

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2018

CORAM

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

Original Petition No.645 of 2013

1.N.Rathinam
2.C.Nallaiyan

.. Petitioners

Vs.

1.M/s.Sundaram Finance Limited
rep. by its Managing Director,
21, Pattuloss Road, Chennai - 2.

2.S.Santhanakrishnan,
Retd. District Judge,
Arbitrator,
Old No.5, New No.11/2,
First Main Road, Ekattuthangal,
Chennai - 32.

.. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation
Act, 1996 to set aside the Award dated 27.02.2013.

For Petitioners : Mr.S.Muthukumar

For Respondents : Mr.T.Srinivasaraghavan for R1

ORDER

The first respondent is carrying on business of hire purchase of vehicles. A loan agreement was entered into between the petitioners being the borrower and the guarantor and the first respondent on 23.08.2007 for the purchase of the vehicle. The loan amount of Rs.24,58,600/- was to be paid in 47 monthly instalments. The petitioners defaulted in making payment from 22nd instalment onwards. Exercising the clause for repossession, the first respondent took possession of the vehicle. After following the formalities, the vehicle was sold. For the remaining amount, the arbitration clause was invoked. The learned Arbitrator issued notices to the petitioners and heard them. The pleadings were completed and thereafter, an award was passed. Challenging the same, the present original petition has been filed.

2.Learned counsel appearing for the petitioners would submit that the first petitioner is no more and the second petitioner is only a guarantor. The vehicle has been sold without following the procedure and for a paltry amount. The procedure for repossession was not followed.

3.Learned counsel appearing for the first respondent would submit that the statement being factual in nature which have been considered duly by the learned Arbitrator and therefore, no ground is made out under Section 34 of the Arbitration and Conciliation Act, 1996. A perusal of the award would show that the learned Arbitrator has considered all the materials available on record. There is nothing to indicate that the procedures have not been followed at the time of repossession. The petitioners did not raise any plea prior to the invocation of arbitration clause. The fact that the petitioners defaulted in making payment is not in dispute. Similarly, there is also no material for the allegation that the vehicle was sold for a very less price. Insofar as the notices to be given to the petitioners after repossession is concerned, a factual finding has been given that the petitioners changed their address after Ex.A3. Therefore, it was rightly held that the responsibility lies on the petitioners to intimate the change of address to the first respondent.

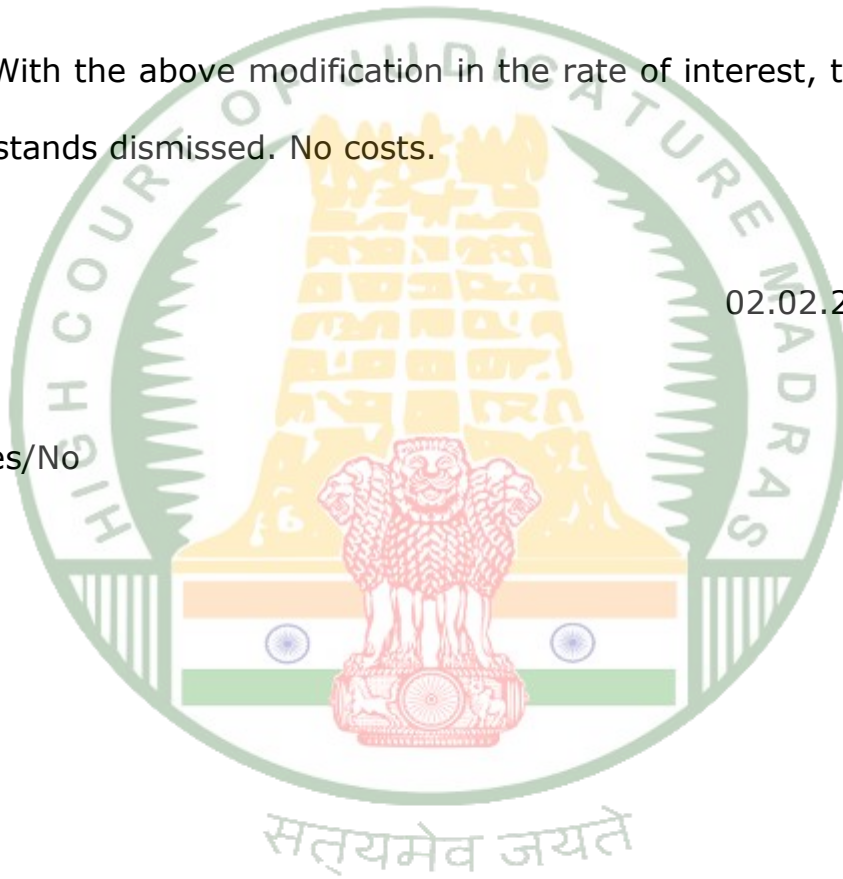
4.In such view of the matter, this Court does not find any error in the award passed. However, the learned Arbitrator has awarded interest at 18% per annum on the award amount from 09.07.2010. This Court is of the view that the percentage of interest fixed is

excessive as Courts would normally award interest at 12% per annum. Accordingly, the interest awarded at 18% per annum from 09.07.2010 stands modified to 12% per annum, in view of the submission made and taking into consideration the orders being passed by the Courts.

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

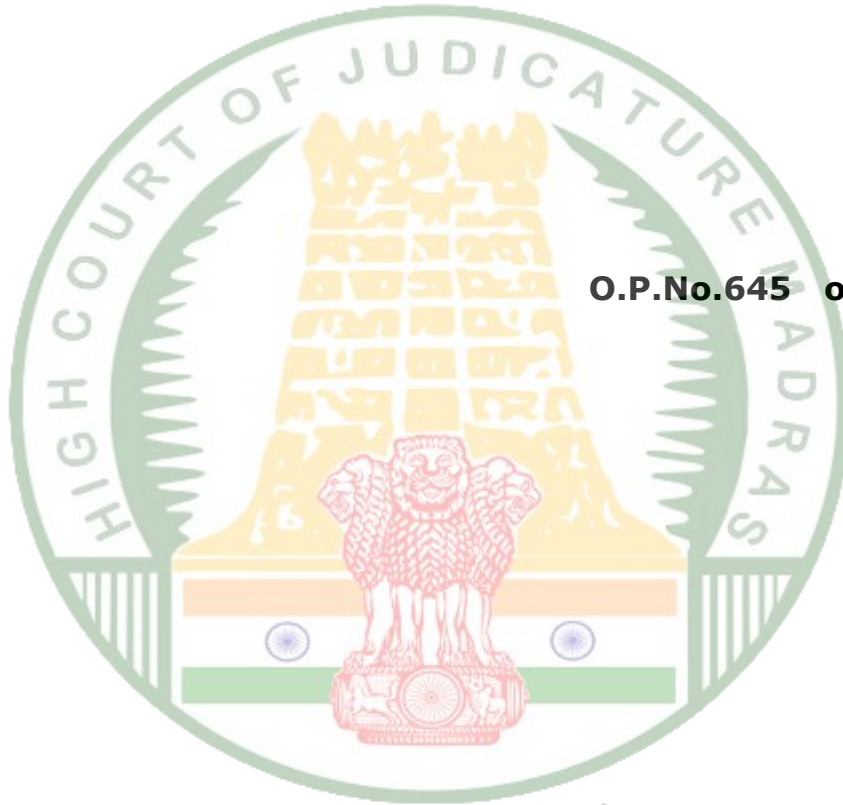
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M.M.SUNDRESH,J.



O.P.No.645 of 2013

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