

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2018

CORAM

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

Original Petition Nos.692 to 694 of 2016

Aluri Ramesh

.. Petitioner in
all the O.Ps

Vs.

1.M/s.Sundaram Finance Limited,
No.21, Patullos Road, Chennai - 2.

2.M/s.DVR Infratech Private Limited,
Door No.7-6-17, 3rd and 4th Floor,
Kranthi Arcade NH 5, Gajuwaka,
Vishakapatnam,
Andhra Pradesh - 530 026.

3.Darsgab Singh Rana

4.Venkatapathi Raju Kalidhendi

5.Mukesh Kumar Tomar

.. Respondents in
all the O.Ps

Petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Awards dated 28.07.2016 in Arb. Case Nos.SM/SF/115 of 2013, SM/SF/116 of 2013 and SM/SF/124 of 2013.

For Petitioner : Mr.V.Ganesh in all the O.Ps
For Respondents : Mr.M.S.Sampath for R1
in all the O.Ps

COMMON ORDER

As the issue involved in all these petitions is one and the same, they are taken up together and disposed of by a common order.

2.In all these cases, the first respondent herein carries on the business of hire purchase of motor vehicles and machineries and leasing of equipments. The second respondent/borrower approached the first respondent with a request to extend loan facility for the purchase of vehicles. The petitioner herein is the guarantor. Respondents 3 to 5 are the owners and Directors of the company which borrowed the amount. The loan agreements were entered into between the parties. The agreements provide for repayment with specific schedule.

3.Admittedly, there was a default. Therefore, the first respondent called the borrower and the petitioner to make the payment. As no such payment was made, the loan was foreclosed and

the arbitration clause was invoked. Before the learned Arbitrator, respondents 3 to 5 and the petitioner did not appear. The learned Arbitrator, after considering the materials available on record, passed awards in favour of the first respondent. While doing so, Exs.A1 to A14 were taken into consideration along with the evidence of P.W.1. The petitioner did not let in any evidence nor marked any document. Though the agreements were filed on behalf of the first respondent, the petitioner has not chosen to examine the same and let in evidence. Thus, the learned Arbitrator, after considering the entire material available on record, was pleased to pass the awards directing the petitioner and the other respondents to pay the specified amount with 18% interest.

4.Learned counsel appearing for the petitioner would submit that for the reasons known, the vehicles have not been repossessed. For the default committed by the other respondents, the petitioner cannot be made liable. The petitioner being the guarantor has to be shown a difference as against the borrowers, who have not been proceeded with.

5.Learned counsel appearing for the first respondent would submit that no ground is made out under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the awards. The learned Arbitrator has passed the awards, on appreciation of evidence and therefore, no interference is required.

6.A perusal of the awards would show that they were rendered based upon the factual adjudication. Exs.A1 to A14 were taken into consideration for passing the awards. Merely because the petitioner is a guarantor, his liability cannot be avoided. Such a liability is co-extensive, that too to the borrower. There is no need to repossess the vehicles. Though the learned counsel for the first respondent would submit that the vehicles could not be traced, the said issue by itself cannot be a ground to deny the entitlement of the first respondent in getting the awards on merits. Admittedly, the arbitration clause provides for adjudication by the Arbitrator.

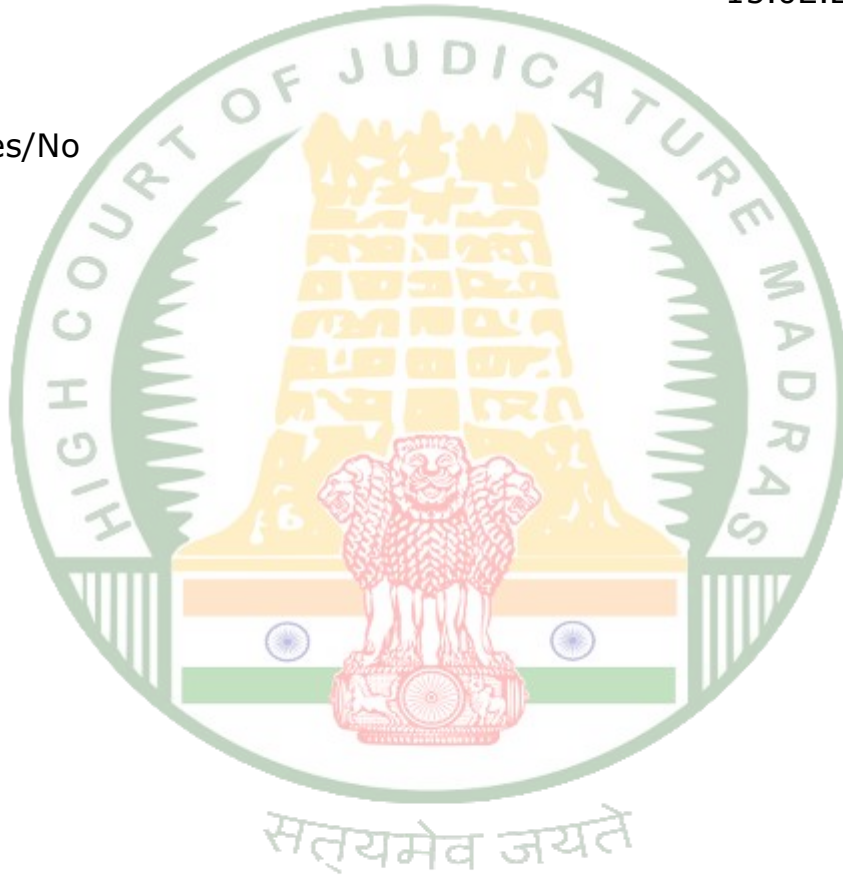
7.In such view of the matter, this Court does not find any merit to interfere with the awards passed. However, considering the fact that the interest levied at 18% as against the normal practice that is being followed by the Courts, the same is reduced to 9% per annum.

8. With the above modification in the rate of interest, the original petitions stand dismissed. No costs.

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Index: Yes/No

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M.M.SUNDRESH,J.

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