

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Original Petition No.738 of 2016

1.Mr.Ramesh

2.Mrs.Chinnammal

...Petitioners

Vs.

Mahindra and Mahindra Financial Service Limited,
Branch office: No.15, Arcot Street,
Opp to MGR Memorial house,
T.Nagar, Chennai - 600 017.
Head office/Registered Office at
Gateway building Apollo Bunder,
Mumbai - 400 001.

...Respondent

Petition filed under Section 34 of the Arbitration and Conciliation Act,
1996 to set aside the Arbitration Award dated 30.11.2013.

For Petitioners : Mr.P.Balamurugan

For Respondent : No appearance

ORDER

The petitioner has come forward with the aforesaid Original Petition to
set aside the Arbitration Award, dated 30.11.2013.

2. The case of the petitioners is that they had entered into a Loan Agreement bearing No.1452929 on 28.01.2011 with the Respondent/Finance Company for the purchase of Mahindra Tractor 595 DI T. The first petitioner herein is the borrower and the second petitioner stood as the guarantor to the said Loan agreement. In terms of the loan agreement entered into between the parties, the Respondent/Finance Company has lent a sum of Rs.4,49,650/- to the petitioners herein. The loan amount lent by the Respondent/Finance Company is repayable together with interest in periodical instalments.

3. It is the further case of the petitioners that they have also executed a Demand Promissory Note by way of collateral security for the value of the total periodical instalments. As the first petitioner/borrower failed to pay the instalments and breached the terms of the loan agreement, the Respondent/Finance Company sent a Recall notice to the petitioners calling upon them to pay the entire outstanding amount. Since there was no reply, the Respondent/Finance Company was constrained to initiate Arbitration proceedings against the petitioners herein, vide notice dated 28.12.2012.

4. Claims were filed by the Respondent/Finance Company on

22.01.2013 stating that the petitioners are jointly and severally liable to the Respondent/Finance Company to pay a sum of Rs.5,15,164/- which is payable with further interest of 3% per month. The borrower/1st petitioner has defaulted to pay the dues. In spite of sending notice, none appeared on behalf of the petitioners before the Arbitrator and therefore, the Arbitrator has come to the conclusion that the Petitioners are liable to pay the entire amount of Rs.5,15,164/- to the Respondent/Finance Company herein. It is further mentioned in the Award passed by the Arbitrator that the vehicle has been seized as per the order dated 06.02.2013 passed by the Arbitrator.

5. Though the learned counsel for the petitioner contended that there is no mention about the sale price of the vehicle in the Award, taking note of the Loan Agreement and the Statement of Accounts which have been marked as Exhibits, the Arbitrator came to the conclusion that the petitioners are liable to pay a sum of Rs.5,15,164/- together with interest at the rate of 3% per month, from 22.01.2013 till date of the Award and with further interest at 18% per annum from the date of the Award till the date of payment.

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

7. In the Award passed by the Arbitrator, it has been mentioned that the Respondent/Finance Company, based on the interim order passed by the Arbitral Tribunal, has seized the vehicle. The petitioners are aware of the Arbitration Proceedings, as notice has been sent to them. The petitioners ought to have evinced interest at least at the stage of seizure of the vehicle and agreed to pay the outstanding amount and negotiated for reduction of rate of interest. As the 1st petitioner has defaulted to pay the outstanding amount in terms of the Agreement, the Arbitrator has proceeded to pass the Arbitral Award and the Award does not suffer from any illegality or perversity.

