

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Original Petition No.30 of 2016

Rahish Khan

... Petitioner

vs.

1. HDB Financial Services Limited,  
rep. By its duly constituted Attorney/  
Authorized Signatory, Radhika  
Registered Office at  
2<sup>nd</sup> Floor, Law Garden Road,  
Navrangpura, Ahmedabad - 380009.
2. Anis Ahamed,  
Sole Arbitrator  
1<sup>st</sup> Floor, Old No.150, Pycrofts Road,  
Opp. Registry Office,  
Royapettah,  
Chennai 600 014.
3. Aabid Khan,  
R/o.Village & Post - Nadka,  
Ramgarh District,  
Alwar - 301026,  
Rajasthan.

... Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Arbitral Award dated 29.03.2014 passed in Case No.2583/2013.

For Petitioner : Mr.G.Mohanakrishnan

For 1st Respondent : Mr.N.K.Vanan

**ORDER**

The Petitioner, who is the Borrower, has come up with this Original Petition challenging the Arbitral Award dated 29.03.2014 passed by the Sole Arbitrator with reference to the dispute arising out of the Arbitration Agreement dated 31.05.2011.

2. According to the Petitioner, he availed loan from the 1<sup>st</sup> Respondent/Finance Company for a sum of Rs.19,75,000/- under Loan Agreement dated 31.05.2011 towards the purchase of a commercial vehicle Truck Ashok Leyland 3116, agreeing to pay the loan amount together with interest in 47 instalments of Rs.54,342/- per month. The 3<sup>rd</sup> Respondent herein stood as Guarantor to the said loan financed by the 1<sup>st</sup> Respondent to the Petitioner herein.

3. It is the case of the 1<sup>st</sup> Respondent/Finance Company that since the Petitioner committed default in payment of the monthly instalments, they issued notice to the Petitioner to make payment of the dues. As the Petitioner did not come forward to make the payment or settle the dispute, the 1<sup>st</sup> Respondent/Finance Company took over possession of the vehicle in question and the Account of the Petitioner was foreclosed.

4. Thereafter, the 1<sup>st</sup> Respondent/Finance Company sent a pre-sale notice dated 28.06.2013 to the Petitioner and his Guarantor, requesting them to foreclose/settle their loan account to the tune of Rs.15,03,823/-, failing which, the 1<sup>st</sup> Respondent/Finance Company would proceed to sell the vehicle in question and appropriate the sale proceeds in the account of the Petitioner. Since, no reply was forthcoming from the Petitioner, the 1<sup>st</sup> Respondent/Finance Company sold the vehicle in question for the highest quoted amount of Rs.8,50,000/- on 05.08.2013, as per the terms and conditions of the Agreement and appropriated the sale proceeds in the account of the Petitioner.

5. According to the 1<sup>st</sup> Respondent/Finance Company, even after appropriation of the sale proceeds, a further sum of Rs.7,08,142/- remained outstanding as on 16.08.2013 and they requested the Petitioner to make such payment. As there was no response from the Petitioner, the 1<sup>st</sup> Respondent/Finance Company initiated Arbitration proceedings against him.

6. Before the learned Arbitrator, on the side of the 1<sup>st</sup> Respondent/Finance Company, i.e. the Claimant, Exhibits 1 to 18 were marked and the Authorized Signatory of the 1<sup>st</sup> Respondent/Finance Company was examined as P.W.1. However, the Petitioner herein and his Guarantor remained exparte.

7. After examining the oral and documentary evidence available on record and on consideration of the facts and circumstances of the Claim Petition, the Arbitrator allowed the claim of the 1<sup>st</sup> Respondent/Finance Company vide Arbitral Award dated 29.03.2014. Relevant portion of the Arbitral Award is extracted hereunder:

"IN THE RESULT, taking the totality of circumstances into consideration and for the reasons aforesaid, the claim of the Claimant is accepted and an Arbitral Award is made in favour of the Claimant-Company HDB Financial Services Limited, Registered Office at Radhika, 2<sup>nd</sup> Floor, Law Garden Road, Navrangpura, Ahmedabad - 380009 and against the Respondents, Rahish Khan, S/o.Shri Kamal Khan, R/o.1, Badka Nadka, Ramgarh, Distt-Alwar - 301026, Rajasthan and Aabid Khan, S/o. Shri. Satari Khan, R/o.VIII & Post, Nadka Teh - Ramgarh District, Alwar-301026, Rajasthan, in terms that:

- (i) The Respondents do pay, jointly and severally, to the Claimant-Company a sum of Rs.7,08,142/- (Rupees Seven Lakhs Eight Thousand One Hundred and Forty Two only) together with interest calculated on outstanding due amount Rs.7,08,142/- at 18% per annum from 16.08.2013 till the payment by the Respondents or realization thereof by the Claimant.

