

**O.P.No.978 of 2015**

**P.T.ASHA, J.**

Today the matter is posted under the caption for "For Being Mentioned" as in the order dated 10.12.2019 it was omitted to mention that the petitioner is entitled to withdraw the amounts which are standing to the credit of the Original Petition considering the fact that the petition to set aside the award has been allowed by this Court.

2. Heard the counsels on either sides.

3. Paragraph No.14 of the said order shall be amended as follows:

"14. The learned counsel for the first respondent would represent that she may be given liberty to file fresh proceedings. Such a permission cannot be granted by this Court. It is open to the first respondent to explore whatever legal remedies that is available to them. *\*The amounts standing to the credit of*

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*O.P.No.978 of 2015 or connected applications can be withdrawn by the petitioner on production of original copy.\** No costs. With the above observation, the OP is allowed. Consequently, connected Miscellaneous petition is closed."

30.01.2020

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Note:The Registry shall issue fresh order copy to the parties.

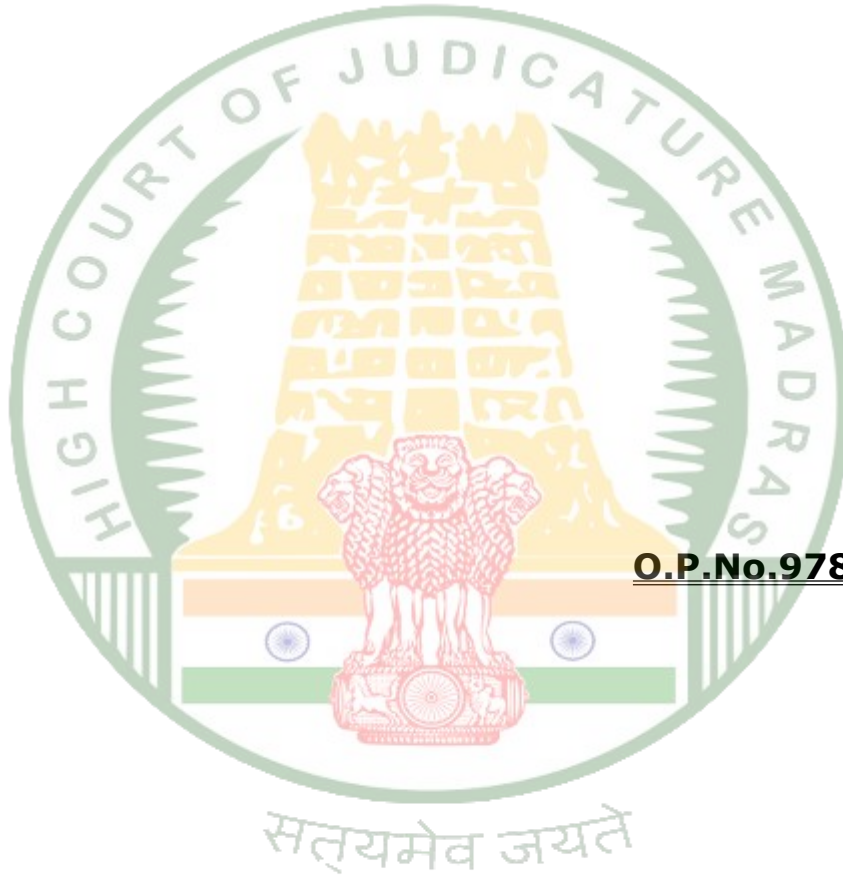


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**P.T.ASHA, J.**

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**30.01.2020**

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.12.2019

CORAM

**The Honourable Ms.JUSTICE P.T.ASHA**

O.P.No.978 of 2015  
and  
A.No.5845 of 2019

Mr. K. Ganesh

Appellants

Vs.

1. M/s Galada Finance Limited,  
Represented by its Manager, G.Ramesh,  
Having registered office at  
'Shanti Sadan' old No.4, New No.7,  
Shaffee Mohammed Road,  
Thousand Lights, Chennai - 600 006.

2. K.S. Gowthaman, Advocate/Sole Arbitrator,  
New No.49, 224 -B,  
IV Cross Street, Natesa Nagar,  
Virugambakkam, Chennai -92.

