

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:09.02.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

O.S.A.No.347 of 2017
and
C.M.P. Nos.22497 and 22498 of 2017

R.Arun .. Appellant

Vs.

M/s IndsInd Bank Limited,
rep. By its Authorised representative,
Mr.P.Ramalingam, Executive Legal
and having its registered Office at
New No.34, Old Nos.115 and 116
G.N.Chetty Road, T.Nagar,
Chennai - 600 117 ..Respondent

Prayer: Original Side Appeal filed under Order 36 Rule 1 of
Madras High Court Original Side Rules r/w under Clause 15 of
Letters Patent.

Prayer in O.P.No.12 of 2013:Petition filed under Section 34 of
the Arbitration and conciliation Act 1996 to set aside the
Award dated 14.08.2012 passed by the second respondent in
arbitration matter A.C.P.no.SS.IBL-XII-18 of 2011.

For Appellant : Mr.P.Ganeshamurthi

For Respondent : Mr.S.R.Sundar

J U D G M E N T

[Order of the Court was made by M.VENUGOPAL, J.]

The Appellant / Petitioner has preferred the present
Intra Court Original Side Appeal (As an aggrieved person) as
against the Order dated 12.10.2017 in O.P.No.12 of 2013 passed
by the Learned Single Judge in dismissing the Petition.

2. Earlier, the Learned Single Judge in O.P.No.12 of 2013
filed by the Appellant / Petitioner against the Respondent
herein and others at Paragraph Nos.5 to 8 had observed the
following and dismissed the Original Petition (filed under
Section 34 of the Arbitration and Conciliation Act, 1996) .

3.Learned counsel appearing for the petitioner

would submit that it is a case of possession having been taken by force. The claim statement was bereft of material particulars. There is nothing to indicate about the credit given to the payment made. In support of his contention, he has placed reliance on the following decisions:

(i) Manager, I.C.I.C.I. Bank Ltd., Vs. Prakash Kaur and Others (2007 (2) CTC 334)

(ii) K.Venkateswaran Vs. Sudheesh Kumar (2010-1L.W. 951)

6. This Court does not find any merit in this petition. This Court cannot treat this petition as an first appellate authority but go by the statute and the limitation prescribed under Section 34 of the Arbitration and Conciliation Act, 1996.

7. The question of forcible possession followed by a sale is outside the jurisdiction of the learned Arbitrator. Even otherwise, the petitioner has not proved the aforesaid allegations made. He has not even challenged the possession and the sale. He only seeks to raise it by way of defence before the learned Arbitrator. The power of attorney is one coupled with interest. Not only that, the petitioner does not dispute the agreement and in fact tried to comply with the terms for some time after taking possession of the vehicle. Therefore, it is not open to him to contend to the contrary. The petitioner also did not specifically question Ex.A3. At least, the petitioner was aware of Ex.A3, which was also marked before the learned Arbitrator. A factual finding has been given by the learned Arbitrator that the sale consideration of the vehicle has been given due credit.

8. The decisions relied upon by the learned counsel for the petitioner are not necessary for deciding the petition and admittedly, the petitioner is a defaulter. There is no material on record to come to the conclusion that the award warrants interference under Section 34 of the Arbitration and Conciliation Act, 1996. It is a simple case of payment to be made by the petitioner for not acting in accordance with the terms and conditions of the agreement entered into between the parties."

3. The Learned Counsel for the Appellant / Petitioner brings it to the notice of this Court that the Appellant / Petitioner on 17.09.2008 entered into the loan agreement with the Respondent / Bank to an extent of Rs.10,75,000/- to purchase the vehicle namely, Super / Tusker-1613 bearing Chasis No.FNE 657831 and Engine No.FNE 101822 Z.

4. The version of the Appellant / Petitioner is that because of the rainy season, the vehicle could not be operated thereby affecting earnings. As a matter of fact, the Appellant

/ Petitioner could not pay the instalment and because of the default committed by him, there arose a dispute pertaining to the loan transaction.