(ii) The Claimant can recover the outstanding dues from the Respondents by appropriating the monies, securities, assets or deposits of the Respondents, which are in possession of the Claimant under any other account, scheme and Agreement and can exercise all or any of its rights under any of the Borrower's or the Co-Borrower's or the Guarantor's Agreement (including this Agreement) with the Claimant at the sole discretion of the Claimant.

(iii) The Respondents, in the first instance, do pay to the Claimant-Company the costs of Arbitral proceedings including the fee of Arbitrator quantified at Rs.1,000/- and an amount of Rs.150/- towards expenses incurred in Stamp Duty imposed on this Award, as the same has been received from the Claimant. The Claimant is further directed to deduct the amount from the Award amount, if any, paid by the Respondents during the Arbitration proceedings, i.e. from the date of commencement till date of Award."

8. Learned counsel for the Petitioner contended that the Petitioner was not served with proper notice as regards appointment of an Arbitrator and initiation of Arbitration proceedings. He further contended that a copy of the Arbitration Award was not served on the Petitioner and that the Petitioner had

to make an application for getting the certified copy of the Award to file the present Original Petition.

9. In reply, learned counsel appearing for the 1<sup>st</sup> Respondent/Finance Company submitted that the notices pertaining to the institution of the Arbitral proceedings were issued to the Petitioner thrice on 02.08.2013, 19.08.2013 and 19.02.2014, by means of a Registered Post Acknowledgement Due. However, neither the Acknowledgement Due Cards nor the Registered envelopes were returned.

10. According to the learned counsel for the 1<sup>st</sup> Respondent/Finance Company, when a notice has been sent to the correct address of the Petitioner and none of the notices have been returned, it has to be presumed that the Petitioner has received the same. It is his contention that in order to beat the issue of limitation, the Petitioner has filed an Application for getting the certified copy of the Arbitral Award and thereafter, he has filed the present Original Petition from the date of receipt of the Award. Learned counsel went on to contend that when notice has already been served on the Petitioner with regard to the Arbitration proceedings, no indulgence can be shown to him and the Arbitral Award needs to be confirmed, as such.

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

12. It is not in dispute that the Petitioner has availed loan for a sum of Rs.19,75,000/- from the 1<sup>st</sup> Respondent/Finance Company towards purchase of a commercial vehicle, agreeing to repay the same in 47 monthly instalments. However, it is seen that the Petitioner has defaulted in paying the loan from the 2<sup>nd</sup> instalment.

13. On a perusal of the original records pertaining to the Arbitration proceedings produced before this Court by the learned counsel for the 1<sup>st</sup> Respondent/Finance Company, it is seen that notices have been sent to the Petitioner as regards initiation of Arbitration proceedings against him by means of Registered Post Acknowledgement Due. However, no acknowledgement cards have been marked before the Arbitrator. It is seen that the vehicle in question was repossessed by the 1<sup>st</sup> Respondent/Finance Company and sold for a sum of Rs.8,50,000/- on 05.08.2013. Further, the Statement of Accounts dated 16.08.2013 after sale of the vehicle in question, shows that after appropriation of the sale proceeds of the vehicle in the Petitioner's account, the 1<sup>st</sup> Respondent/Finance Company submitted an application for amendment in Claim Petition.

