

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.04.2018

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

O.P.No.645 of 2011

Abdul Gaffar
24/2-1538, Military Colony,
Dhargamitta, Nellore-524 003.

.. Petitioner

Vs.

1.M/s Indus Ind Bank Limited,
Rep., by its Power of Attorney
Holder Mr.P.Bala Venkata Giri,
having office at No.116,
G.N.Chetty Road, T.Nagar,
Chennai-600 017.

2.S.K.Srinivasan,
Advocate & Sole Arbitrator,
New No.2, Old No.16, Eighth Street,
Dr.Radhakrishnan Road,
Mylapore, Chennai-4.

3.Mrs.P.Noorjahan,
24-1399, Sujathamma Colony,
Nellore-524 003.

.. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the ex-parte Award passed in Claim Petition No.ANAA02724 dated 04.07.2011 by the sole Arbitrator Mr.S.K.Srinivasan, the second respondent herein.

For Petitioner : Mr.P.Thiagarajan

For Respondents : Mr.K.Moorthy for R1

ORDER

The petitioner herein is the borrower. The first respondent is the finance company. A loan Agreement was entered into under Ex.A2 for the purchase of vehicle. It was also hypothecated by the petitioner. As there was default in paying the instalments, the vehicle was repossessed and sold and for the remaining amount, a demand was raised. On the failure of the petitioner to make the payment, the arbitration clause was invoked.

2. The learned Arbitrator, after recording the finding that the petitioner did not file any document and written statement, proceeded with on merit and passed an Award. The said Award is sought to be predicated before this Court.

3. The learned counsel appearing for the petitioner would submit that a perusal of the Award and the communication as recorded by the learned Arbitrator would clearly show that the documents filed especially Exs.B1 to B4 along with the written statement have not been taken note of. On the contrary, the learned Arbitrator recorded the finding, as if, only oral

argument has been made apart from another finding that the petitioner did not appear and thus, set ex-parte. Thus, the Award requires interference.

4. The learned counsel appearing for the first respondent would submit that though the learned Arbitrator has committed a factual error, the Award was passed on merit after taking note of the submissions made by the petitioner and hence, no interference is required.

5. We are dealing with the case where the petitioner did file documents and written statement as against that of the first respondent. The Tribunal made a wrong recording and proceeded to give a finding based on the documents filed by the first respondent alone. As this position is clear, the award cannot be sustained in the eye of law. In such view of the matter, the Award stands set aside and the original petition is allowed. Inasmuch as this Court has not gone into the merits of the case, there is no bar for the first respondent to proceed afresh by invoking the arbitration clause. No costs.

16.04.2018

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M.M.SUNDRESH,J.

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