

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2019

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

O.P.No.931 of 2019

and

A.Nos.8721 and 8722 of 2019

1.Kamla Devi
2.Suresh Kumar

... Petitioners

-Vs.-

1.Daimler Financial Services India Private Limited,
rep. By its Manager Legal,
RMZMilliennia Business Park,
Campus, 3B Unit 202,
143, Dr.MGR Road,
Perungudi,
Chennai – 600 096.

2.R.Rajarajan,
Advocate,
Arbitrator,
No.28, Appa Kannu Street,
Loyds Road,
Royapettah,
Chennai – 600 014.

... Respondents

Prayer: Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the Arbitral Award dated 10.06.2016 passed by the learned Arbitrator, 2nd respondent herein to the extent set out in this petition.

For petitioners : Mr.Ramasamy Meyyappan

For Respondents: Mr.H. Mohammed Ismail

ORDER

The respondent before the Arbitral Tribunal is the petitioner before this Court. This case once again highlights the manner in which the arbitral proceedings are being handled by certain arbitrators.

The facts which are necessary for disposing of the above Original Petition are as follows:

2.The 1st respondent herein which is non banking financial Company had filed arbitral proceedings before the 2nd

respondent invoking the arbitration clause in Loan Agreement No.20112014, dated 20.11.2014 said to have been entered into between themselves and the 1st petitioner herein. It is their case that the 1st petitioner herein as a principal borrower had borrowed a sum of Rs.25,11,230/- for the purchase of a new vehicle Bharat Benz BB HDT 2523C having Engine No.400950D0010407, Chassis No.MEC2411BHEP010188 and registered as HP 24 C2077.

3.The 2nd and 3rd respondents according to the claim, are the co-borrower and the guarantor to the said borrowal as per the terms of the loan agreement. The petitioners were under an obligation to repay the sum in 48 monthly installments of Rs.66,750/- commencing from 20.12.2014 and concluding on 20.11.2018. According to the 1st respondent, the instalments were not properly paid and the petitioners had committed a default. As on 20.11.2015, a sum of Rs.25,62,759.95 was due and payable by the petitioners. It is the case of the 1st respondent that invoking the arbitration clause in the

Agreement, they have nominated and appointed an Arbitrator. The 1st respondent by had communication dated 02.11.2015 informed the petitioner about the invocation of the Arbitration Clause and the appointment of the Arbitrator. However, the petitioner herein had not responded to the same. Therefore, they were constrained to proceed further with the arbitral proceedings.

4.It appears that the Arbitrator has passed an Award dated 10.06.2016 in Arbitration Case N.1667 of 2015 and thereafter, the 1st respondent sought to execute the said Award by filing E.P.No.41/10 of 2018 on the file of the learned District and Sessions Judge, Bilaspur, Himachal Pradesh. It is only after the summons from the Execution Court was received by the respondents, they came to learn about the arbitral proceedings and the consequent arbitral Award. Therefore, they had come forward with the present petition to set aside the arbitral Award. The ground on which the arbitral award is sought to be challenged that there has been no agreement between the

petitioners and the 1st respondent and there has been no communication from the Arbitrator or the 1st respondent regarding the arbitral proceedings. It is the categorical case of the petitioner that they had not received any notice informing them about the appointment of the Arbitrator and no notice has also been received from the Arbitrator and also the copy of the claim. Therefore, they were totally unaware about the proceedings.

5.Originally, the Office had raised a query with reference to the maintainability of the Original Petition since there was a delay. This Court by order dated 14.10.2019 was pleased to direct the Registry to number the Original Petition. There was no proof to show that the Award had been dispatched to the petitioners. Thereafter, by order dated 18.11.2019, the original records of the Arbitrator was directed to be produced and the Arbitrator in pursuance of the orders of this Court produced the xerox copies of the said proceedings though this Court had directed to production of Original records.

6.A perusal of the documents that has been produced by the Arbitrator would reveal that notice issued by the 1st respondent to the petitioners dated 02.11.2015 is not accompanied either by the Acknowledgment Card or returned cover indicating that notice had reached the petitioners. Thereafter, the Arbitrator has issued the first notice on 22.12.2015 informing the petitioners that the matter is listed on 26.03.2016 at 10.30 a.m. The proof of service does not accompany this notice. The records does not indicate if the notice has been dispatched. A xerox copy of the Acknowledgment Card finds place in the records without showing details about the sender or the date of which it is dispatched or received. On 22.12.2015, the Arbitrator had made the following Minutes to the proceedings:

"Sir,

*Sub: Take Notice that I have been
appointed as Sole Arbitrator by M/s.Daimler*

Financial Services India Pvt Limited, the claimant herein, in terms of the Arbitration Clause in the above said Loan Agreement between the claimant and respondents and also as per the provisions of Arbitration and Conciliation Act, 1996. There is no circumstances exist that give rise to justifiable doubts as to my independence or impartiality in resolving the dispute referred. The Claimant has filed their claim statement and the following documents on this 22.12.2015.

- 1.Copy of the Board Resolution*
- 2.Copy of the Loan Agreement*
- 3.Copy of the unattested Deed of Hypothecation*
- 4.Copy of the legal notice*
- 5.Copy of the letter of reference to arbitration*
- 6.Copy of the statement of account.*

The copy of the above said documents are appended herein.

Take further notice that the above matter

stands posted to 26.03.2016 at 10.30 a.m. at the venue of No.28 Appa Kannu Street, Lloyds Road, Royapettah, Chennai-600 014, for your appearance either in person or through your authorized representative and to submit your objections, if any, failing which, arbitration proceedings will be commenced and Arbitral Award will be passed on merits by setting the Respondents ex parte.

Dated at Chennai at this 22nd day of December 2015."

