

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Original Petition No.425 of 2017

1. Parasuraman, G.
2. Manoharan, A. ... Petitioners
- vs.

M/s.Shriram Transport Finance Company Ltd.,
No.879, T.H.Road, Theradi Bus Stop,
Thiruvottiyur, Chennai 600 019,
rep. by its Authorized Signatory,
Mr.A.Sathiyaraj ... Respondent

Petition filed under Section 34 of the Arbitration and Conciliation Act,
1996 to set aside the Arbitral Award dated 14.05.2016 passed by the Sole
Arbitrator in Arbitration Case No.936 of 2016.

For Petitioners : Mr.A.Sriram
for Mr.S.M.Meera Mohideen

For Respondent : No appearance

ORDER

Petitioners herein, who are Respondents before the Arbitrator, have
come up with this Petition seeking to set aside the Arbitral Award dated
14.05.2016 passed by the Sole Arbitrator in Arbitration Case No.936 of 2016.

2. According to the Petitioners, they approached the Respondent/Finance Company and entered into a Hypothecation Agreement dated 20.06.2013 with them, for the purpose of purchasing a vehicle viz. AL TUSKER TURBO 3516, bearing Registration No.TN 03 E 8772. In pursuance of the Loan cum Hypothecation Agreement, the Respondent/Finance Company sanctioned loan to the 1st Petitioner to the value of Rs.19,82,878/- repayable in 48 monthly instalments, the first instalment commencing on 20.07.2013.

3. From the Arbitral Award, it is seen that the 1st Petitioner/G.Parasuraman is the borrower and the 2nd Petitioner/A.Manoharan stood as his Guarantor. After obtaining loan, the 1st Petitioner paid only a sum of Rs.3,40,930/- towards the regular monthly instalments and thereafter, he failed and neglected to pay the subsequent monthly instalments. As on 04.11.2015, a sum of Rs.4,68,100/- was due from the Petitioners towards the arrears of monthly instalments alone. In spite of several demands, the Petitioners were not bothered to pay the arrears. Hence, the Respondent/Finance Company sent a demand notice to the Petitioners on 11.02.2015. Since the Petitioners did not turn up to settle the amount due under the Loan cum Hypothecation Agreement, after effecting Newspaper

publication, the Respondent/Finance Company sold the said vehicle for best available price of Rs.6,00,002/- as per the terms and conditions of the said Agreement. Apart from the said amount, the Petitioners are liable to pay a sum of Rs.1,85,085/- being the overdue charges at 36% per annum on belated and defaulted instalments and a sum of Rs.19,303/- towards incidental expenses.

4. Pursuant thereto, for recovery of the outstanding amount, the Respondent/Finance Company initiated Arbitration proceedings and sent legal notice to the Petitioners on 05.03.2016 to appear before the Arbitrator on 02.04.2016. The notice sent to the 1st Petitioner was unserved. However, the 2nd Petitioner received service of notice. Since the 1st Petitioner did not receive the notice, Paper Publication was ordered by the Arbitrator and the parties were asked to appear before him on 23.04.2016. Accordingly, Paper Publication was effected on 20.04.2016. The Petitioners did not appear before the Arbitrator and the Arbitrator proceeded to examine the witnesses and marked Exhibits vide Exs.C1 to C10 on the side of the Respondent/Finance Company.

5. As the Petitioners remained ex-parte from 23.04.2016, the learned Arbitrator passed the following Award on 14.05.2016:

"(i) In the result, an Award is passed directing the Respondents to pay jointly and severally, a sum of Rs.11,61,445/- (Rupees Eleven Lakhs Sixty One Thousand Four Hundred and Forty Five only) together with interest at 18% per annum from the date of the claim petition dated 05.03.2016 till its realization in full.

(ii) The Respondents have to pay jointly and severally the cost of the above Arbitration Proceedings, on filing of the Bills of cost by the claimant.

(iii) This Award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as per Section 36 of Arbitration and Conciliation Act, 1996."

6. Heard the learned counsel for the Petitioners and carefully perused the Arbitral Award, dated 14.05.2016. Even though notice has been served on the Respondent/Finance Company, none appeared on their behalf.

7. Learned counsel for the Petitioners contended that when notice has not been served on the 1st Petitioner, the Arbitral Award has to be interfered with, so that the Petitioners may have another chance before the

Arbitrator.

8. It is seen that the 1st Petitioner has paid only a sum of Rs.3,40,930/- towards the regular monthly instalments. Though the Petitioners did not turn up before the Arbitrator, the Award has not been passed in a single stroke. The Arbitral Award has been passed on merits taking into account the oral and documentary evidence. The Petitioners cannot contend that they have not been served with notice about the Arbitration proceedings. Though notice to the 1st Petitioner was unserved, the 2nd Petitioner has received notice. Despite service of notice to the 2nd Petitioner and Newspaper publication, the Petitioners have not evinced interest to appear before the Arbitrator. The contention of the Petitioners cannot be accepted, more particularly, in the light of the fact that the 2nd Petitioner/Guarantor having knowledge about the proceedings, did not appear before the Arbitrator.

9. The learned Arbitrator has rightly come to the conclusion that the Petitioners are jointly and severally liable to pay a sum of Rs.11,61,445/- together with interest at 18% per annum from the date of the Claim Petition dated 05.03.2016 till the date of its realization. Since the Arbitral Award is a finding of fact, this Court finds no reason to interfere with the same. However, it is open to the 2nd Petitioner/Guarantor to pay the outstanding dues to the Respondent and recover the same from the 1st

Petitioner/Borrower.

