

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2018

CORAM

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

Original Petition No.385 of 2012

Bindhu K.M.

.. Petitioner

Vs.

1.M/s.Indus Ind Bank Limited,
No.115 & 116, G.N.Chetty Road,
T.Nagar, Chennai - 17.

2.G.Ramakrishnan,
Arbitrator.

.. Respondents

Petition filed under Section 34(2)(ii) and (iii) of the Arbitration and Conciliation Act, 1996 to set aside the award dated 22.06.2006 made in Arbitration Claim Petition No.715 of 2006.

For Petitioner : Mr.R.Abdul Mubeen

For Respondents : No appearance

ORDER

The petitioner entered into an agreement with the first

respondent for purchase of two wheeler through the loan agreement dated 18.03.2004. Thus the petitioner became the hirer with the first respondent as the owner. As the petitioner defaulted in making the payment, the vehicle was repossessed and thereafter sold. For the remaining amount, the arbitral proceedings were initiated after issuing notice.

2.The learned Arbitrator was pleased to pass an award based upon the relevant records. Before the learned Arbitrator, the petitioner did not appear and thus set exparte. Challenging the same, the present original petition has been filed.

3.Learned counsel appearing for the petitioner would submit that the petitioner has not been served during the proceedings. He has been kept in dark. Thus, for non-compliance of the mandatory provisions of effecting service on the petitioner, the proceedings are liable to be set aside.

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4. It is not the case of the petitioner that notices have been sent to him asking him to make payment. Admittedly, the petitioner was in default. Possession was taken from the petitioner and thereafter, the

vehicle was sold. Thus he was quite aware of the default and consequence emanated from it. Thereafter, notice was issued to the petitioner intimating the arbitration. Especially, the learned Arbitrator also issued notices to the petitioner. What is required to be communicated is to the last known address of the petitioner. The notice sent was returned undelivered. Therefore, it is deemed to be a proper service. The learned Arbitrator not stopped with it. He went on to make further service on another address in which the petitioner was stated to be available. The petitioner was accordingly served. Thereafter, the award was passed.

5. Thus, the contention of the learned counsel that the manner of service has not been intimated cannot be accepted. The facts would reveal that the petitioner was aware of the proceedings and notices were sent to the address furnished by him. Therefore, there is no presumption in law with respect to service of notice. Not only that, the learned Arbitrator recorded the factual finding on the service of notice. It appears a subsequent communication was served on the mother of the petitioner. It is only an incidental service of notice after the petitioner has evaded receipt of the earlier notice in the address given by him.

6.Hence looking from any perspective, this Court does not find any merit in the original petition. However, the other submission made by the learned counsel for the petitioner with respect to the interest deserves to be considered. The learned Arbitrator has awarded interest at 18% per annum, which is obviously excessive as against the norms that have been fixed by the Court. Accordingly, the rate of interest is reduced to 9% per annum.

7.With the above modification in the rate of interest, this 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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