

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Original Petition No.800 of 2013

1.Basavaraj.H. Vastrad

2.Gouramma Vastrad

...Petitioners

Vs.

1.M/s.Citicorp Finance (India) Limited,
Rep. by its Power Agent,
I Floor, Angson Centre,
153, Greams Road, Chennai - 600 006.

2.M/s.Citicorp Finance (India) Limited,
Asset based finance branch, 702/703,
7th Floor, Carlton Towers, Airport Road,
Bangalore - 560 008.

3.The Sole Arbitrator,
Shri.G.Ashokpathy.

...Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Arbitration Award dated 02.08.2011 in A.C.P.(CITI) No.21 of 2011.

For Petitioners : Mr.A.Vinupradha,
for M/s.Arun Kumar Rajan

For Respondents : M/s.Hamshadwani,
for Mr.S.Vasudevan

ORDER

Petitioners have come forward with this Original Petition challenging the Arbitration Award dated 02.08.2011 in A.C.P.(CITI) No.21 of 2011.

2. The case of the 1st petitioner is that he had availed loan of a sum of Rs.15,64,000/- (Rupees Fifteen Lakhs Sixty Four Thousand Only) on 27.09.2007 from the 1st respondent for the purchase of Ashok Leyland Tipper Lorry with Vehicle Registration No.K.A.34 9114 and the 2nd petitioner was a Guarantor to the said loan. The loan was to be paid in 35 equal monthly instalments at Rs.54,693 per month and the rate of interest on the amount borrowed was 14.01% per annum. The petitioner has paid 15 instalments and the subsequent instalments could not be paid by him, due to which, the vehicle was seized by the 2nd respondent on 15.05.2009 and it was sold on 30.06.2009 for a sum of Rs.7,10,000/- (Rupees Seven Lakhs and Ten Thousand only). As the outstanding amount was not paid by the petitioner, Arbitration proceedings were initiated by the respondent.

3. Learned counsel for the Petitioner submitted that the Petitioner was not aware about the Arbitration Proceedings initiated by the

Respondents/Finance Company and that only at the time of hearing the Execution Petition, the petitioner came to know about the passing of the Arbitration Award. He further submitted that when there is no notice with regard to initiation of Arbitration Proceedings, the exparte Award passed by the Arbitrator is illegal and the same needs to be interfered with. That apart, he contended that the value of the vehicle sold was very meager and that the vehicle would have fetched more than Rupees Ten Lakhs as per the market price.

4. Learned counsel for the petitioner went on to contend that the Arbitration proceedings held at Chennai is per se without jurisdiction as the first petitioner availed the loan facility from the 2nd Respondent and not from the 1st respondent herein. According to him, since the cause of action arose at Bangalore, the proper forum to arbitrate the issue would be at Bangalore and not at Chennai.

5. Learned counsel appearing for the respondents/Finance Company contended that the petitioner has availed loan for purchase of Ashok Leyland Tipper Lorry on 28.09.2007; the first petitioner is the borrower and the second petitioner, who is the wife of the first petitioner stood as Guarantor to the said loan agreement and that the amount repayable together with interest was

Rs.19,14,255/-, which was to be paid in 35 equal monthly instalments commencing on 28.10.2007 and ending on 28.08.2010. The first petitioner has issued post-dated cheques towards repayment of the loan and the cheque issued by the first petitioner got bounced for the reason "Funds insufficient". The first petitioner had undertaken to pay 2.5% additional interest, in case of default of payment.

6. Thereafter, a recall notice was issued by the Respondents/Finance Company to the first Petitioner on 15.03.2009 that the amount repayable by them was Rs.11,68,432.65. As per clause 6 of the Agreement, the vehicle was repossessed by the Respondents/Finance Company, as the petitioner did not pay the arrears when he was called upon to clear the same. Subsequently, the vehicle was sold to the highest bidder for a sum of Rs.7,10,000/- (Rupees Seven Lakhs and Ten Thousand Only) on 30.06.2009 and after adjusting the amount already paid, a sum of Rs.3,90,134/- is due, for which the petitioners are jointly and severally liable.

7. When there was no response from the Petitioners, Arbitration proceedings were initiated in terms of clause 16 of the Loan agreement, fixing the seat of Arbitration at Chennai and an Arbitrator was appointed on 19.01.2011. Thereafter, the Arbitrator issued notice to the petitioners asking

them to appear before him on 03.06.2011. The notice sent to the first petitioner was served and the notice sent to the second petitioner was returned. Thereafter, Claim Statement and documents were filed by the respondent and the same was communicated to the petitioners fixing the hearing of the matter on 01.07.2011. The notices sent to the Petitioners were returned as 'refused' and the Arbitrator has proceeded to pass an Award in terms of Section 25 of the Act, after setting the parties exparte.

