

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2018

CORAM

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Original Petition No. 775 of 2017

S.Prasanna Kumar ... Petitioner

Vs.

1.HDFC Bank Ltd
Rep. by its Authorised Representative
4th Floor, Abdullah Complex
No.22, Thirumurthy Nagar 1st Street
Nungambakkam, Chennai - 600 034.

2.Thiru K.Moorthy
Arbitrator
New No.235, Old No.112
5th Floor, Angappa Naiken Street
Chennai - 600 001.

... Respondents

Prayer :: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the award dated 11.11.2011 passed by the Arbitrator /2nd Respondent in the Arbitration Proceedings pursuant to Arbitration Case A.C.P. No. 282 of 2011 in the matter of dispute between the Petitioner and the First Respondent and consequently dismiss the claim made by the First Respondent and direct the Respondent to pay the costs of the proceedings.

For Petitioner : Mr.Y.Kaja Navas

For Respondent No.1 : Mr.V.Achunanthan
for M/s.Pass Associates

ORDER

This Original Petition has been filed by the Petitioner to set aside the Award dated 11.11.2011 passed by the Arbitrator /2nd Respondent in the Arbitration Proceedings pursuant to Arbitration Case A.C.P. No. 282 of 2011 in the matter of dispute between the Petitioner and the First Respondent and consequently dismiss the claim made by the First Respondent and direct the Respondent to pay the costs of the proceedings.

2. The sum and substance of the issue on hand is that, whether the petitioner had notice about the initiation of arbitration proceedings, nomination of Arbitrator and the receipt of the Award copy.

3. Learned counsel for the Petitioner submitted that in terms of Section 3 of the Arbitration and Conciliation Act, 1996, there should be a mode of service and that the notice had to be served on the party concerned. According to him, initiation of arbitration proceedings itself in the case on hand is bad and that even though there was an Agreement for availing of loan in respect of purchase of a car, the vehicle was seized by the First Respondent/finance company and it was sold at the bottom price of Rs.2,75,000/-, when it can be sold for a sum of Rs.7,00,000/-.

4. Learned counsel appearing for the First Respondent /Bank contended that the Petitioner availed loan by entering into a loan agreement for a sum of Rs.4,55,000/- and that the Petitioner had agreed to pay the loan amount in 48 instalments. But, the Petitioner had failed to pay the loan instalments as agreed by him and hence, the vehicle was re-possessed and sold at Rs.2,75,000/- in the open market. Notice about the initiation of Arbitration proceedings was received and the Petitioner was informed about the appointment of Arbitrator, and the Arbitrator has sent a communication to his last known address. All the communications from the Arbitrator including the Arbitral Award sent to the address given by the Petitioner were returned as 'door locked'.

1. It is further stated by the learned counsel appearing for the First Respondent/ Bank that in the postal cover, it has been stated that 'Intimation delivered', but the Petitioner did not evince any interest to go to the First Respondent /Bank to collect the communication and participate in the Arbitration proceedings so as to prove his bonafide to pay the loan amount.

2.

6. The contention that there was no notice served on the Petitioner

due to 'door locked', 'intimation delivered', cannot be termed as proper service. It is stated that when there is default in payment under the Arbitration proceedings initiated in terms of the loan Agreement, the Petitioner is liable to pay the amount. Though the Arbitration Award is an exparte order, it is passed on merits and it need not be interfered with.

7. Heard both parties and perused the records.

8. It is not in dispute that a loan Agreement was entered into between the parties for a sum of Rs.4,55,000/- and the Petitioner agreed to pay the loan amount in 48 instalments. On account of failure of payment by the Petitioner, the vehicle was re-possessed and sold at Rs.2,75,000/-. The Respondents have produced the original Arbitration records, from which it is very clear that the Petition was duly intimated and the covers were returned as 'door locked' and 'intimation given'. That being the case, the contention of the learned counsel for the Petitioner that there is no notice in terms of Section 3 of the Arbitration and Conciliation Act, 1996, cannot be accepted. Having availed the loan, it is the duty cast upon the Petitioner to repay the amount in time and if he is not able to repay the same to the Bank, he ought to have gone to the First Respondent /Bank and intimated the same. At least,

he should have shown the bonafide to pay the amount, knowing that he has not repaid the amount in several instalments. Having not done so, the act of the petitioner in condemning that he has no knowledge of the Arbitration proceedings and that he came to know about the same only after the passing of the Award, cannot be accepted.

9. With the above observations, this Original Petition is dismissed.

No costs.

10. The Original file pertaining to the arbitration proceedings is returned to the learned Standing Counsel appearing for the Bank, who is expected to hand over the same to the Arbitrator/Second Respondent herein and produce an acknowledgment to that effect to the Assistant Registrar (Original Side), High Court, Madras.

11.12.2018

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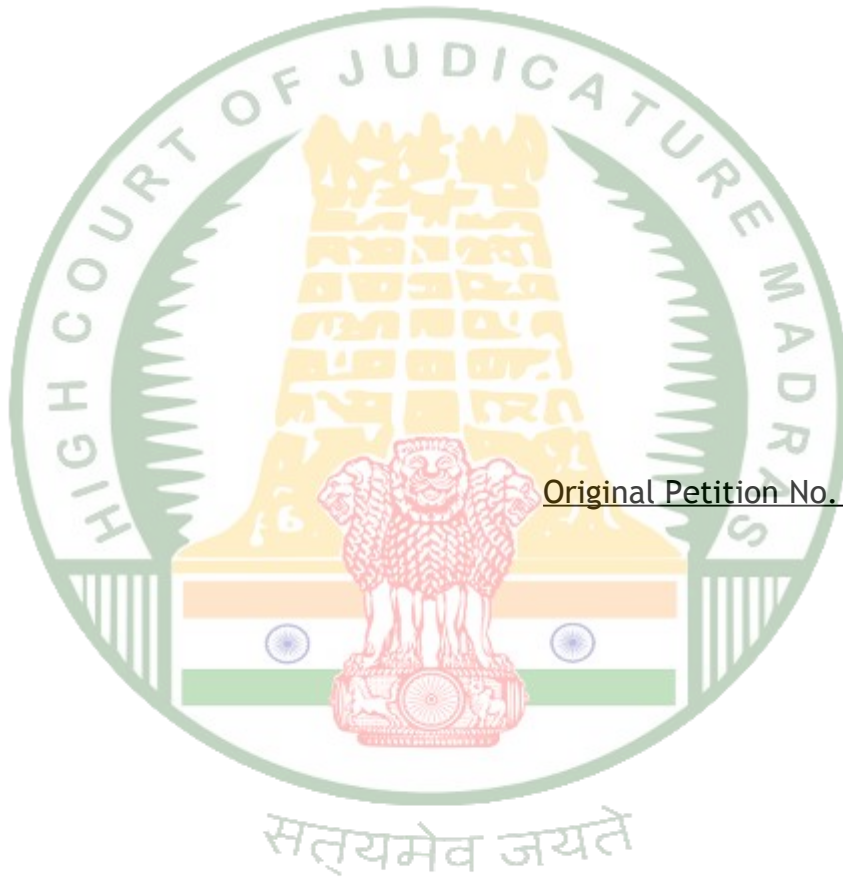
Index: Yes /No

Internet: Yes/No

Speaking /Non-speaking order

S.VAIDYANATHAN, J.

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