

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.03.2018

CORAM

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

O.P.No.943 of 2017

M.Dilly

Petitioner

Vs.

1.M/s Dugar Finance & Investment Ltd.,
Rep., by its Authorised Signatory,
Dugar Towers, 7th Floor, 34(123),
Marshalls Road, Egmore,
Chennai-600 032.

2.Mr.D.Nagaraj,
No.62, Perumal Koil Street,
Deveneri Village,
Sholavaram,
Chennai-600 067.

.. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award dated 04.09.2017 in A.C.No.R/DF & IL/03 of 2017 passed in favour of the first respondent and direct the respondent to pay the petitioner the costs of this petition.

For Petitioner : Mr.M.Anandaraj

For 1st Respondent : No appearance

ORDER

Despite notice having been served, none appears for the first respondent. To give one more opportunity, the matter stands adjourned to 23.02.2018. Even today, there is no appearance on behalf of the first respondent.

2. The first respondent is the non banking finance company. A Loan Agreement was entered into between the petitioner, being the borrower and the first respondent being the company. According to the first respondent, the petitioner defaulted in making the payment from 03.11.2015 onwards. Therefore, a notice dated 18.02.2017 was issued calling non payment of dues.

3. An arbitration clause was invoked by the first respondent making the claim on various heads. A sum of Rs.4,15,007/- was claimed for additional finance charges in terms of Clause 6 of the agreement, which is as follows.

“6. The first respondent under Contract No.HP
7367 agreed to repay the amount borrowed from
the claimant together with interest. In case of

default in payment of the amount borrowed from the claimant, the first respondent further agreed to pay additional finance charges @ 3% per mensem from the date of default to the date of further payment. Contrary to the said undertakings, the first respondent committed default and he failed and neglected to pay any amount to the claimant despite repeated demands made by them. Since the default persists, the claimant issued a notice dated: 18.02.2017 to the respondents calling for the settlement of the contract. Till date, the contract is not settled.”

4. The learned counsel appearing for the petitioner would submit that even as per the averment in para 16 of the affidavit, the last payment was made on 03.11.2015. If that date is reckoned, what has to be paid is only towards additional payment of Rs.1,99,260/-. There is no liability to pay parking charges when the vehicle is still with the petitioner. Therefore, awarding of additional finance charges @ 3% till 26.07.2016 at Rs.4,15,007/- cannot be sustainable in the eye of law.

5. There is considerable force in the argument of the learned counsel for the petitioner. The petitioner has to pay a sum of Rs.2,46,000/- being the contract balance. So is the case with the visiting charges, Insurance debit balance and parking charges and the payment under the additional finance charges as per clause 6. There is no basis for making the payment of Rs.4,15,007/- as against Rs.2,46,000/-.

6. Though the petitioner did not appear before the learned Arbitrator, the Tribunal ought to have considered the issues in its own perspective. It appears that the first respondent is also not willing to come before this Court. In such view of the matter, the award stands modified for a sum of Rs.4,45,260/-. The interest awarded is at 18%, for which, the learned counsel would submit that the same is contrary to the orders passed by this Court. In such view of the matter, the interest levied by the Tribunal at 18% per annum stands modified to 12% per annum. Accordingly, the original petition stands allowed in part. No costs.

02.03.2018

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M.M.SUNDRESH,J.

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