5. It comes to be known that by virtue of the Loan Agreement dated 17.09.2008, the Respondent / Bank had repossessed the said vehicle on 03.11.2009 and sold the vehicle on 22.06.2010 and according to the Appellant, the same was sold for a under value price and the selling of the vehicle by the Respondent was without a proper knowledge of the Appellant.

6. The Learned Counsel for the Appellant contends that in the 'Loan Agreement' dated 17.09.2008, there is a covenant in and by which without the order of the Civil Court, the vehicle cannot be repossessed and hence, the order passed by the Learned Single Judge in dismissing the Original Petition No.12 of 2013 filed by the Appellant is an erroneous one.

7. Advancing his arguments, the Learned Counsel for the Appellant submits that the Learned Single Judge had failed to advert to the proved fact, which is available in the printed form of objections 'Without any further information', as per Clause Nos.7.1 and 7.2 of the Loan Agreement dated 17.09.2008, Clause Nos. 7.1 and 7.2. Moreover, in the loan agreement there are no such words found as 'Without any further Information'.

8. The real grievance of the Appellant is that the vehicle in question was sold by the Respondent without any intimation to him and the same is against the 'Principles of Natural Justice'. Apart from that, it is the plea of the Appellant that he raised an objection in regard to the sale price of the vehicle and although the real value of the vehicle was Rs.9,00,000/- (Rupees Nine Lakhs only), the repossessed vehicle was sold by the Respondent to the tune of Rs.6,95,000/- (Rupees Six Lakhs Ninety Five Thousand only) and as such, the action of the Respondent is a suspicion one.

9. The Learned Counsel for the Appellant projects a yet another argument that the vehicle was taken without the knowledge of the person, who gave the Power of Attorney and sold at the rock bottom price without any intimation and as such, the action of the Power agent is not bonafide one, besides the Power of Attorney being invalid one in the eye of Law.

10. The contention of the Learned Counsel for the Appellant / Petitioner is that the Appellant purchased the new vehicle on 17.09.2008 for a sum of Rs.12,07,453/- and the Respondent had failed to inform him about the sale price. In reality, the Respondent after repossessing the vehicle, sold the same for an amount of Rs.6,95,0000/- on 22.06.2010 and gained unlawfully, thereby caused an irreparable loss to the

Appellant / Petitioner.

11. The Learned Counsel for the Appellant points out that the Learned Single Judge at the time of dismissing the Original Petition had failed to take into account that the sum claimed before the Arbitrator was an exorbitant and the loan was taken on 17.09.2008 and that loan amount was Rs.10,75,000/- interest being calculated at 8% per annum for 48 days was Rs.3,44,000/- and when the vehicle was assessed on 03.11.2009, nearly 13 months are over, which comes to Rs.93,166/- out of Rs.3,17,000/- was paid etc., In fact, the plea taken on behalf of the Appellant is that the Respondent / Bank is to calculate the interest for 13 months, which runs to Rs.93,166/- out of Rs.3,17,000/- paid, the interest amount was only Rs.93,166/- .

12. Moreover according to the Appellant, the principal sum was Rs.2,23,833/- and the vehicle was sold for Rs.6,95,000/- the amount released by the Respondent was only Rs.6,95,000/- and the balance payable by the Appellant was only Rs.1,57,000/-. Besides this, the stand of the Appellant is that if the Respondent / claimant had given notice to them to pay this amount, they should have settled the matter on the day itself, but a claim was made by the Respondent / Claimant for Rs.4,32,867/- and in fact, the Arbitrator without appreciating the aforesaid factual position had arbitrarily decided in favour of the Respondent / Bank. In regard to the aforesaid contention of the Appellant, it is to be pointed out by this Court that Ex.A.3, Statement of Accounts was not assailed before the Learned Arbitrator and also before the Learned Single Judge in O.P.No.12 of 2013.

13. Even in the counter statement filed on behalf of the Appellant / borrower, no reference was made with regard to Paragraph no.6 of the grounds of Appeal, as stated supra, namely, to the effect that the Respondent / claimed an exorbitant amount etc., when the Statement of Accounts of the Respondent / Bank, Ex.A.3 remained unchallenged before the Learned Arbitrator at the time of passing award and also later before the Learned Single Judge at the time of dismissal of Original Petition No.12 of 2013, then, this Court is of the considered view that the plea which was never taken before the appropriate Competent Forum and also before the Learned Single Judge cannot be taken at a later point of time. Added further, it is settled Law, that the plea, which ought to have been raised by the concerned party / Litigant, when it is not raised, then, it not open to him to raise at a belated point of time. later point of time, especially when there is no foundation in this regard.