3. Mr. Raajender

4. Mrs. R. Bharathy

Respondents

Prayer : Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the arbitral award dated 27.04.2015 passed by Second respondent in C.P.No.KSG/20/2014 and dismiss the claim of the first respondent.

|                 |                                                                                                            |
|-----------------|------------------------------------------------------------------------------------------------------------|
| For petitioner  | : Mr. S. Ramajayam<br>Mr. D Nishanthi R. Deepan<br>Mr. R. Rajkumar Balamurugan<br>Mr. Amsalekha G. Sathish |
| For Respondents | : Mrs. Vijayalakshmi K. Rajaratnam for R1                                                                  |

**ORDER**

The third respondent in the arbitration proceedings before the Arbitral Tribunal is the petitioner before this Court. The challenge is to the award in C.P.No.KSG/20/2014 initiated by the first respondent herein.

2. The brief facts which have given rise to the above original petition are as follows:

a) The first respondent has invoked the arbitration proceedings based on the hire purchase agreement dated 13.12.2010 wherein the second respondent was nominated as the arbitrator.

b) In the claim statement, the first respondent would contend that one Raajendran had borrowed a sum of Rs.14,00,000/- for the purchase of Toyota Fortuner bearing Registration No.TN-07-BJ-0055, for which the Hire Purchase Agreement dated 13.12.2010 was entered into between the first respondent and the third respondent/ (principal borrower), fourth respondent (the wife of the third respondent) as well as the petitioner. The petitioner and the fourth respondent had executed the Hire Purchase Agreement as guarantors.

3. The case of the claimant/first respondent is that the third respondent had committed default in the repayment of the Hire Purchase charges which was repayable in 36 equated monthly instalments being a sum of Rs.57,600/- per month for the instalment nos: 1 to 35 and Rs.56,000/- for the 36th instalment. The first respondent would contend that the vehicle was seized by them in view of the default committed by the third respondent in the payment of the monthly instalments. The first respondent had issued notice calling upon the respondents 3 and 4 to pay the sum of Rs.15,26,250/-. Though the said notice was received by both the respondents they had not come forward to clear the dues. The petitioner and the respondents 3 and 4 were served notice of arbitration by the first respondent herein in and by which the first respondent had demanded repayment of a sum of Rs.14,72,800/-, failing which they had informed the addressees that arbitration proceedings would be initiated. The notice sent to the respondents 3 and 4 were received by them. However, notice sent to the petitioner herein has been returned with the endorsement 'left'. The claimant had followed it up with some more notices. However there was no response from the respondents 3 and 4 as well as the petitioner. The notices which have been sent to the petitioner have been returned with the endorsement 'left'.

4. By letter dated 27.11.2014, the first respondent had informed the petitioner and respondents 3 and 4 that that were appointing the second respondent as a sole arbitrator to adjudicate the dispute. This notice was also not served on the petitioner and the same was returned with the very same endorsement "left". Notice which was sent to respondents 3 and 4 was also not received by them.

5. Pursuant to his appointment, the arbitrator has issued a notice dated 05.01.2015 informing the petitioner and the respondents to appear before him for arbitration. In the said notice dated 05.01.2015, the arbitrator has stated that the claim statement and documents have been filed by the first respondent/claimant. However, the next date of hearing has not been mentioned in the said notice. It appears that by an award dated 27.04.2015, the arbitrator had allowed the claim made by the claimant.

6. It appears that on 09.1.2015, when the arbitration proceedings were pending before the second respondent, the first respondent herein had filed an application No.879 of 2015, directing the respondents 3 and 4 and the petitioner herein to furnish security to the tune to Rs.24,00,000/-, failing which, to attach the salary,

allowances and other benefits due to the petitioner herein and direct the fourth respondent in the said application, who is the employer of the petitioner, to deposit the award amount into Court. In the said application, the first respondent had contended that the arbitrator had sent notices dated 05.01.2015 to the petitioner and respondents 3 and 4, and was awaiting their response. The affidavit would further read that since the petitioner herein was not willing to settle the issue, the present application for furnishing security has been filed. The said application has been ordered by this Court.

7. By order dated 02.03.2015, this Court had directed the petitioner and respondents 3 and 4 herein to furnish security to the tune of the Award amount namely Rs.24,00,000/- within a period of three (3) weeks and in default thereof, to attach the salary, allowances and other benefits due to the petitioner herein. Thereafter, by a further order dated 15.04.2015, this Court was pleased to direct attachment of the petitioner's salary at the hands of the fourth respondent in Application No. 879 of 2015. It was only after his salary had been attached, that the petitioner herein had come to know about the arbitration proceedings. He had immediately filed application No.5136 of 2015 on 28.04.2015 seeking to set aside the order in Application No.879 of 2015. The petitioner herein has contended that

the agreement was a fraudulent agreement and the signature in the agreement was not his. He had further contended that he has not received any notice whatsoever in the said proceedings since his place of residence was no longer the one shown in the arbitration proceedings. A counter dated 27.08.2015 was filed by the petitioner in and by which they would contend that the arbitrator had passed an Award on 27.04.2015 directing the petitioner and the respondents 3 and 4 to pay a sum of Rs.23,01,012/- with further interest at the rate of 18 per cent per annum from 17.12.2014 till the date of realisation. The application in A.No.5136 of 2015 had been filed into Court on 28.04.2015 against the first respondent herein and other side respondent was served by serving a notice on the counsel.

