

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2018

CORAM

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

Original Petition No.520 of 2012

E.Kandeeban

.. Petitioner

Vs.

1.M/s.Shriram City Union Finance Ltd.,
rep. by its Authorised Representative
Chidambaranathan, Junior Manager (Legal),
No.123, Angappa Naicken Street,
Chennai - 1.

2.D.Saravanan,
Sole Arbitrator,
First Floor, New No.346, Old No.161,
Thambu Chetty Street, Chennai - 1.

.. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation
Act, 1996 to set aside the Award dated 05.09.2008.

For Petitioner : Mr.AP.Srinivas

For Respondents : Mr.K.V.Ananthakrishnan
for R1

ORDER

Seeking to set aside the award dated 05.09.2008, the present Original Petition has been filed.

2. An agreement of loan was entered into between the petitioner and the first respondent. On 15.07.2003 the petitioner executed a promissory note and issued cheques. As per the agreement, the petitioner has to pay the loan amount in 24 equal monthly instalments. Since the petitioner did not make payment of equal monthly instalments, the loan was foreclosed. Thereafter, the petitioner was informed by letter dated 23.02.2008 on the reference of dispute to the Arbitrator. The learned Arbitrator issued notices to the petitioner. Though it is recorded that the notices were served, the petitioner did not appear. Thereafter, execution petition was laid. After receiving notice, the petitioner has come forward to file this petition.

3. Learned counsel appearing for the petitioner would submit that no amount was disbursed to the petitioner. The learned Arbitrator did not issue any notice. Therefore, the award requires to be set aside.

4.Learned counsel appearing for the first respondent would submit that the first respondent is a public limited company incorporated under the Companies Act, 1956. The award was passed based upon Exs.A1 to A5. Ex.A2 is the loan application and Ex.A3 is the loan agreement. Ex.A5 is the foreclosure notice. The learned Arbitrator has taken into consideration the relevant materials and held that the petitioner is liable to pay the amount mentioned in the award. Thus, no interference is required.

5.The learned Arbitrator has considered the materials available on record. It is the case of the petitioner himself that the cheques were dishonoured. This itself would show that the contention of the petitioner is not correct. If no amount was paid to the petitioner, the petitioner would have taken steps to take the cheques issued by him back. Further more, the said issue being disputed question of fact cannot be adjudicated in this proceedings. After all, it is for the petitioner to substantiate it with materials, which are also lacking.

6.On the second issue also, the petitioner has not proved before this Court that he did not receive the notice. It is not in dispute that

the petitioner was issued with notice in the entire proceedings in the very same address. Therefore, it is nothing but an afterthought adopted by the petitioner. A factual recording has been made by the Tribunal on the receipt of the notice. Thus the petitioner was given sufficient opportunity to appear. Hence the second contention raised is also rejected.

7. One more contention has been raised by the learned counsel for the petitioner to the effect that the interest awarded at 18% per annum is on the higher side. This Court has repeatedly held that post-award interest shall be only 12% per annum and not 18%. In such view of the matter, the interest levied at 18% per annum by the learned Arbitrator is reduced to 12% per annum. In all other respects, the award is confirmed.

8. With the above modification, the original petition is dismissed.

No costs.

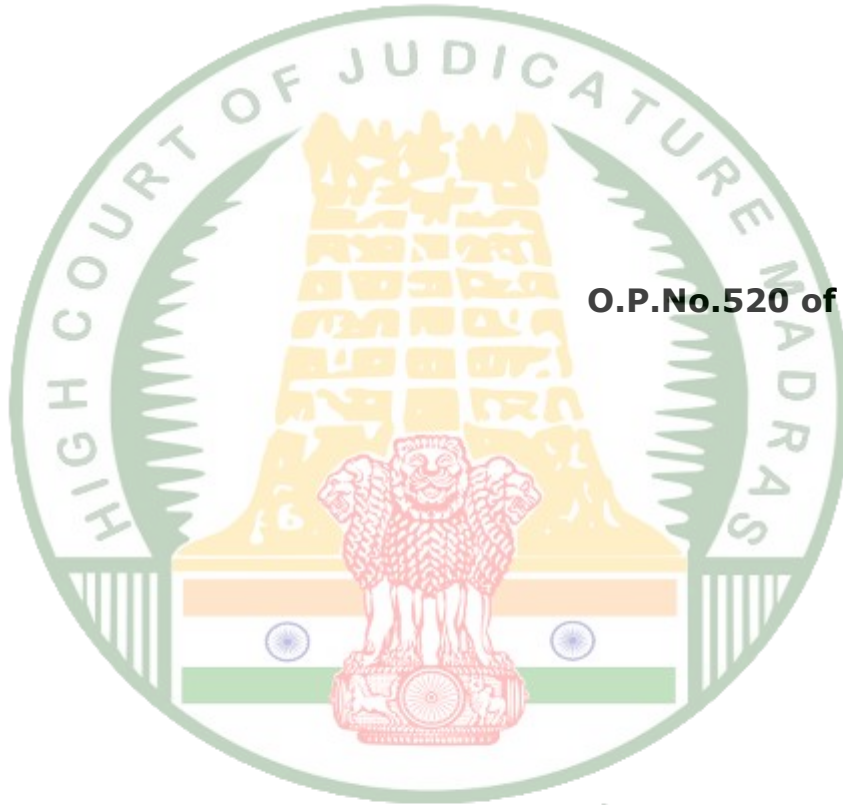
WEB COPY

08.01.2018

Index: Yes/No
mmi

M.M.SUNDRESH,J.

mmi



O.P.No.520 of 2012

सत्यमेव जयते

08.01.2018

WEB COPY