14. At this stage, the Learned Counsel for the Respondent /Bank aptly points out the decision of Hon'ble Supreme Court between Sundaram Finance Limited and Another V. T.Thankam reported in (2015) 14 SCC cases at Page 444 at Page 449, whereby and whereunder in Paragraph No.12, it is observed and

laid down as follows:

"12. In Orix Auto Finance (India) Ltd., V.Jagminder Singh (2006) 2 SCC 598, referring to public policy, this Court has taken the view that if agreements permit the financier to take possession of the financed vehicles, there is no legal impediment on such possession taken, unless the contract is held to be unconscionable or opposed to public policy"

15. It is to be borne in mind that the Respondent / Claimant before the Arbitrator filed A.C.P.No.SS-IBL-XII-18 of 2011 sought a sum of Rs.4,32,867/- as on 27.05.2011 and also claimed an interest at 36% per annum to be paid by the Appellant and Co-Borrower/ Respondents therein jointly and severally for the aforesaid amount from 27.05.2011 till the same is paid in full and for payment of cost to the Arbitration Proceedings.

16. A perusal of the Loan Agreement dated 17.09.2018 was entered into between the parties, which reads as under:- 2 to 4

"2.0. Loan, Interest etc.,

2.1 Amount and Term of Loan

(a) The Lender has agreed to grant the Loan to the Borrower for the purpose of purchase of the asset, of a sum, as stated in the first.

(b) The Loan provided under this Agreement shall be for the period as specified in the First Schedule, commencing from the date specified in the Second Schedule.

2.2 Interest

The rate of interest applicable to the said Loan as at the date of execution of this agreement is as stated in the First Schedule, compounded with monthly rests on the outstanding balance, namely, the balance of the loan and unpaid interest and costs, charges and expenses outstanding, at the end of the month.

2.3 Computation of Interest

(a) The rate of interest stipulated in the first schedule shall remain fixed during the term of the loan facility unless mandated by the Reserve Bank of India or other Regulatory Authorities or unforeseen or exceptional changes in money market conditions. In such event, notwithstanding the provisions of the First Schedule, the Borrower agrees to pay interest on such revised rate and this Agreement shall be construed as if such revised rate was expressly mentioned herein.

(b) The Borrower shall reimburse or pay to the Lender such amount as may have been paid or payable by the Lender to the Central or State Government on account of any tax levied on interest (and/or other charges) on the Loan by the Central or State Government or due changes in law or due to nay new

law coming into force. The reimbursement or payment, shall be made by the Borrower as and when called upon to do so by the Lender.

2.4. Details of Disbursement

The Borrower shall indicate the manner of disbursement of Loan by the Lender, as desired by him. However, the Lender shall have the sole discretion to determine the manner of disbursement, which shall be deemed to be the disbursement to the Borrower as contemplated under this Agreement. In the case of purchase of new Assets, the Loan amount may, at the option of the Lender, be disbursed by the Lender directly to the dealer / manufacturer and such disbursement shall be deemed to be disbursement to the Borrower. In case of purchase of used Assets, the Lender shall determine the manner of the disbursement, i.e., either to the owner / seller of the Asset or to the Dealer or to the Borrower and such disbursement shall be deemed to be the disbursement to the Borrower as contemplated under this Agreement.

2.5 Mode of Disbursement

All disbursements to be made by the Lender to the Borrower, under or in terms of this Agreement shall be made by cheque duly crossed and marked *A/c Payee only* or by Demand draft or any other accepted modes of transfer of funds permitted under the Indian banking system, at the sole discretion of the Lender. The collection charges or such other charges levied, if any, in respect of all such cheques or modes of transfers will have to be borne by the Borrower, irrespective of the time taken for transit / collection / realisation of the cheque by the Borrower or its bank.