7.Despite the fact that there is no proof to show service on the petitioners, the Arbitrator has discussed that the first notice has been served on the respondents. The Arbitrator has called the petitioners absent and set them *ex parte* and marked Ex.A.2 to Ex.A.6 and reserved the matter for orders. On 10.06.2016, the *ex parte* Award has been passed.

8.It is clear that the petitioners before this Court have not

been given proper notice regarding the appointment of the Arbitrator or arbitral proceedings and therefore, they were unable to present the case. Therefore, the arbitral Award has to be set aside in view of the provisions of Section 34(2)(iii) of the Act. The learned counsel for the respondents would also agree that there is no proof to show that the petitioners were duly served.

Accordingly, this Original Petition is allowed.
Consequently, connected applications are closed.

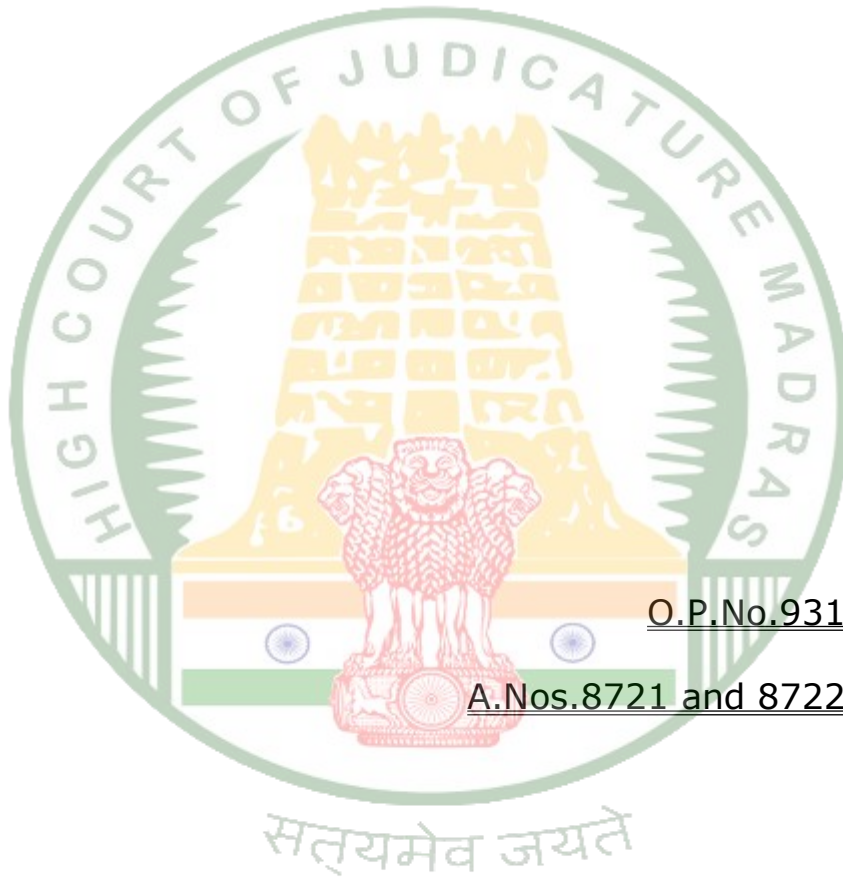
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P.T. ASHA. J,

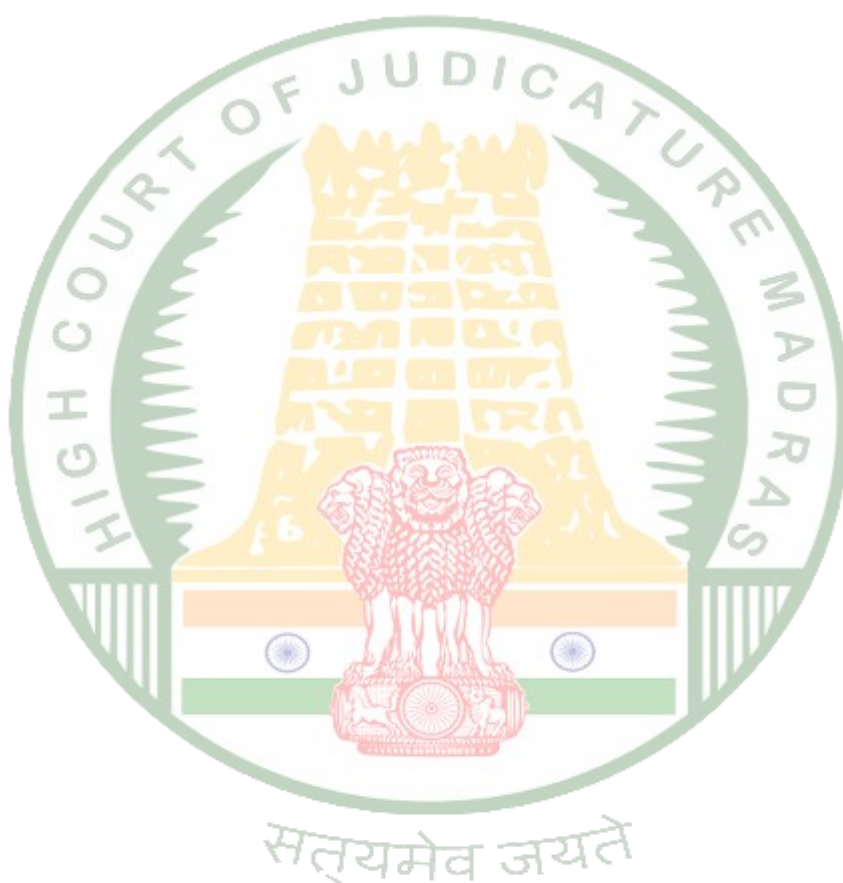
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