8. According to the learned counsel appearing for the Respondents 1 and 2/Finance Company, the contention of the learned counsel for the Petitioners that the vehicle was sold at a meager price, is not correct and that after adjusting the amount, the first petitioner was asked to pay a sum of Rs.3,90,134/- together with interest at 18% per annum from 17.02.2011. Learned counsel went on to state that the Respondent/Finance Company, being a Limited Company and that the parties have agreed to have the Arbitration at Chennai in terms of Clause No.16 of the Agreement, the contention of the petitioner that the Arbitration proceedings should not have been held at Chennai, cannot be accepted. The Arbitrator, after taking into account that the petitioners did not appear even after the receipt of notice and the subsequent notice has been returned as refused, has rightly passed the exparte Award in question and that the present Original Petition needs to be dismissed.

9. Heard the learned counsel for the parties and perused the materials placed on record.

10. It is not in dispute that there was an Agreement entered into between the parties on 28.09.2007 for availing a loan of Rs.15,64,000/- (Rupees Fifteen Lakhs Sixty Four Thousand Only) to be repaid in 35 equal monthly instalments at Rs.54,693/- per month and the rate of interest on the amount borrowed was 14.01% per annum. It is also not in dispute that the petitioner has paid 15 instalments. The cheque issued by the petitioner got bounced and the petitioner did not evince any interest to pay the outstanding amount even after receiving the intimation from the Respondents/Finance Company. As the loan was not cleared, the vehicle was repossessed by the Respondents/Finance Company and it was sold at Rs.7,10,000/- (Rupees Seven Lakhs and Ten Thousand Only) on 30.06.2009 and thereafter, Arbitration Proceedings was initiated.

11. From the typed set of papers submitted by the Respondents/Finance Company, it is clear that notices have been dispatched to the petitioners and it was served on the first petitioner and the subsequent

notices sent to the petitioners have been returned as 'refused'. It is seen that the notices to the Petitioners have been sent to their last known address that has been given by them. That being the case, the contention of the learned counsel for the Petitioners that the Arbitrator has passed an ex-parte Award cannot be accepted. In terms of the Agreement, the seat of Arbitration as agreed by the parties was at Chennai and the Arbitration took place at Chennai. While so, the petitioner cannot turn around now to contend that the Arbitration ought not to have been taken place at Chennai and the said contention cannot be acceded. Though, it is an Ex-parte award, the Arbitrator has rendered a detailed finding on merits, after taking into account the pleadings and Exhibits marked by the Respondents/Finance Company and held that the petitioners are jointly and severally liable to pay the outstanding amount together with interest at 18% per annum.

12. When the matter was taken up for hearing, this Court suggested to the learned counsel for the petitioners and the respondents/Finance Company to reduce the rate of interest to 9% per annum, so that the outstanding amount can be paid by the petitioners as per the Arbitration Award.

13. To the suggestion put forth by this Court, the learned counsel appearing for the respondents/Finance Company submitted that the

respondents/Finance Company is agreeable to the reduced rate of interest at 9% and the learned counsel for the Petitioners expressed the willingness of the Petitioners to the same.

14. With the consent of both the parties, this Court directs the petitioners to pay the outstanding dues to the Respondents/Finance Company together with interest at the rate of 9% per annum from the date of passing of the Arbitral Award, within a period of eight weeks from the date of receipt of a copy of this order.

15. However, this Court makes it very clear that if the outstanding amount is not paid by the petitioners as agreed, within the time stipulated as stated supra, the entire amount payable to the respondents/Finance Company together with interest, as per the Award passed by the Tribunal will stand restored and in such case, it is open to the Respondents/Finance Company to execute the Award in the manner known to law and coercive proceedings can be taken against the Petitioners.

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In the result, the above Original Petition is disposed of. No costs.

