IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2018

CORAM:

THE HONOURABLE MR. **JUSTICE S.VAIDYANATHAN**

Original Petition No.845 of 2014

P.Palanisamy ... Petitioner

vs.

1. M/s.Indus Bank Ltd.,
   by its Executive Legal
   Nos.115 & 116, G.N.Chetty Road,
   T.Nagar, Chennai 600 017.

2. A.Mohamed Yasararafath

3. Rajeni Ramadoss ... Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Arbitral Award dated 06.08.2014 made by the 3rd Respondent herein in the matter of Arbitration Agreement between M/s.Indusland Bank Limited and A.Mohamed Yasararafath and another arising under the Loan Agreement No.TTU002160D, dated 11.09.2012.

For Petitioner	:	Mr.S.Kamadevan
For 1st Respondent	:	Mr.P.Suresh, for Mr.K.Moorthy
For 2nd Respondent	:	No appearance
For 3rd Respondent	:	Arbitrator

* * * * *

ORDER

This Petition is filed to set aside the Arbitral Award dated 06.08.2014 made by the 3rd Respondent herein in the matter of Arbitration Agreement between M/s.Indusland Bank Limited and A.Mohamed Yasararafath and another arising under the Loan Agreement No.TTU002160D, dated 11.09.2012.

2. According to the Petitioner, he stood as a Guarantor for the vehicle loan to the tune of Rs.18,00,000/- borrowed by the 2nd Respondent herein from the 1st Respondent/Bank towards the purchase of Tarus Tipper Lorry. Alleging default in the payment of instalments, the 1st Respondent/Bank filed Arbitration Claim before the 3rd Respondent for the recovery of Rs.24,06,627/- as on 21.01.2013 with interest at 36%. The Arbitral Award dated 06.08.2014 passed by the 3rd Respondent/Arbitrator reads as under:

> "The Respondents are hereby directed to jointly and severally pay to the claimant the following amounts:
>
> (a) The claim sum of Rs.24,06,627/- (Rupees Twenty Four Lakhs Six Thousand Six Hundred and Twenty Seven only)
>
> (b) Further interest @ 18% per annum for Rs.24,06,627/- from 22.01.2013 until the date of actual payment

(c) In case of Respondents failing to make the above payment, the Respondents are directed to surrender the aforesaid vehicle as and when the final order of release of subject vehicle is passed by the Judicial Magistrate, Perambalur in Crl.M.P.No.7311/2013 and handover all the relevant documents to the Claimant.

(d) In case of the Respondents failing to surrender the aforesaid vehicle even after passing of final order of release of subject vehicle is passed by the Judicial Magistrate, Perambalur in Crl.M.P.No.7311 of 2013, the Claimant is directed to seize and sell the same at the best market price, appropriate the sale proceeds towards the Award amount and return the excess sale proceeds, if any to the Respondents.

(e) In the event of the sale proceeds falling short of the Award amount, the Claimant shall execute this Award for recovering the balance amount from the Respondents.

(e) A sum of Rs.1,000/- towards cost. ”

3. It is further stated by the Petitioner that the vehicle was stolen on 26.09.2012, even before it got duly registered before the Regional Transport Authority, Perambalur and in that regard, the 2nd Respondent/owner of the vehicle lodged a complaint with Mangalamedu Police Station. Thereafter, the vehicle was traced and a Petition was filed for the purpose of taking custody of the vehicle.

4. Learned counsel for the Petitioner contended that the learned Arbitrator failed to see that as far as the Petitioner is concerned, he is not a co-borrower, but only a Guarantor and hence, the terms of Agreement which applies to the 2nd Respondent, is not applicable to him. He went on to contend that the 1st Respondent failed to take any steps to repossess the vehicle and realize the loan amount. According to the learned counsel, the Arbitration proceedings are motivated and the claimant, i.e. 1st Respondent/Bank had not approached the forum with clean hands.

5. Heard the learned counsel for the Petitioner, the learned counsel appearing for the 1st Respondent/Bank and carefully perused the Arbitral Award passed by the 3rd Respondent.

6. The main contention put forth by the Petitioner before the Arbitrator is that his surety has to be discharged, since there is no vehicle and that the Loan Agreement is silent with regard to unforeseen and contingent nature of facts.

7. On a perusal of the Loan Agreement, dated 11.09.2012, which was marked as Ex.A2, it is seen that both the Petitioner, who stood as Guarantor and the 2nd Respondent/Borrower have signed the Agreement. They have agreed to

discharge the loan and in case of any dispute, they have agreed to refer the matter to an Arbitrator. As per Clauses 15.3 and 15.4 of the Loan Agreement, in the event of default, the Borrower is bound to return the subject vehicle and render as a right to sell the same or at the best possible price and adjust the sale proceeds and claim the outstanding dues if any.

8. Taking note of the overall circumstances and the fact that the matter was pending before the Criminal Court in Crl.M.P.No.7311 of 2013, the Arbitrator rendered a finding that in case of the Respondents failing to surrender the vehicle in question even after passing of final order of release of subject vehicle, the 1st Respondent/Bank is directed to seize and sell the same at the best market price, appropriate the sale proceeds towards the Award amount and return the excess sale proceeds, if any to the Borrower.

9. It is represented by the learned counsel for the 1st Respondent that the vehicle in question has been returned to the Borrower. In case, the loan availed by the Borrower is not cleared in terms of the Loan Agreement, the Bank is entitled to recover the amount from the Petitioner/Guarantor, in terms of the Loan Agreement. In this regard, the Arbitrator has rightly held that the Borrower and the Guarantor are jointly and severally liable to pay the amount to the Bank, in case of default in payment.

10. The categorical finding rendered by the Arbitrator is a finding of fact and this Court finds no error to interfere with the same. It is needless to mention that after payment of money to the 1st Respondent/Bank by the Petitioner/Guarantor, it is open to him to proceed against the 2nd Respondent/Borrower to recover the amount paid by him and also proceed against him seeking compensation for causing mental agony.

Accordingly, the Original Petition stands dismissed. No costs.

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Index : Yes/No

Speaking Order : Yes/No

(aeb)

S.VAIDYANATHAN,J.

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