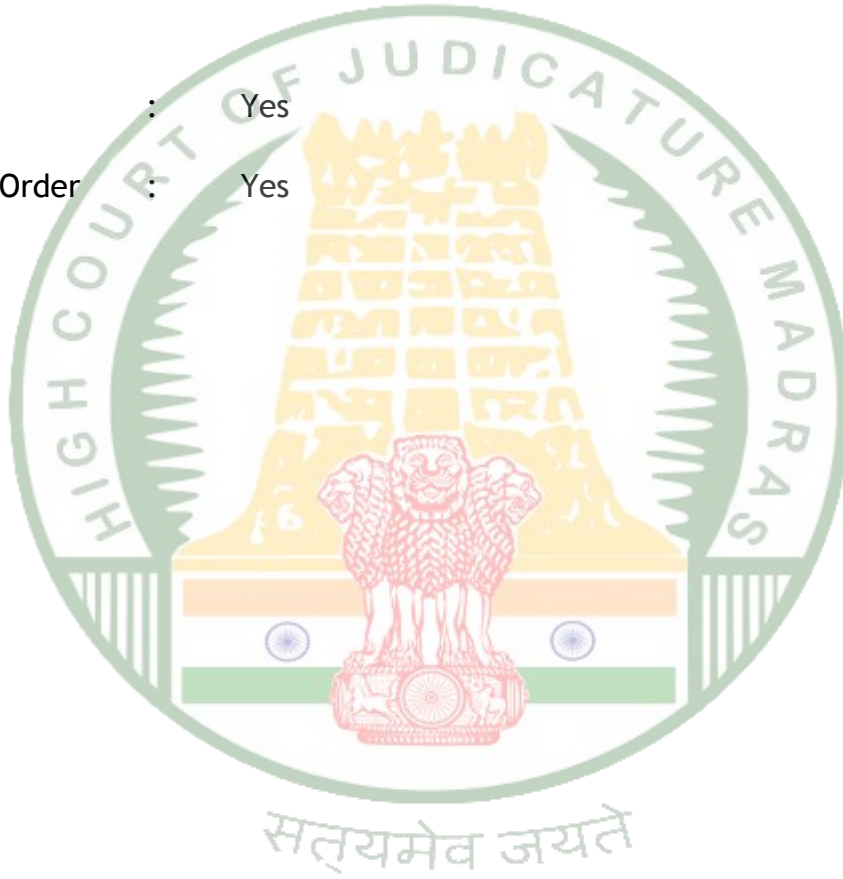
Accordingly, this Original Petition is dismissed. No costs.

28.11.2018

Index : Yes

Speaking Order : Yes

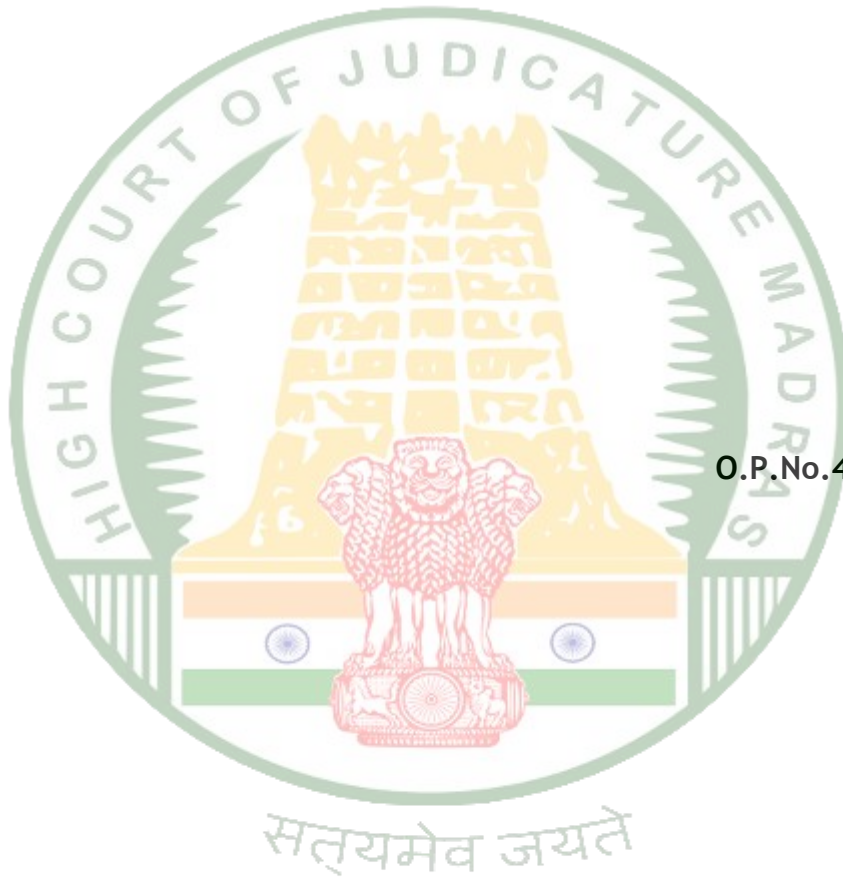
(aeb)



WEB COPY

S.VAIDYANATHAN,J.

(aeb)



O.P.No.425 of 2017

WEB COPY

Dated: 28.11.2018