8. Thereafter the petitioner herein has filed an application under Section 34 of the Arbitration and Conciliation Act on 20.11.2015 after receiving the Award from the Arbitrator by his letter dated 08.10.2015. The main ground of attack in the Section 34 application is that none of the notices were served on the petitioner and therefore, without serving notice an Award has been passed and in fact, substituted service has also not been taken in this matter. The service to the petitioner and the other respondents have been incomplete.

9. The petitioner has also raised the issue of limitation since the Hire Purchase Agreement was entered into on 03.12.2010 and no amount has been paid towards the loan, and for the first time, notice had been served, even according to the first respondent, on 14.02.2011, on the principal borrower and his wife first guarantor. The arbitral proceedings has been initiated only on 27.11.2014, which is much beyond the period of limitation.

10. Mr. S. Ramajayam, the learned counsel for the petitioner would argue that the entire Award appears to be a collusive award and has been passed in haste. The first respondent had come to know about the filing of Application in A.No.5136 of 2015 by the petitioner herein, for setting aside the attachment order secured by the first respondent in Application No.879 of 2015, after he received the notice in A.No.5136 of 2015 and thereafter the award has come to be passed. The said contention is stoutly objected to by the learned counsel for the petitioner.

11. Heard the learned counsel on either side.

12. A perusal of the Award would clearly demonstrate that the same has been prepared in great haste by the Arbitrator. The

Arbitrator has issued a notice dated 05.01.2015 to the petitioner and the other respondents and the original returned covers found in the original file received from the Arbitrator would indicate that the date of hearing has been left blank. This is also seen in the paper book at page 40. Apart from that, the original record does not show any other notice and neither has the arbitrator taken any steps to order reissue of notice or substituted service on the petitioner and respondents 3 and 4 particularly when the notice has been returned unserved.

13. Paragraph 2 of the Arbitral Award make interesting reading. The Arbitrator would in his order state that the Tribunal had issued a notice dated 05.01.2015 enclosing claim statement and documents to the respondents to their last known address, which according to the Arbitrator constituted sufficient service. The Arbitrator has further stated that despite service, the second respondent has failed to appear and therefore held that "they may be set ex parte". The Arbitrator would contend that the respondents were called absent on 29.01.2015. However he would further go on to state that evidence of PW1 was recorded on 08.01.2015, that is within 3 days of his issuing notice to the respondents therein enclosing the claim statement and when he had, according to the award, set them ex parte on 29.01.2015. Further, if the respondents had been set ex parte on

29.01.2015, this would have been stated by the first respondent in the affidavit filed in support of the Application No. 879 of 2015 which was signed by the first respondent on 09.02.2015. Such a statement is not found in the affidavit and neither was the Court informed that an ex parte arbitral award had been passed. Even when this Court had passed the order dated 15.04.2015, directing attachment of salary of the petitioner herein, the fact that an ex parte award was passed was not placed before it, all of this would clearly go to show that the Arbitrator has not conducted himself in the manner expected of him and neither has he followed the procedure contemplated under the Act. The conduct of the Arbitrator deserves to be deprecated particularly when he is also an Advocate by profession, who is aware of the nuances and procedures. Without effecting appropriate services on the respondents, and with a view to appeasing one party, the Arbitrator has proceeded to pass the award hastily. The arbitrator has not even taken note of the fact whether the claim was in time but has merely reproduced the claim statement. The award therefore deserves to be set aside.

14. The learned counsel for the first respondent would represent that she may be given liberty to file fresh proceedings. Such a permission cannot be granted by this Court. It is open to the first

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respondent to explore whatever legal remedies that is available to them. No costs. With the above observation, the OP is allowed. Consequently, connected Miscellaneous petition is closed.

