

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 6.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE N.SATHISH KUMAR

O.P.No.114 of 2015

1. V.Thiyagarajan
2. Sasikala

... Petitioners

Vs.

1. Cholamandalam Investment and Finance Co.Ltd.,
(Cholamandalam DBS Finance Ltd.),
Dare House, No.2, N.S.C. Bose Road,
Parrys, Chennai 600 001.
2. K.Rajamanickam
Sole Arbitrator
3. S.Sivaganam

... Respondents

Prayer:- Original Petition is filed under Section 34 of Arbitration and Conciliation Act, 1996 to set aside the Arbitral award, passed by the second respondent/ Arbitrator in Arbitration Case No.581 of 2013 dated 17.2.2014.

For Petitioner : Mr.P.G.Thiyagu
For Respondent No.1 : Mr.D.Pradeep Kumar

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ORDER

Challenging the award, dated 17.2.2014, passed by the second respondent/Arbitrator, the present original petition has been filed.

2. Brief facts leading to filing of this petition are as follows:

The first petitioner herein entered into a loan agreement with the claimant/first respondent herein for purchase of TATA LPT 1109 42 HD EX BS II vehicle and the second and third petitioners stood as guarantors. The total sum of Rs.13,16,658/- made up of Rs.10,15,000/- towards amount financed and Rs.3,01,658/- towards finance charges payable by the first respondent in 47 monthly instalments commencing from 1.5.2012 ending on 1.3.2016. The respondents/petitioners herein said to have committed default in payment of loan amount. Hence, on 2.5.2013, the claimant/first respondent herein invoked arbitration and an Arbitrator was appointed to adjudicate the claim.

3. The Arbitrator recorded a finding that the claimant has clearly proved their case by both oral and documentary evidence and passed an award holding that the claimant is entitled to recover a sum of Rs.11,43,218/- along with interest at the rate of 18% p.a. from 2.5.2013 till realization.

4. The main contention of the learned counsel appearing for the petitioners is that no notice was served at the time of arbitration proceedings. Further, award also not communicated and they came to know about the award only at the time of execution proceedings. In order to find out veracity of the contention, this Court directed the Arbitrator to produce records. On perusal of the original records placed before this Court, this Court have no hesitation to

come to a conclusion that the contention of the petitioner that no notice was served cannot be countenanced. A letter in respect of invoking arbitration was also served on the petitioners herein. Similarly, the notice of hearing was also received by the petitioners and an acknowledgment to that effect is also available in the record. Further, award copy also dispatched to the petitioners on 1.3.2014 and the same was received by the petitioner and the acknowledgment is also very much available in the record. Therefore, the contention of the petitioners that no opportunity was given to them and they came to know about the award, only at the time of execution proceedings is a false ground. In fact, the award has been communicated on 1.3.2014 itself and the award copy also received by them. Such being the position, the ground raised by the petitioners herein that they came to know about the award only at the time execution proceedings cannot be countenanced. Besides, the learned Arbitrator considered all the documents and passed an award. Therefore, this Court come to a conclusion that sufficient opportunity was given to the petitioners, however, the same was not availed by the petitioners. Hence, I do not find any ground to interfere with the award passed by the Arbitrator.

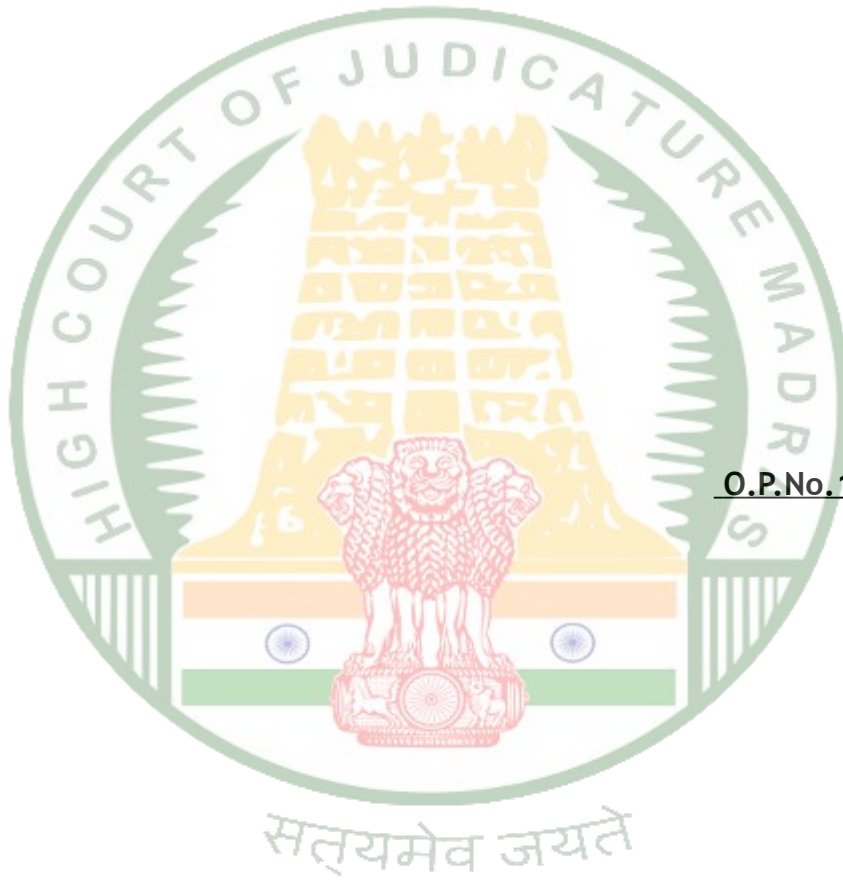
5. In view of the same, the original petition is dismissed. No costs.

6.08.2019

Speaking/Non Speaking order
Index: Yes/No
vaan

N.SATHISH KUMAR, J.

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