2.6 Terms of Disbursement

Notwithstanding anything to the contrary contained herein, the Lender may, by notice to the Borrower, suspend or cancel further disbursements of the Loan if the Loan granted has not been fully drawn and has not been suspended / cancelled by the Lender.

2.7. Statement of Accounts and Confirmation of Balance

The Lender shall, as on 31st March of every year, sent to the Borrower, a statement of account drawn as on March 31, showing the amount due, the interest charged etc., to the Borrower. Unless the Borrower notifies the non receipt of this statement or points out any discrepancy therein within 15 days of sending such statement by certificate of Posting, it shall be presumed that the Borrower has agreed and accepted that the amount stated therein is due and outstanding against him.

2.8 Processing charges

The Borrower shall be liable to pay to the

Lender processing charges as stated in the First Schedule at the time of and together with the application for Loan. The said amount of processing charges shall be refundable to the Borrower only in the event the borrower notifies its intention for not availing of the Loan prior to the Lender intimating its approval through an offer letter to the Borrower for grant of the Loan.

2.9. Repayment of loan

(a) The repayment of the Loan and the interest thereof, shall be made by the Borrower in installments. The details such as number, due dates and amount in respect of the installments are described in the Second Schedule. The repayment schedule is without prejudice to the right of the Lender to be paid on demand as contemplated under this agreement, the entire Loan amount along with other dues. Further, the computation / fixation of the installment will be without prejudice to the right of the lender to re-compute the amount of installments and interest therein, including in case it is discovered at any stage that the installments have been computed wrongly. The installments shall be payable as per the second schedule.

(b) The borrower /Co-borrower agree that time is the essence of the contract.

(c) The payment of installments shall commence and continue irrespective of the asset being delivered to the borrower by the Dealers / Manufacturer or not and notwithstanding any difficulties that the borrower may be facing or any disputes, objections, protests, complaints or grievances which the borrower may have with or against the Dealers / Manufacturer or not and notwithstanding any difficulties that the borrower may be facing or any disputes, objections, protests, complaints or grievances which the borrower may have with or against the Dealers / Manufacturer or in respect of the delivery / non delivery of the asset or in respect of the asset itself.

(d) No notice, reminder or intimation will be given to the borrower regarding his obligation to pay the installment regularly on due date. It shall entirely be the responsibility of the Borrower to ensure prompt and regular payment of the installments.

(e) Without prejudice to any other rights and remedies which the Lender may have under this Agreement and / or under the prevalent law, in the event of any delay by the Borrower in any payment to the Lender under this agreement, the Lender shall be entitled to charge an additional interest as described in the First Schedule on the entire such outstanding amount, whether of Loan, interest or any

other charges payable hereunder. The Lender is entitled to treat such non payment as a dispute which could be referred before the Arbitrator as per Clause 23 of this agreement.

The aforementioned additional charge would not affect the obligation of strict compliance with repayment schedule being an essential condition for the grant of Loan.

(f) Any dispute being raised about the amount due or interest computation will not enable the Borrower(s) to withhold payment of any installment.

2.10. Mode of payment of the Installment

(a) The repayment shall be by way of post dated cheques (PDC's) or by borrower's remittance by cash or by Demand Draft or any other accepted modes of transfer of funds permitted under the Indian Banking System, to the Lender on the dates specified in the Second Schedule, and shall commence as per the repayment schedule is an essential condition for the grant of the loan.

(b) No notice, reminder or intimation shall be given by the Lender to the Borrower prior to the presentation of any of the PDC's and insurance premium cheques issued by him.

(c) If any or more than one or all of the PDC's delivered to by the Borrower pursuant to Clause 2.10 (a)

(i) is/are lost, destroyed or misplaced while in the custody of the Lender or

(ii) become(s) non encashable due to death, insolvency, lunacy, termination of authority or otherwise of the signatory or any or more of the signatories (if more than one) thereof or liquidation or any moratorium of the drawee bank,

then in such an event, the Borrower shall, on receipt of the intimation of such loss, destruction or misplacement (as the case may be) from the Lender or immediately on the said cheques or any of those being non encashable due to the reasons mentioned in 2.10(c) (ii) above, deliver to the Lender such numbers of cheques as are adequate to replace those that have been lost destroyed, misplaced or become non encashable, or made such suitable alternative arrangement for repayment of Loan as is acceptable to and is approved by the Lender.

