section 34 of the Arbitration and Conciliation Act, 1996. Learned single Judge was pleased to dismiss it by way of a speaking order. Not satisfied with the same, the present appeal has been filed.

5.Learned counsel appearing for the appellant would contend that the affidavit has not been taken into consideration. For the reasons known to the Tribunal, the name of Pawan Anand was struck off. The appellant was not put on notice either at the time of repossession or sale. The records with respect to liability have not been considered properly.

6.Learned counsel appearing for the first respondent would submit that the Tribunal and the learned single Judge rightly held that the appellant does not have any locus after the execution of the assignment deed. It is the appellant who ought to have taken steps to implead Pawan Anand. A mere affidavit per se cannot substitute an admitted document viz., assignment deed. The first respondent was not a party to the affidavit. The registering authorities made changes by deleting the name of the appellant while incorporating that of Pawan Anand and while giving effect to the assignment deed. There is no mutual

corresponding change in the name of the appellant. Therefore, no interference is required.

7. The claimant has to prove his claim. Any adjudicating authority will have to satisfy first the locus of the party, who approached it. Admittedly, in the case on hand, execution of assignment deed is not in dispute. This deed was executed by the appellant with the approval of the first respondent. The so called affidavit given by Pawan Anand does not have an approval of the first respondent. If at all, there is any party who should be put on notice on the premise that the affidavit is true and genuine and will have a legal effect, it would only be the first respondent. While the assignment deed had the sanction of the first respondent through his signature, the so called affidavit did not contain any such consent either oral or in writing. Therefore, the Tribunal rightly rejected the affidavit filed. Once we hold that the appellant is the claimant, it is for him to implead Pawan Anand as the respondent. Merely because the Tribunal deleted the name of Pawan Anand as a claimant, it will not take away the right of the appellant to array him as the respondent if he chooses to do so. When once the issue with respect to re-transfer in favour of the appellant is held against him, he does not have a locus to even file the claim. There is no need for the first respondent to issue notice to the appellant at the time of repossession. In any case, the factual possession was taken back and there was no objection at the relevant point of time. If the appellant was in possession, an objection ought to have been raised at the relevant point of time. Even if there was an objection raised, the same will not have any legal effect without having any right over the vehicle. Not only the Tribunal but also the learned single Judge considered the entire material available on record while dismissing the claim petition. We are not dealing with the case in which an award has been passed in favour of the claimant. On the contrary, the first respondent, opposing the oral claim, did not press for the claim. Therefore, it is for the appellant to substantiate the claim to the satisfaction of the Tribunal, which he miserably failed to do. Thus, looking from any perspective, we are not inclined to interfere with the order of the learned single Judge. Accordingly, the Original Side Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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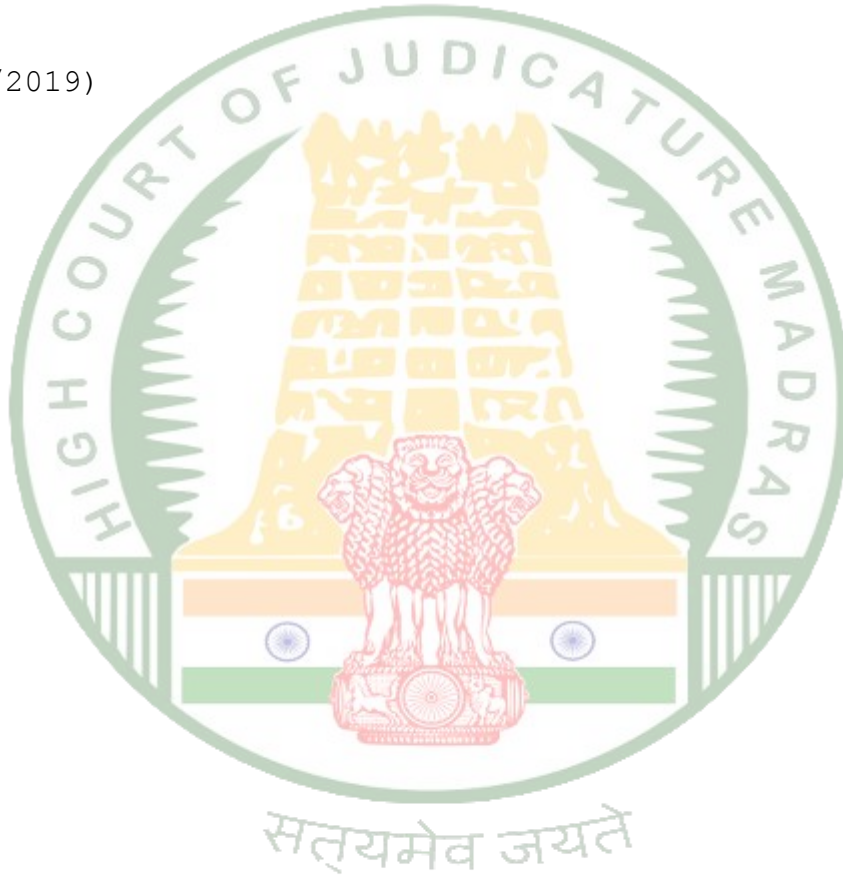
1.The Sub Assistant Registrar,
Original Side, High Court, Madras.

+1cc to Mr.K.Moorthy, Advocate, S.R.No.88321

+1cc to Mr.Elizabeth Ravi, Advocate, S.R.No.88595

O.S.A.No.241 of 2013

KJI (CO)
GSP(30/01/2019)



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