

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

O.P.No.150 of 2010

1.Mrs S.K.Shazadabegam,
W/o Abdul Gafoor,
24/2-1538, Military Colony,
Dhargamitta,
Nellore-524 003.

2.Mr.S.K.Abdul Gafoor,
24/2/1538, Military Colony,
Dhargamitta,
Nellore-524 003.

..Petitioners

Vs.

1.M/s Indus Bank Limited,
Rep., by its Power of Attorney
Holder Mr.P.Bala Venkata Giri,
Having its consumer finance
Division at No.115 & 116,
G.N.Chetty Road, T.Nagar,
Chennai-600 017.

2.Ms.S.Rajeni Ramadass,
Advocate, Sole Arbitrator,
New No.68, Basha Street,
Choolaimedu, Chennai-94.

.. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 22.07.2009 in SRR/ACP No.535/2008 by the learned sole Arbitrator and for costs.

For Petitioners : Mr.P.Thiagarajan

For respondents : Mr.K.Moorthy for R1

ORDER

The first respondent is the company incorporated under the Companies Act, 1956, involving in the business of financing vehicles. A loan Agreement was entered into between the petitioners and the first respondent on 31.05.2006 for the purchase of the vehicle. As per the loan agreement, the vehicle was hypothecated in favour of the first respondent with a clause to repossess it, if there is a default.

2. The first petitioner is the borrower and the second petitioner is the guarantor. As there was a default, the vehicle was repossessed on 15.10.2008 and sold. For the remaining amount, notice was issued to the petitioners and thereafter, the arbitration clause was invoked.

3. Before the Arbitral Tribunal, the petitioners did not appear, but sent a reply statement. Once again notices were issued enclosing the documents. Thereafter, the Tribunal proceeded with the matter ex-parte and passed an Award.

4. The learned counsel appearing for the petitioners would submit that though the award states that the reply statement and the documents sent were perused, there was no clear discussion on the same. Therefore, the Award requires interference.

5. The learned counsel appearing for the first respondent would submit that the document relied upon in Form-35 is merely a notice in respect of termination of the agreement entered into between the petitioners and the first respondent and the other is the document evidencing the sale effected by the first respondent in favour of the third party after repossession of the vehicle from the first petitioner. Hence, the learned counsel seeks to confirm the award passed by the second respondent.

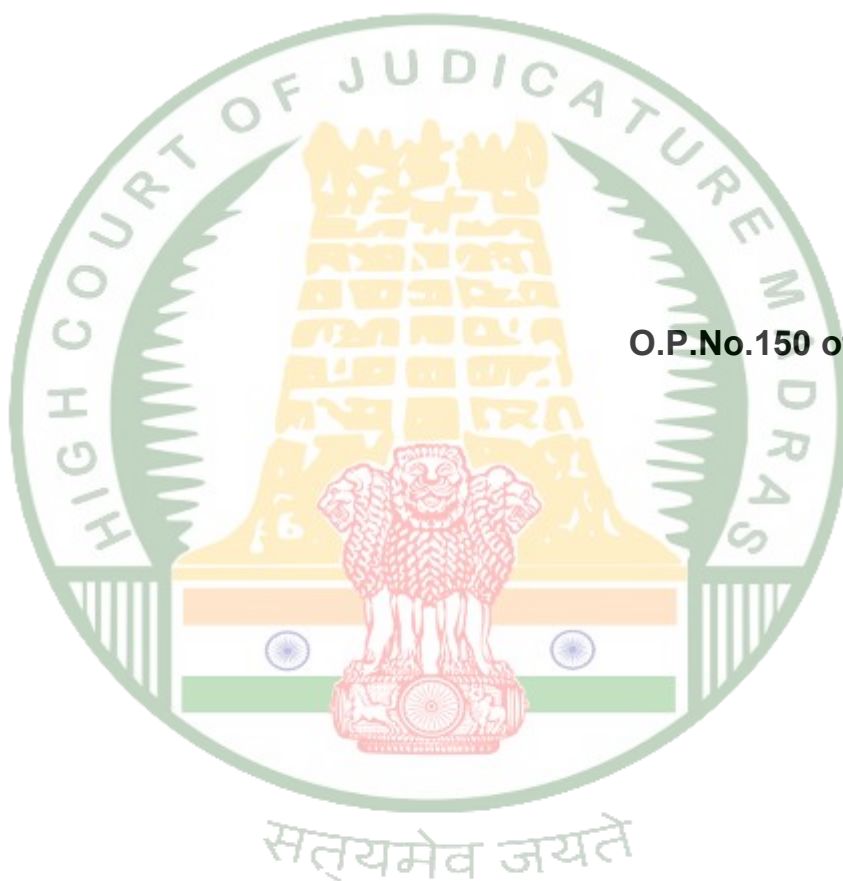
6. A perusal of the award would clearly show that despite number of opportunities given, the petitioners did not appear except sending reply statement and few documents. The documents relied upon by the learned counsel for the petitioners would not help their case. It is a document evidencing the sale effected by the first respondent in favour of the third party after repossession of the vehicle from the first petitioner. At best, this

document gives proof for repossession of the vehicle from the first petitioner and sale. In other words, this document construed to mean the dispute *inter se* parties has been settled amicably. Since it is a contention that is being raised by the petitioners, they ought to have proved it before the Tribunal with cogent material and evidence both oral and documentary. The Tribunal has passed an award by taking into consideration of the materials produced by the first respondent under Exs.A1 to A8. These exhibits would include the demand notices and the copies of the statement of account, the statement of additional finance charges among other things. A finding has been given on the default committed by the petitioners. In such view of the matter, this Court does not find any error in the award passed. However, this Court finds some force in the argument with respect to interest awarded by the Tribunal at 18%. Considering the fact that the interest levied at 18 % per annum is excessive, the same stands modified to 9% per annum. Accordingly, the original petition stands dismissed modifying the rate of interest awarded by the Tribunal at 18% to 9 % per annum. In all other respects, the award stands confirmed. No costs.

12.01.2018

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M.M.SUNDRESH,J.



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