14. A scrutiny of the Arbitral Award would show that the learned Arbitrator has conducted the Arbitration proceedings after issuance of proper notice to the Petitioner. Non-receipt of the Acknowledgement Cards in respect of the notices sent by the 1<sup>st</sup> Respondent/Finance Company to the Petitioner, cannot be a ground to hold that the Petitioner would be entitled to another opportunity. The fact remains that the loan availed by the Petitioner has not been repaid. Admittedly, the Petitioner is a defaulter and on technical grounds, he cannot be let off scot-free. Though the Petitioner remained exparte before the Arbitration proceedings, the Arbitrator has rendered a finding based on merits.

15. This Court posed a question to the learned counsel appearing for the 1<sup>st</sup> Respondent/Finance Company as to whether the 1<sup>st</sup> Respondent/Finance Company is willing to accept the outstanding dues from the Petitioner at a reduced rate of interest, say at 9% per annum. On instructions from the Authorized representative of the 1<sup>st</sup> Respondent/Finance Company, the learned counsel submitted that the 1<sup>st</sup> Respondent/Finance Company is willing to accept the dues from the Petitioner together with interest at 9% per annum.

16. In view of the above, this Court directs the Petitioner to pay the entire amount due to the 1<sup>st</sup> Respondent/Finance Company together with interest at the reduced rate of 9% per annum, within a period of 12 weeks from the date of receipt of a copy of this order.

17. If the Petitioner fails to pay the outstanding amount together with the modified rate of interest to the 1<sup>st</sup> Respondent/Finance Company within the stipulated time, it goes without saying that the original Arbitral Award will revive.

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

22.01.2019

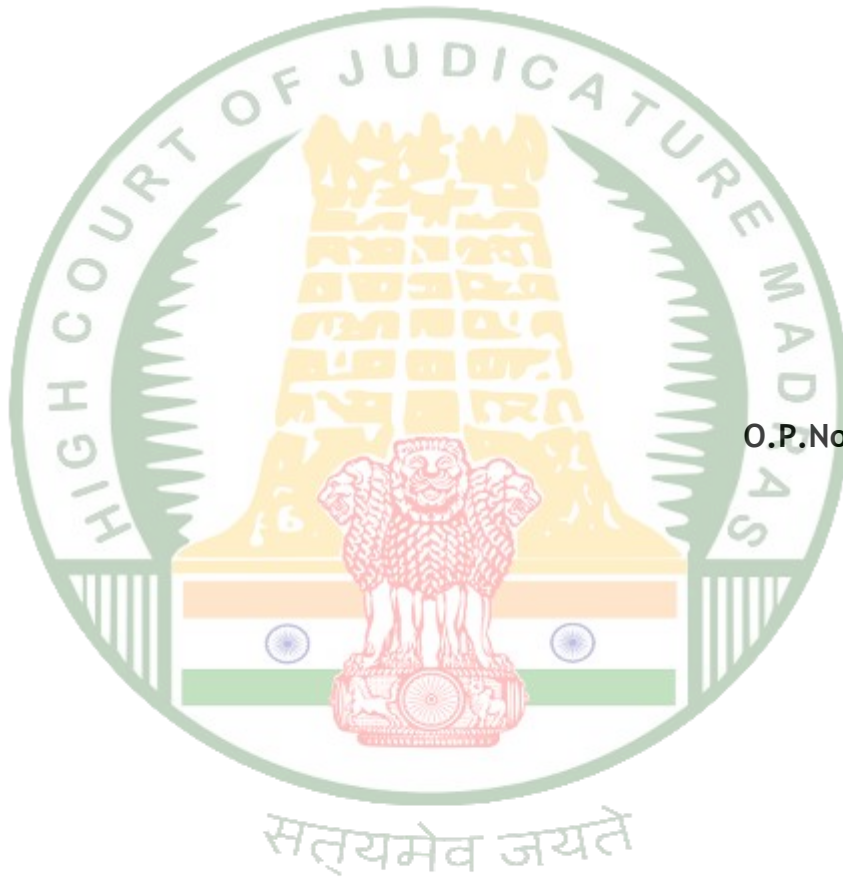
Index : Yes  
Speaking order : Yes

**Note to Registry:**

- (i) Return the original Records pertaining to the Arbitration proceedings to the learned counsel for the 1<sup>st</sup> Respondent/Finance Company.
  - (ii) Issue copy of this order on or before 20.02.2019.
- (aeb)

S.VAIDYANATHAN,J.

(aeb)



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