(d) It is agreed and understood by the Borrower that non-presentation of the cheques by the Lender due to any reason whatsoever will not affect the liability of the Borrower to repay the Loan. The Lender shall not in any way be responsible for delay, omission or neglect in encashment, damage or loss of any cheques (already given or to be given by the Borrower to the Lender in terms hereof) for any reason whatsoever.

(e) Without prejudice to any other rights or remedies the Lender may have under this Agreement and / or under the prevalent law, the Borrower shall be liable to pay a flat charge as stated in the First Schedule in case of dishonour of the PDCs on the first presentation. In case of dishonour on the second presentation, a further charge, as stated in the First Schedule would be levied in respect of such dishonoured PDC. The quantum of the charge on the dishonouring of the cheque is without prejudice to the rights of the Lender under the Negotiable Instruments act, 1881, as amended and as in force for the time being, and without prejudice to the other rights, which the Lender has under this Agreement or under law or equity.

(f) The charges mentioned in the First Schedule of this Agreement are subject to change at the sole discretion of Lender.

2.11 Alteration and Re-scheduling of the Installments

The Lender shall be entitled to, if the Lender deems fit in the circumstances, alter or re-schedule the Installments in such manner and to such extent as the Lender may, in its sole discretion, decide and the repayment will be made by the Borrower as per the said alteration and re-scheduling notwithstanding anything stated in the Second Schedule.

2.12 Liability of Reborrower and the Co-borrower is joint and several

The liability of the co-borrower(s) is joint and several and is coexistent with that of the borrower. The liability of the Co-borrower(s) to repay the Loan together with interest etc., and to observe the terms and conditions of this Agreement / and any other Agreement/s, documents that may have been or may be executed by the Borrower with the Lender in respect of this Loan or any other Loan or Loans, is joint and several and consequently the Lender shall have a sole discretion to proceed against both or either of them to recover the Loan and other charges payable by the Borrower to the Lender.

3.0 Security

3.1 In consideration of the Lender having granted or agreed to grant to the Borrower the Loan facility, subject to the terms and conditions mentioned herein, the Borrower hereby hypothecates / agrees to hypothecate and charges in favour of the Lender, by way of an exclusive first charge on the Asset together with all accessories, additions to /

in the said asset whether present or future and improvements, renewals and replacements made or to be made on the asset as detailed under the First schedule, against which the Loan facility is being taken. In this regard the Borrower has also executed the irrevocable power of attorney in favour of the lender in the form attached hereto. The Borrower also agrees and undertakes to execute such further documents and made such other deeds as may be required by the Lender to perfect the charge of the Lender on the Asset.

3.2 The hypothecation shall be deemed to take place immediately on signing of this agreement or delivery of the Assets(s) whichever is earlier.

3.3. The charge created by the Borrower in Clause 3.1 hereof shall stand as security for the due repayment and payment by the Borrower of the Loan granted or to be granted by the Lender to the Borrower and of all fees and interest, costs and expenses incurred or to be incurred by the Lender hereunder and all other monies payable or which may become payable by the Borrower to the Lender pursuant to the terms hereof.

3.4. The charge created by the Borrower herein shall continue unless and until the Lender issues a certificate discharging the security created herein and shall not affect, impair or discharge the liability of the Borrower by insolvency, arrangement with creditors, mental disability or physical disability winding up (voluntary or otherwise) or by any merger or amalgamation, reconstruction, take over of the management, dissolution or nationalization (as the case may be) of the Borrower.

3.5 If the asset has not been delivered to or in the case of vehicle it has not been registered in the name of the Borrower at the time of execution of the Agreement, the particulars of the asset that are not delivered and that are not delivered and that of the vehicle which has not been registered at such time shall be intimated in writing by the Borrower to the Lender within one week of such delivery and / or registration and such particulars shall be read as a part and parcel of the Schedule hereunder as if they had been incorporated therein at the time of execution of this agreement. The Borrower agrees not to take the plea that on the date of execution of this Agreement, the details of the asset or any part thereof were not available, the charge is inoperative defective or invalid or in any way unenforceable.

