IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2018

CORAM

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

**Original Petition No.262 of 2011**

1.D.Srikanth
2.D.Padmavathy .. Petitioners

Vs.

1.M/s.Kotak Mahindra Bank Ltd.,
5th Floor, Ceebros Centre,
No.39, Montieth Road, Chennai - 8.

2.S.Balajanaki,
Sole Arbitrator. .. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award dated 22.02.2011 made in A.C.P.No.1666 of 2000.

For Petitioners : Mr.K.Balaji

For Respondents : No appearance

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**ORDER**

Challenging the award dated 22.02.2011, the present original petition has been filed.

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2.The first petitioner is the borrower and the second petitioner is the guarantor. The first respondent advanced a sum of Rs.3,07,229/- under the personal loan cum guarantee agreement dated 20.05.2008. The amount was to be repaid in 36 equal monthly instalments. As there was default in making the payment, after issuing notices, the arbitral proceedings were initiated.

3.The first respondent, being the claimant, filed Exs.A1 to A5 which were authorisation letter, certified copy of the loan application, certified copy of the personal loan cum guarantee agreement, foreclosure letter and statement of accounts. The second petitioner is the mother of the first petitioner. The first petitioner has contended that he has repaid the entire amount. The second petitioner stated that she did not sign the documents.

4.Before the learned Arbitrator, the petitioners did not appear after the initial appearance. Therefore, the learned Arbitrator proceeded with the relevant materials available on record after framing the issues. By the said award, the learned Arbitrator was pleased to hold that inasmuch Exs.A1 to A5 having been proved leading to agreement entered into, payment and failure to make the repayment,

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the consequence will have to follow. The learned Arbitrator took into consideration Ex.A4 foreclosure document, which has given entire details of the transaction including dishonour of cheques. Accordingly, a sum of Rs.2,92,251/- was awarded with 18% interest.

5.Heard the learned counsel appearing for the petitioners. Despite service of notice and the name of the first respondent having been printed in the cause list, there is no representation on behalf of the first respondent.

6.Learned counsel appearing for the petitioners would submit that the learned Arbitrator did not give sufficient opportunity to the petitioners to put forth their contentions. He further submits that the second petitioner did not sign the application and the interest levied is excessive. Thus the award requires interference.

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7.The contentions raised are factual. The learned Arbitrator considered Exs.A1 to A5 and thereafter passed the award. The contention of the second petitioner that she did not sign the documents was rejected after perusing the loan application along with personal loan cum guarantee agreement wherein the second petitioner

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has affixed her photograph and duly signed. The relationship between the petitioners is not in dispute. The learned Arbitrator was also pleased to hold that the relevant particulars for the transaction were found available under Ex.A4. The petitioners did not produce any contra material regarding repayment made. Thus, the adjudication being factual, this Court is of the view that no interference is required, especially when Exs.A1 to A4 are not in dispute. However, this Court finds some force in the submission made with respect to interest at 18% per annum. The award of interest at 18% per annum is excessive. Normally, interest that is being levied by the Courts is only 9% per annum. In such view of the matter, the award of interest at 18% per annum is reduced to 9% per annum.

8.With the above modification in the rate of interest, the original petition stands dismissed. No costs.

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Index:Yes/No
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**M.M.SUNDRESH,J.**

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