IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Original Petition No.370 of 2013

Robert Sam ... Petitioner

vs.

1. M/s.Hinduja Leyland Finance Ltd.,
rep. by its Authorised Representative,
Regd. Office at No.1, Sardar Patel Road,
Guindy, Chennai 600 032.

2. Mariya Sebastin

3. D.Saravanan
Arbitrator,
Orient Chambers,
No.90 (Old No.73), 4th Street,
Armenian Street,
Chennai 600 001. ... Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Arbitral Award dated 17.04.2012 of the 3rd Respondent herein in ACP (HLF) No.172 of 2011.

For Petitioner : Mr.Prithvi Chopda
for Mrs.AL.Gandhimathi

For Respondents : Mr.K.Moorthy

O R D E R

Challenging the Arbitral Award dated 17.04.2012, the Petitioner has come up with the present Original Petition.

2. It is seen that the Petitioner herein has availed loan for a sum of Rs.76,50,000/- from the 1st Respondent/Finance Company towards purchase of two numbers of EX 210 Excavator vehicles. The 2nd Respondent herein viz. Maria Sebastin stood as Guarantor to the said Loan Agreement. As per the Loan Agreement, the Petitioner is due and liable to repay a sum of Rs.97,61,400/- in 47 instalments, which is inclusive of finance charges and insurance charges.

3. It is the case of the 1st Respondent/Finance Company that the Petitioner paid only a few instalments and defaulted in paying the subsequent instalments. Despite several requests, the Petitioner did not pay the loan instalments on the due dates. Hence, the 1st Respondent/Finance Company sent a communication to the Petitioner and the 2nd Respondent herein on 18.11.2011 intimating the reference of Arbitral dispute regarding non-payment of dues and the appointment of an Arbitrator. However, there was no reply from the Petitioner and the 2nd Respondent herein.

4. After going through the oral and documentary evidence available on record, the Arbitrator passed an Award in favour of the 1st Respondent/Finance Company on 17.04.2012. Relevant portion of the Award is extracted hereunder:

> "7. ... IN THE RESULT IT IS AWARDED THAT the claim is allowed and consequently the Respondents are jointly and severally directed to pay the sum of Rs.69,13,202/- forthwith. The said sum of Rs.69,13,202/- shall carry interest at 18% per annum from the date of this Award, as held above, till its realization which the Respondents are directed to pay together with a sum of Rs.2,500/- towards cost of Arbitration forthwith. In non-compliance thereof, subject to the observation made hereinabove, it is open to the claimant, to sell the vehicles being two numbers of EX 210 EXCAVATORS with Engine/Serial Nos.N601D00566 AND N601D00569; Chassis No.SCE/INV/010/10-11 in open market for the highest price and adjust the sale proceeds towards the amount due. If the sale proceeds short fall the amount due under this Award, the claimant may recover the same by executing this Award from both the Respondents jointly and severally. If the sale proceeds exceed the due, the balance shall be returned to the first respondent."

5. According to the learned counsel for the Petitioner, the non-appearance of the Petitioner before the Arbitrator is neither wilful nor wanton, but, unfortunately, he has been set exparte and an Award has been passed against the Petitioner herein.

6. In reply, learned counsel appearing for the 1st Respondent/Finance Company contended that besides, oral and telephonic demands, the Petitioner did not bother to pay the outstanding amount and

hence, the 1st Respondent/Finance Company initiated Arbitration proceedings against the Petitioner and all the notices have been served on the Petitioner to his last known address given in the Agreement.

7. Heard the learned counsel on either side and perused the material documents available on record.

8. The Proceedural History usefully quoted by the Arbitrator would make it clear that on 06.03.2012, the authorized representative of the 1st Respondent/Finance Company had appeared before the Arbitrator and even though notice has been sent to the Petitioner and the 2nd Respondent herein, the notice sent to the Petitioner was returned with postal remarks and the same sent to the 2nd Respondent herein was duly served and acknowledged by him. However, none appeared for the 2nd Respondent on the said date.

9. On a reading of the Arbitral Award, it is clear that the Petitioner did not evince any interest to settle the outstanding dues to the 1st Respondent/Finance Company. The fact that the Petitioner has borrowed money from the 1st Respondent/Finance Company agreeing to repay the same in regular instalments and that the principal amount has not been paid is amply evident from the discussion of the Arbitrator in the Award. Any person,

who borrows money is liable to pay the same and he/she cannot escape on technicalities. A perusal of the loan Agreement entered into between the Petitioner and the 1st Respondent/Finance Company and other documents on record, it is seen that the Arbitral Award has been passed on merits foisting the liability of Rs.69,13,202/- together with interest at 18% per annum on the Petitioner. At no stretch of imagination, the Award passed by the Arbitrator can be interfered with, when it is a finding of fact.

10. However, this Court posed a question to the learned counsel appearing for the 1st Respondent/Finance Company as to whether the 1st Respondent/Finance Company is willing to accept interest at 9% per annum from the date of the Award or the amount due on that date. After getting instructions, learned counsel appearing for the 1st Respondent/Finance Company submitted that the 1st Respondent is willing to accept interest at 9% per annum.

11. In view of the above, **the Petitioner is directed to pay the outstanding amount of Rs.69,13,202/- (Rupees Sixty Nine Thousand Thirteen Thousand Two Hundred and Two only) together with interest at 9% per annum** from the date of the Award till the amount is actually paid, within a period of six months from the date of receipt of a copy of this order, in six

equal instalments. The payment of instalments shall commence on the last working day of every month from March 2019. In case, the Petitioner defaults in one of the instalments, the interest awarded by the Arbitrator shall be restored and it is open to the 1st Respondent/Finance Company to take coercive steps against the Petitioner, to recover the entire amount at the rate of interest mentioned in the Award.

12. At the end of arguments, learned counsel for the Petitioner represented that the vehicles in question have been re-possessed by the 1st Respondent/Finance Company due to non-payment of instalments. In this regard, this Court makes it clear that the sale proceeds of the vehicles in question shall be appropriated to the Petitioner's Loan Account and if any amount has been paid by the Petitioner during the pendency of the Original Petition, the same shall be given credit to his Loan Account.

The Original Petition is disposed of with the above direction and observation. No costs.

31.01.2019

Index : Yes/No
Speaking order : Yes/No

Note to Registry: Issue copy of this order on or before 18.03.2019.
(aeb)

S.VAIDYANATHAN,J.

(aeb)

O.P.No.370 of 2013

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