3.6 The borrower shall register the vehicle / asset within such time as has been stipulated by the appropriate authority and hand over the copies of RC and insurance immediately on such completion.

3.7 The Borrower hereby confirms that the Borrower is aware of all the details of the Asset(s)

3.8 The Borrower has also executed a promissory note by way of security for the amount of Loan and interest thereon.

3.9 The Lender may require the Borrower to furnish such additional securities including additional guarantee(s) from third party, as the Lender may deem fit, in its sole discretion. In such an event the Borrower shall provide such additional security and in this regard execute such Agreements, undertakings documents power of attorney/s that may be required by the Lender. The Borrower shall not revoke or terminate any such contracts, agreements, undertakings, documents etc., till all the amounts due and payable by the Borrower to the Lender under this Agreement have been paid in full and certified so by the Lender

4.0 Appropriation of Payments

4.1 The Lender shall have a right to appropriate any payments due and payable under the Loan agreement and made by the Borrower towards dues in the order the Lender deems fit towards the following:

- (i) Premium on prepayment;
- (ii) Costs, charges, expenses and other monies
- (iii) Interest on costs, charges, expenses and other monies
- (iv) Service charges
- (v) Interest, including additional interest, if any, payable in terms of the Loan Agreement
- (vi) Repayment of installments of principal due and payable under the Loan Agreement.
- (vii) Cost of initiating legal proceedings"

17. In fact, Clause Nos. 15 to 15.9 speaks of 'Lender's Right' Clause 16 deals with Additional Guarantee. Clause 17 refers to 'Prepayment'. Clause 19 relates to 'Lender's Right to Appoint Agency'. Finally, Clause 28.3 of the Loan Agreement dated 17.09.2018 says that 'The said agreement shall be concluded and become legally binding' on the date when the authorized officer of the Lender signs this Agreement.

18. There is no dispute with regard to the fact that dues will have to be paid by the Appellant promptly and in case of

default on the dues, they are liable to pay the additional final charges for the belated payment, till the same is paid in full. Besides they are duty bound to surrender the vehicle in a good condition to the Respondent /Claimant.

19. At this stage, the Learned Counsel for the Respondent brings it to the notice of this Court that as per Clause 15.0 of Loan agreement dated 17.09.2008 under the caption 'Lender's Rights', upon the occurrence of an Event of Default, the borrower shall be bound to return the asset to the Lender at such location, as the Lender may designate in the same condition in which it was originally delivered to the Borrower, ordinary wear and tear excepted. Further, it is also made mention of that the borrower shall not prevent or obstruct the Lender from taking the possession of the asset etc., In case of short fall in respect of amounts due to the Applicant, after the sale of vehicle, the Respondent is entitled to proceed against the Appellant and co-borrower for recovery of such short fall in terms of the loan agreement in question.

20. After giving credit to the payment made by the Appellant and co-borrower and the sale proceeds of the repossessed vehicle an amount of Rs.4,32,867/- was still due and payable Appellant and another / Respondent as on 27.05.2011. Also that the Appellant and the co-borrower are liable to pay the additional charges and interest at the rate of 36% per annum, till the actual date of payment, because of the existing dispute between the Respondent / Claimant and the Appellant / co-borrower, pursuant to Clause 23 of the Loan Agreement dated 17.09.2008 between the Respondent/Claimant and Appellant/Co-borrower, the dispute was referred to the Arbitrator. The Arbitrator on 14.08.2012 had passed the Award against the Appellant and co-borrower directing them to pay jointly and severally a sum of Rs.4,32,867 as on 27.05.2011 with an interest at 18% per annum etc.,

21. It transpires that armed with an Award dated 14.08.2012, the Respondent / Claimant filed E.P.No.192 of 2017 before the Principal Sub Judge, Villupuram and during the pendency of the Execution Petition on the file of the trial Court, the Appellant / co-borrower filed a O.P.No.12 of 2013 before this Court and this Court, after contest, had opined that there is no material on record to come to the conclusion that the award warrants interference under Section 34 of the Arbitration and Conciliation Act, 1996.

