

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.07.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Original Petition Nos.566 to 569 of 2014O.P.No.566 of 2014

1.Joseph Rajan Fernandes

2.Jyothi Rajan Halankar

...

Petitioners

versus

1.M/s.Indusind Bank Ltd.

Represented by its Executive-Legal,

New No.34, Old No.115 & 116,

G.N.Chetty Road, T.Nagar,

Chennai - 600 017.

2.D.Anand

Advocate / Arbitrator,

Orient Chambers,

New No.90, Old No.73,

Armenian Street,

Chennai - 600 001.

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Respondents

PRAYER: Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the arbitral award dated 11.09.2012 made in Arbitral Claim Petition No.263 of 2012 on the file of the 2nd respondent / Arbitrator.

For Petitioners : Mr.A.Palaniappan
For Respondents : Mr.S.R.Sundar
for Mr.K.Moorthy

O.P.No.567 of 2014

1.Merry Fernandes

2.Jyothi Halankar

...

Petitioners

versus

1.M/s.Indusind Bank Ltd.

Represented by its Power of Attorney Holder

S.P.Krishnekumaar,

Having its Consumer Finance Division at

No.115 and 116, G.N.Chetty Road,

T.Nagar, Chennai - 600 017.

2.S.Ranjeni Ramadass,

Advocate / Arbitrator,

Office: New No.69, Basha Street,

Choolaimedu,

Chennai - 600 094.

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Respondents

PRAYER: Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the arbitral award dated 05.09.2012 made in SRR/ACP No.20 of 2012 on the file of the 2nd respondent / Arbitrator.

For Petitioners : Mr.A.Palaniappan

For Respondents : Mr.S.R.Sundar
for Mr.K.Moorthy**O.P.No.568 of 2014**

1.Joseph Rajan Fernandes

2.Jyothi Rajendra Halankar

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Petitioners

versus

1.M/s.Indusind Bank Ltd.

Represented by its Power of Attorney Holder

S.P.Krishnekumaar,

Having its Consumer Finance Division at

No.115 and 116, G.N.Chetty Road,

T.Nagar, Chennai - 600 017.

2.S.Ranjeni Ramadass,
Advocate / Arbitrator,
Office: New No.69, Basha Street,
Choolaimedu,
Chennai - 600 094.

...

Respondents

PRAYER: Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the arbitral award dated 05.09.2012 made in SRR/ACP No.18 of 2012 on the file of the 2nd respondent / Arbitrator.

For Petitioners : Mr.A.Palaniappan
For Respondents : Mr.S.R.Sundar
for Mr.K.Moorthy

O.P.No.569 of 2014

1.Joseph Rajan Fernandes
2.Jyothi Rajendra Halankar

...

Petitioners

versus

1.M/s.Indusind Bank Ltd.
Represented by its Power of Attorney Holder
S.P.Krishnekumaar,
Having its Consumer Finance Division at
No.115 and 116, G.N.Chetty Road,
T.Nagar, Chennai - 600 017.

2.S.Ranjeni Ramadass,
Advocate / Arbitrator,
Office: New No.69, Basha Street,
Choolaimedu,
Chennai - 600 094.

...

Respondents

PRAYER: Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the arbitral award dated 05.09.2012 made in SRR/ACP No.19 of 2012 on the file of the 2nd respondent / Arbitrator.

For Petitioners : Mr.A.Palaniappan
For Respondents : Mr.S.R.Sundar
for Mr.K.Moorthy

COMMON ORDER

These Original Petitions have been filed by the petitioners to set aside the arbitral award dated 11.09.2012 and 05.09.2012 made in Arbitral Claim Petition No.263 of 2012 and SRR/ACP Nos.18, 19 and 20 of 2012 on the file of the 2nd respondent / Arbitrator respectively.

2. The first contention of the learned counsel for the petitioners is that the learned Arbitrator has passed an award without jurisdiction and no notice has been properly issued. The second contention is that the petitioners had not given proper opportunities and further contended that Clause 15.5 of the Loan Agreement empowers only for repossession of the vehicle and therefore, the matters ought not to have adjudicated by the learned Arbitrator for recovery of money.

3. Whereas the learned counsel for the respondents submitted that sufficient opportunities have been given, the arbitral notice has been properly issued. He further submitted that the learned Arbitrator has perused the entire materials and passed an award. Hence, he prayed for dismissal of these Original Petitions.

4. I have perused the arbitral award passed by the learned Arbitrator.

5. The matters had been referred to the learned Arbitrator as per Hire Purchase Agreement entered into between the parties. Clauses 15.3 and 15.5 of the Agreement reads as follows;

"15.3. The Lender shall, in any/all the aforesaid Events of Default, be entitled to and the Borrower hereby irrevocably authorizes the Lender to sell/transfer/assign the Asset either by public auction or by private treaty or otherwise howsoever, and appropriate the proceeds thereof towards repayment of all the outstanding amounts from the Borrower to the Lender under this Agreement. If the sale proceeds are not sufficient to meet all the dues of the Lender, the Borrower shall be liable to pay for any deficiencies after the said appropriation. In case there is any surplus after adjusting the dues of the Lender, the same shall be paid to the Borrower. Nothing contained in this Clause shall prevent the Lender to sell the Asset and the Lender shall be entitled to proceed against the Borrower(s) or Co-borrower(s), independently of such security.

15.5. The Lender shall be entitled to recover from the Borrower(s) all expenses (including legal costs on full indemnity basis) incurred by or on behalf of the Lender in ascertaining the whereabouts of the Asset, taking possession, garaging, insuring,

transporting and selling the Asset and of any legal proceedings that may be filed by or on behalf of the Lender to enforce the provisions of this Agreement. It is expressly clarified that the remedies referred to hereinabove shall be in addition to and without prejudice to any other remedy available to the Lender either under this Agreement, or under any other Agreement, or in law, or equity."

6. On a perusal of the above Clauses would make it clear that apart from other rights, the lender has been given the right to repossess the vehicle even after such repossession he is entitled to claim for differential amount as per Clauses 15.3 and 15.5 of the Agreement. I am unable to countenance the contention of the learned counsel for the petitioners in this regard. Merely because the right on the repossession has been given in the Agreement does not mean that the matters can be referred only in respect repossession of the vehicle and not for other claim, such interpretation cannot be countenanced.

7. The learned Arbitrator sent several notices to the petitioners i.e. on 11.05.2012, 08.06.2012, 06.07.2012, 27.07.2012 and 10.08.2012, and thereafter, giving sufficient time, the arbitral proceedings have been proceeded on the basis of the document executed by the petitioners and

passed an award. Therefore, the contention of the petitioners that no notice has been served cannot be countenanced.

8. The learned Arbitrator has in fact framed necessary issues and considered the exhibits and passed the award. Therefore, now it cannot be contended that proper notice has not been given after repossession of the vehicle. Such new facts and plea cannot be adjudicated in these Petitions. I do not find any merits in these Petitions. Accordingly, these Original Petitions are dismissed. However, there is no order as to costs.

12.07.2019

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

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N.SATHISH KUMAR, J.,

sri



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