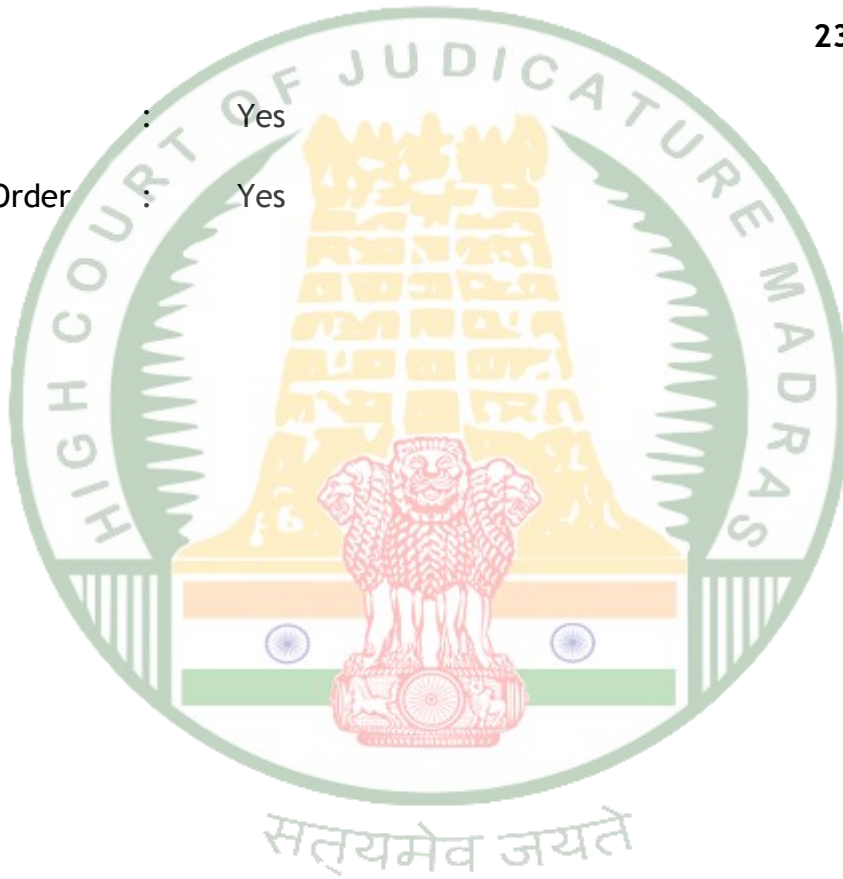
Consequently, connected Application No.5418 of 2013 is closed.

23.01.2019

Index : Yes

Speaking Order : Yes

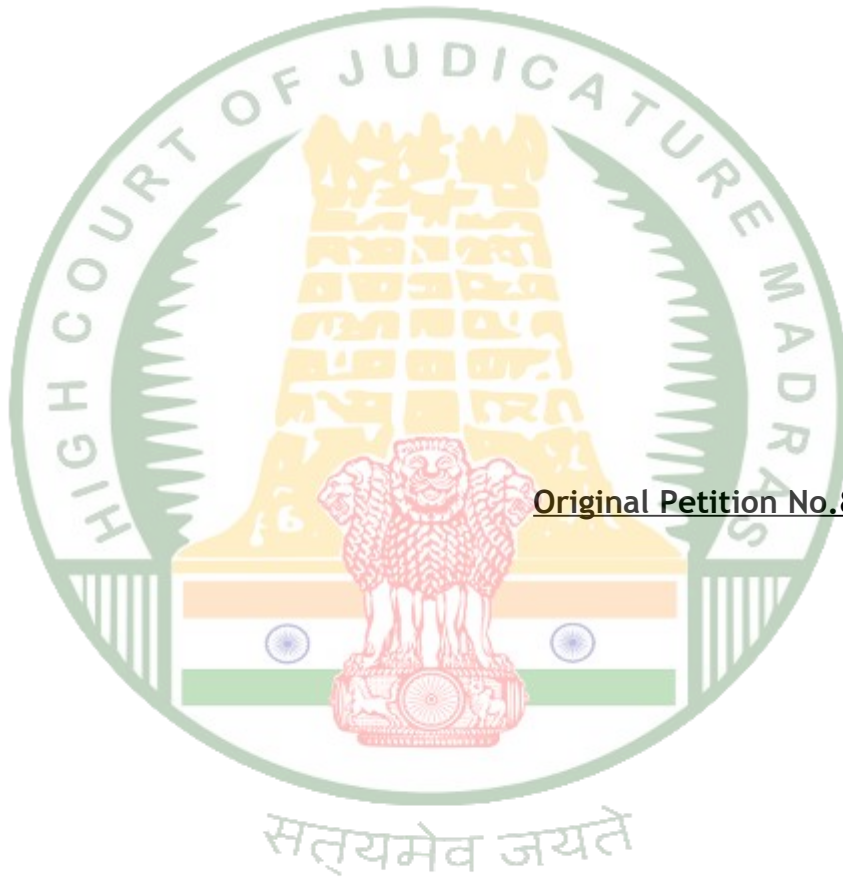
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S.VAIDYANATHAN,J.

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