22. Also that, it is to be pointed out that the Learned Arbitrator had arrived at a finding that the sale consideration of the vehicle which was sold by the Respondent / Bank was given due credit and in fact, the Appellant / Petitioner had not questioned Ex.A.3, Statement of Accounts and the amount realised for the sale was also taken

into consideration and it is a candid fact that the Arbitrator had only ordered 18% interest and had negated the claim for 36% interest claimed by the Respondent / Bank. Even the plea taken before the Arbitrator that the vehicle was forcibly taken by the Respondent / Bank was not accepted by the Arbitrator based on the reason projected by the Appellant that he did not know English language and in fact, the Respondent / Bank had acted as power of attorney and sold the vehicle for the lower price. It cannot be forgotten that the Appellant after committing default for the payment of instalment amount, as agreed to by him, the Respondent / Bank had filed a Claim Petition before the Arbitrator, in which the award was passed.

23. It is to be noted that 'Repossession is Legally Tenable', as per the Loan Agreement. It cannot be gainsaid that the Hirer can seek his available remedy in accordance with Law. To put it succinctly, the Loan Agreement is a contract and by and large ambit of interference by the Court Concerned is a restricted / limited one. In any event, by no stretch of imagination, a contract entered into between the parties can be varied, satisfied or altered or rewritten by a Court of Law.

24. It is to be pertinently pointed out that this Court on 05.01.2018 in the present Original Side Appeal and C.M.P. Numbers had passed an order of staying the Impugned Judgment in O.P.No.12 of 2013 dated 12.10.2017 subject to the deposit of Rs.4,32,000/- (Rupees Four Lakhs Thirty Two Thousand only) by the Appellant within a period of two weeks. Further, proceeded to observe that if the aforesaid amount was not deposited, then, the Interim Stay granted would dissolve automatically. Added further, the said amount was directed to be deposited with the Registrar General, to be invested in fixed deposit created with a nationalised bank.

25. Although this Court had passed a conditional Order of Stay, as aforesaid in the instant Original Side Appeal dated 05.01.2018, it comes to be known that the Appellant / Petitioner had not deposited a sum of Rs.4,32,000/-, as ordered and that the Interim Stay granted by this Court had worked out itself as a logical corollary.

26. When the Appellant and Co-Borrower had entered into the Loan Agreement dated 17.09.2008 with eyes wide open and when they affixed their signature in Ex.A.2, Loan Agreement dated 17.09.2008, agreeing to abide by the Terms and Conditions of the Agreement, then, it is not open to them to turn around at a later point of time to take a contra stand. In short, the Appellant and co-borrower are estopped by their conduct to question the respective clauses of the Loan Agreement. When the Loan Agreement, Ex.A.2 dated 17.09.2008

was not disputed by the Appellant / Co-borrower and the Learned Arbitrator after taking into all the objections of the Appellant had arrived at a conclusion that the Appellant is bound to pay the amount of Rs.4,32,867/- with an interest at 18% per annum, then, the same is free from any legal infirmities, in the considered opinion of this Court. Consequently, the Original Side Appeal is devoid of merits.

27. In fine, the Original Side Appeal is dismissed leaving the parties to bear own costs. Resultantly, the order of the Learned Single Judge in O.P.No.12 of 2013 dated 12.10.2017 in dismissing the Petition is hereby affirmed by this Court for the reasons assigned in this Appeal. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

M/s IndsInd Bank Limited,
rep. By its Authorised representative,
Mr.P.Ramalingam, Executive Legal
and having its registered Office at
New No.34, Old Nos.115 and 116
G.N.Chetty Road, T.Nagar,
Chennai - 600 117

+1cc to Mr.K.Moorthy, Advocate Sr.No.10651
+1cc to Mr.S.T.Varadharajulu, Advocate Sr.No.10392

SAI(CO)
sm:1.3.2018

O.S.A.No.347 of 2017
and

C.M.P. Nos.22497 and 22498 of 2017

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