10.12.2019

Index:Yes / No

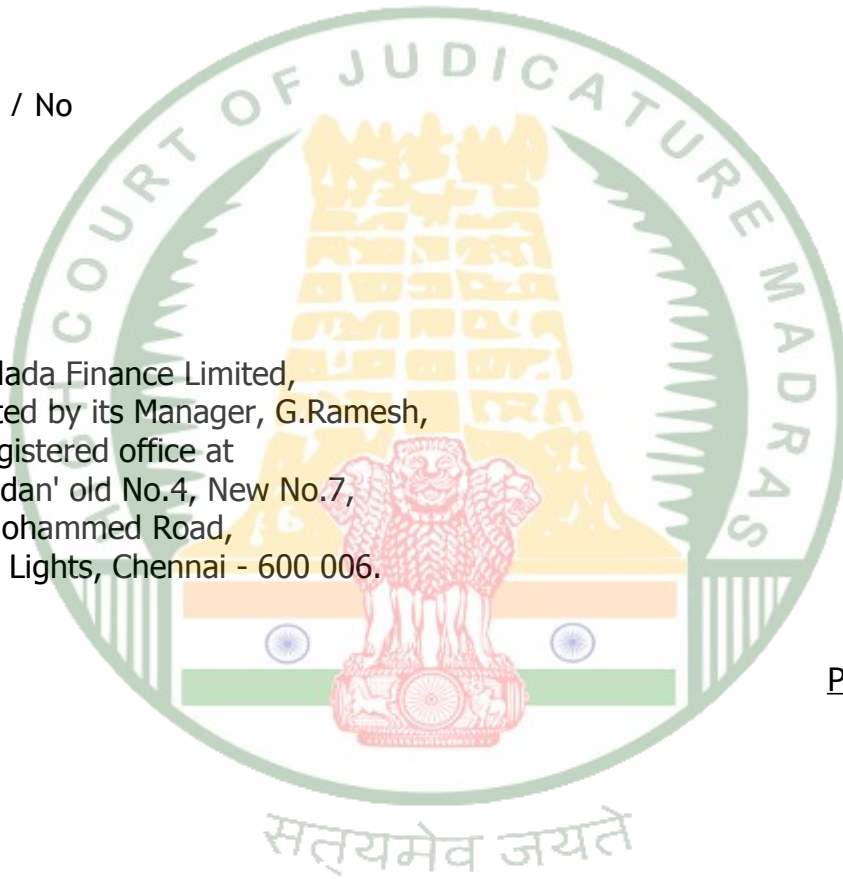
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To

1. M/s Galada Finance Limited,  
Represented by its Manager, G.Ramesh,  
Having registered office at  
'Shanti Sadan' old No.4, New No.7,  
Shaffee Mohammed Road,  
Thousand Lights, Chennai - 600 006.

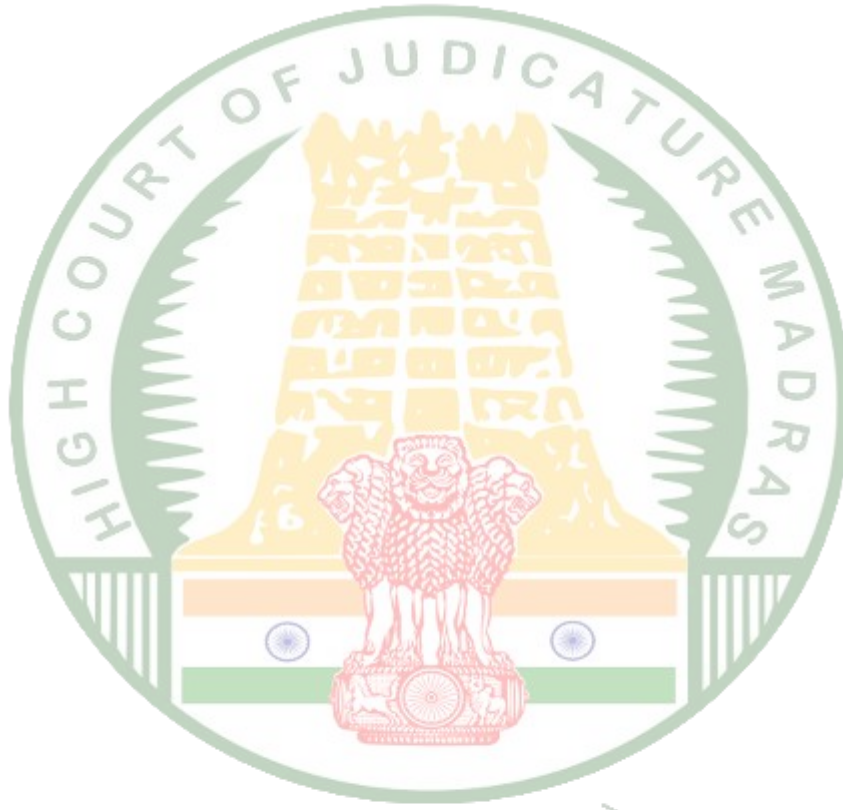
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