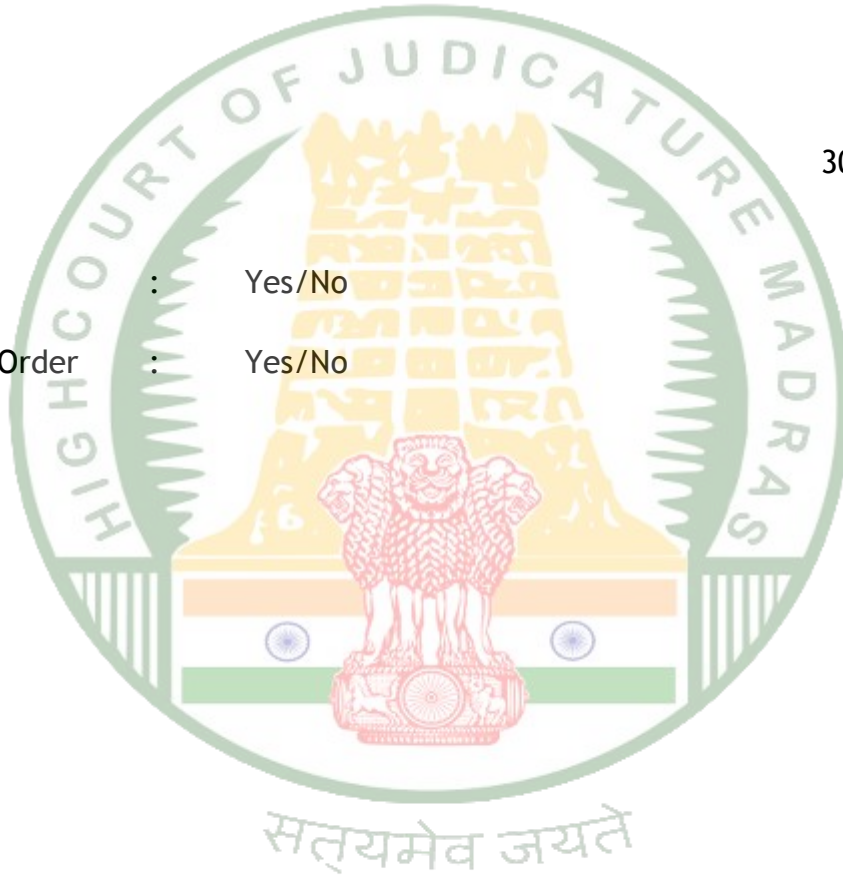
8. While dictating this order, learned counsel for the Petitioners represented that the first Petitioners is willing to pay the outstanding amount, but, the notices sent to the address, where the Arbitration was conducted were returned with an endorsement 'left' and that there is no Finance Company in the Address given. He further represented that they have informed the Mumbai Office of the Respondent/Finance Company. This order will not prevent the petitioner in approaching the Respondent/Finance Company to pay the principal amount together with interest at the reduced rate and it is open to the Respondent/Finance Company to accede to the request of the

petitioners.

In the result, the present Original Petition is disposed of, confirming the Award. No costs.

30.01.2019

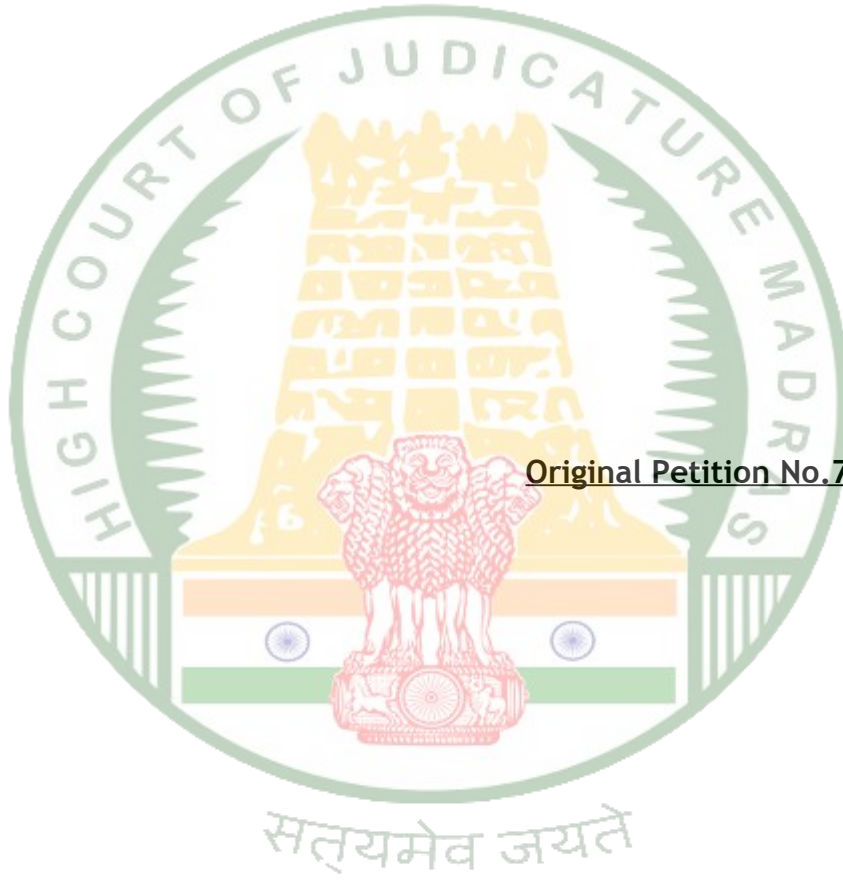
Index : Yes/No
Speaking Order : Yes/No
(tsg)



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S.VAIDYANATHAN,J.

(tsg)



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