

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2018

CORAM

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

Original Petition No.474 of 2011

Madhav Nayak

.. Petitioner

Vs.

1.M/s.IndusInd Bank Limited
rep. by P.Bala Venkata Giri

2.Santhosh Naik
3.T.Venugopalan,
Sole Arbitrator.

.. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation
Act, 1996 to set aside the award dated 15.06.2010.

For Petitioner

:

Mr.G.Krishnakumar

For Respondents

:

Mr.K.Moorthy for R1

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ORDER

Challenging the award dated 15.06.2010, the present original
petition has been filed.

2.The petitioner is a borrower, the first respondent is a lender/owner and the second respondent is a guarantor. A loan agreement was entered into on 29.03.2008 for the purpose of purchase of vehicle. A sum of Rs.5,89,000/- was advanced and the loan agreement also had a schedule of payment. As the petitioner did not make the payment, the vehicle was seized and sold. Consequently, the proceeds were appropriated towards the loan agreement. For the remaining amount, the first respondent approached the learned Arbitrator.

3.The claim petition was filed on 23.03.2010. Having found that the petitioner was not co-operating and not appearing before the learned Arbitrator, he was accordingly set exparte. Knowing the exparte order passed and the matter was reserved for passing orders in the main petition, the petitioner sent a communication to the first respondent requesting him to accept the written statement filed and advance the hearing. However, an award was passed on merits, after noting that without the application seeking to set aside the exparte order, the request made cannot be granted.

4.Learned counsel appearing for the petitioner would submit that the learned Arbitrator ought to have given an opportunity to the petitioner to contest the matter on merits. The payments made have not been given credit to and the interest levied is excessive.

5.Learned counsel appearing for the first respondent would submit that the payments were adjusted towards additional financial charges. The award was passed as per the exhibits filed. The petitioner being the borrower cannot take his own time before the learned Arbitrator. The learned Arbitrator was not expected to wait for the parties. Hence no interference is required.

6.This Court cannot go into the factual adjudication made. The petitioner did not make an application seeking to set aside the exparte order. Therefore, there is nothing wrong in the order passed by the learned Arbitrator on merits while rejecting the request made by the petitioner. A perusal of the award would show that it was passed based upon the statement of accounts filed. There is no contra material to dispute the submission of the learned counsel for the first respondent

that amounts paid by the petitioner were adjusted towards the additional financial charges. Therefore, on merits, this Court does not find any error in the award passed.

7.However, this Court finds that the interest levied is very high. The learned Arbitrator has awarded interest at 18% per annum. We are dealing with the case where the vehicle was seized and sold. After appropriating the amount realised, the first respondent approached the learned Arbitrator for the remaining amount. The petitioner being the borrower has lost the vehicle. The interest levied at 18% per annum is found to be excessive by the Courts. Accordingly, the same is reduced to 9% per annum.

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

23.04.2018

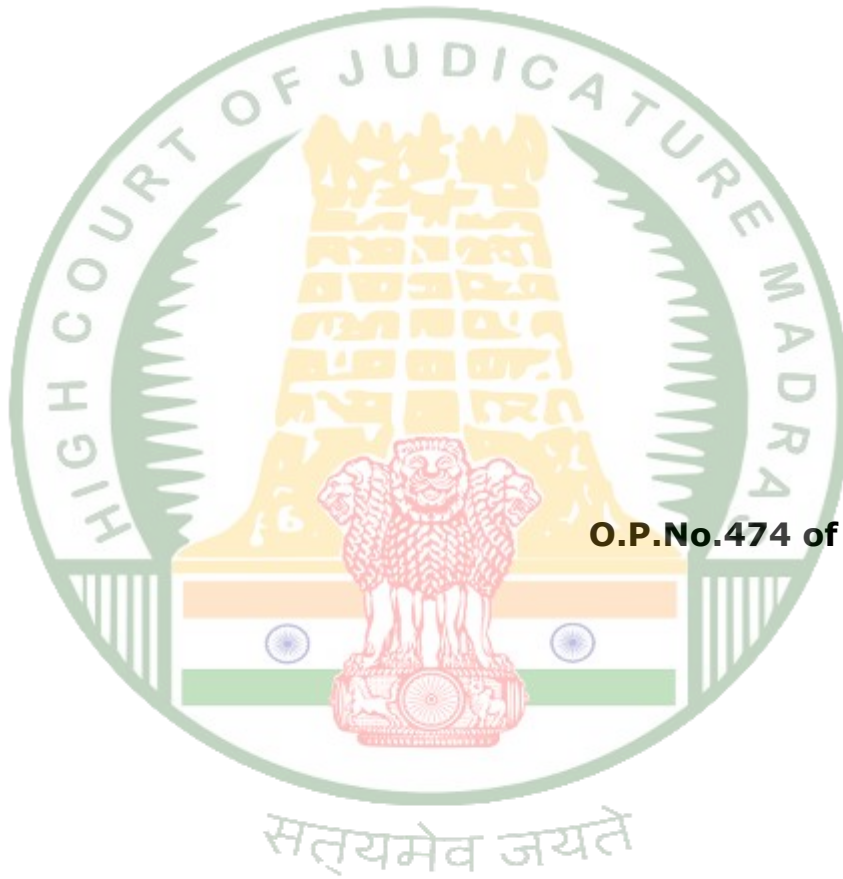
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M.M.SUNDRESH,J.

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