

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2018

CORAM

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

Original Petition No.1002 of 2015

1.R.Sundharamoorthy
2.R.Shanthi
3.Kalki

.. Petitioners

Vs.

1.HDFC Bank Ltd., rep. by its
Authorised Representative,
No.110, Ceebros Building,
4th Floor, Nelson Manickam Road,
Aminjikarai, Chennai - 29.

2.V.Manohar,
Sole Arbitrator.

.. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 26.10.2015 in Arbitration Case No.1622 of 2015.

For Petitioners : Mr.S.Gopi

For Respondents : No appearance

ORDER

Challenging the award dated 26.10.2015, the petitioners have come up with the present original petition.

2.The first respondent is a banking company interalia carrying on business in extending loan to its customers. The first petitioner is a borrower, the second petitioner is a co-borrower and the third petitioner is a guarantor. Pursuant to the application made by the first petitioner, a sum of Rs.4,06,018/- was sanctioned. The agreement was an hire purchase one for the purchase of tractor.

3.As the petitioners defaulted in making the payment despite number of demands made, a letter was issued by the first respondent dated 21.07.2015, calling upon the first petitioner to pay the outstanding amount, failing which, the vehicle will be sold in public auction. Despite the same, there was no response and therefore, the vehicle was seized and sold in public auction with due intimation to the petitioners. The petitioners were asked to make further payment. Accordingly, the arbitration clause was invoked after termination of the loan agreement dated 27.09.2012. Thereafter, the learned Arbitrator was appointed and proceedings was initiated.

4. Before the learned Arbitrator, notices issued to the petitioners got returned with an endorsement 'left'. Thereafter, further notices were sent to the petitioners, which were returned with an endorsement "insufficient address". Treating it as sufficient service, the learned Arbitrator proceeded further to pass an award against the petitioners and hence the present original petition.

5. Learned counsel appearing for the petitioners would submit that having found the addresses being insufficient, the learned Arbitrator ought to have issued fresh notices. A perusal of the addresses would show that the same are at Chennai though for the third petitioner, it is shown as Thiruvallur. The addresses of all the three petitioners were correctly shown as Gummidipoondi. However, the discrepancy as mentioned above is inherent from the addresses shown in the award. Therefore, the award requires interference.

6. Heard the learned counsel appearing for the petitioners. Despite service of notice and the name of the respondents having been printed in the cause list, none appears for the respondents.

7. It is the specific case of the petitioners that they have not been served with notices. We are dealing with the case in which the vehicle has already been seized and sold. It is imperative on the part of the

learned Arbitrator to satisfy himself with service of notice. The notices sent were returned with an endorsement "left". That is the reason why the second set of notices were sent. Therefore, the learned Arbitrator cannot go back with first notices for proper service. Having found that the notices got returned with the endorsement "insufficient address", fresh notices ought to have been ordered. After all, the learned Arbitrator is involved in an adjudicatory process. Section 34 of the Arbitration and Conciliation Act, 1996 mandates the service of notice.

8. In such view of the matter, this Court is constrained to set aside the award giving liberty to the first respondent to proceed afresh, if so advised. Accordingly, the award dated 26.10.2015 stands set aside and the original petition stands allowed. No costs.

सत्यमेव जयते

04.06.2018

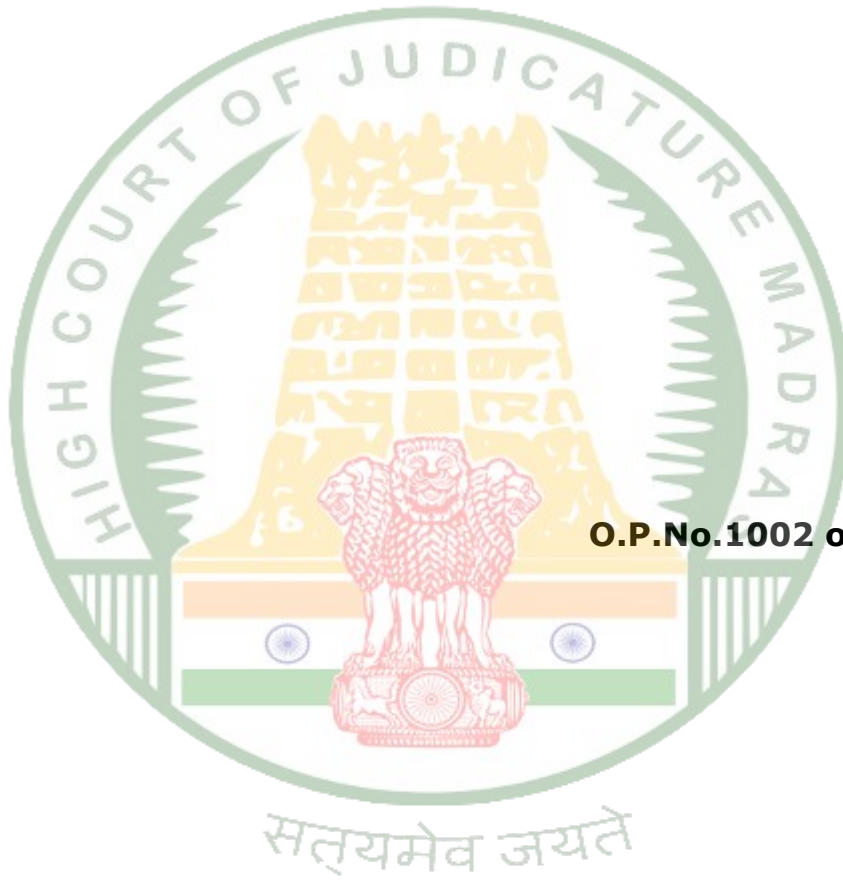
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M.M.SUNDRESH,J.

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