

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Original Petition No.435 of 2014

1. M.Indirani
  2. K.Marga Sagayam
  3. S.Muthuraman
- ... Petitioners

vs.

1. M/s.Shriram City Union Finance Ltd.,  
rep. by its Assistant Manager (Legal),  
No.123, Angappa Naicken Street,  
Chennai 600 001.
  2. C.A.Ravichandran
  3. M.Devapunniya Vathani
- ... Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Arbitral Award dated 21.05.2014 passed by the Sole Arbitrator in respect of Trade Finance Agreement No.CTFWMMNR0000430, dated 30.11.2010.

For Petitioner : Mr.R.P.Prathap Singh

For 1st Respondent : Ms.A.Janani  
for M/s.K.V.Anantha Krishnan

**ORDER**

Petitioners have come up with the present Original Petition challenging the Arbitral Award dated 21.05.2014 passed by the Sole Arbitrator in respect of Trade Finance Agreement No.CTFWMMNR0000430, dated 30.11.2010.

2. It is seen that the Petitioners herein borrowed a sum of Rs.3,00,000/- as loan from the 1<sup>st</sup> Respondent/Finance Company vide

Agreement No.CTFWMMNR0000430, dated 30.11.2010. As per the Loan Agreement, the Petitioners have to repay the loan amount in 36 equated monthly instalments of Rs.12,480/- each, commencing 10.01.2011 and in the event of cheque being dishonoured on the due dates, the Petitioners shall be liable to pay late payment charges at the rate of 3% per month on all the outstanding amount till the date of receipt of the amount.

3. It is the case of the 1<sup>st</sup> Respondent/Finance Company that the Petitioners have so far paid a sum of Rs.2,73,340/- to the 1<sup>st</sup> Respondent/Finance Company after giving credit to all the payments made so far and they are further liable to pay a sum of Rs.1,89,798/-. As the Petitioners did not come forward to pay the said amount despite repeated demands, the 1<sup>st</sup> Respondent/Finance Company initiated Arbitration proceedings against the Petitioners herein.

4. Though Arbitration Notices were served on the Petitioners, none appeared before the Arbitrator. Hence, they were called absent and set Exparte. After examining the oral and documentary evidence available on record, the Arbitrator allowed the claim of the 1<sup>st</sup> Respondent/Finance Company and consequently directed the Petitioners herein to pay jointly or severally a sum of Rs.1,89,798/- together with interest at 18% per annum from 26.03.2013 till its realization and Rs.5,000/- towards the cost of Arbitration. It was further held therein that in case of non-compliance thereof, the 1<sup>st</sup>

Respondent/Finance Company may proceed further by executing the Award for recovery of the amount due from the Petitioners.

5. Learned counsel for the Petitioners submitted that the Petitioners availed loan from the 1<sup>st</sup> Respondent/Finance Company for a sum of Rs.3,00,000/- and without their knowledge, it was converted into chit fund and without any proper notice, Arbitration proceedings have been initiated against them.

6. In reply, learned counsel appearing for the 1<sup>st</sup> Respondent/Finance Company submitted that the Petitioners availed loan to the tune of Rs.3,00,000/- repayable in 36 monthly instalments and for that purpose, 19 post-dated cheques were issued initially. Out of the 19 cheques, 7 cheques were dishonoured. He contended that for dishonour of the cheques, a sum of Rs.1000/- has to be paid by the Petitioners and that the rate of interest fixed for default in payment is 36% per annum from the date of default.

7. Learned counsel for the 1<sup>st</sup> Respondent/Finance Company went on to state that the Petitioners agreed to pay a sum of Rs.12,480/- per month in 36 months, when the loan was availed. As there was default, pre-Arbitration notice was issued and thereafter, Arbitration proceedings have been initiated. He further submitted that though paper publication was effected, Petitioners did not chose to appear and all the notices have been served to the last known

address of the Petitioners as stated in the Agreement. He also stated that the copy of the Arbitral Award sent to the Petitioners was received by them in the very same address furnished by them at the time of availing loan. Hence, he prayed that the Original Petition has to be dismissed.

8. Heard the learned counsel for the parties and perused the material documents available on record.

9. It is not in dispute that the Petitioners availed loan for a sum of Rs.3,00,000/- agreeable to be repaid in 36 instalments at Rs.12,480/- per month and in terms of the Agreement, if there is any default, the rate of interest will be 36% per annum from the date of default. On a reading of the Arbitral Award, it is clear that the Petitioners were given due notice and paper publication has also been effected. It is further seen that the Petitioners have received the Arbitral Award at the very same addresses, as mentioned in the Loan Agreement.

10. The contention of the learned counsel for the Petitioner that the loan has been converted into a chit fund account, cannot be accepted, as there is no evidence to that effect before the Arbitrator. Hence, this Court is of the view that the Petitioners are liable to pay the entire amount due to the 1<sup>st</sup> Respondent/Finance Company.

11. When this Court posed a question to the learned counsel appearing for the 1<sup>st</sup> Respondent/Finance Company as to whether the rate of interest could be reduced from 18% per annum to 9%, learned counsel appearing for the 1<sup>st</sup> Respondent/Finance Company submitted that the 1<sup>st</sup> Respondent/Finance Company is willing to accept the same.

12. In view of the above, this Court directs the Petitioners herein 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 four months from the date of receipt of a copy of this order.

13. In case, the Petitioners fail to pay the outstanding amount within the stipulated time or seek extension of time, the rate of interest fixed in the Arbitral Award shall stand restored.

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

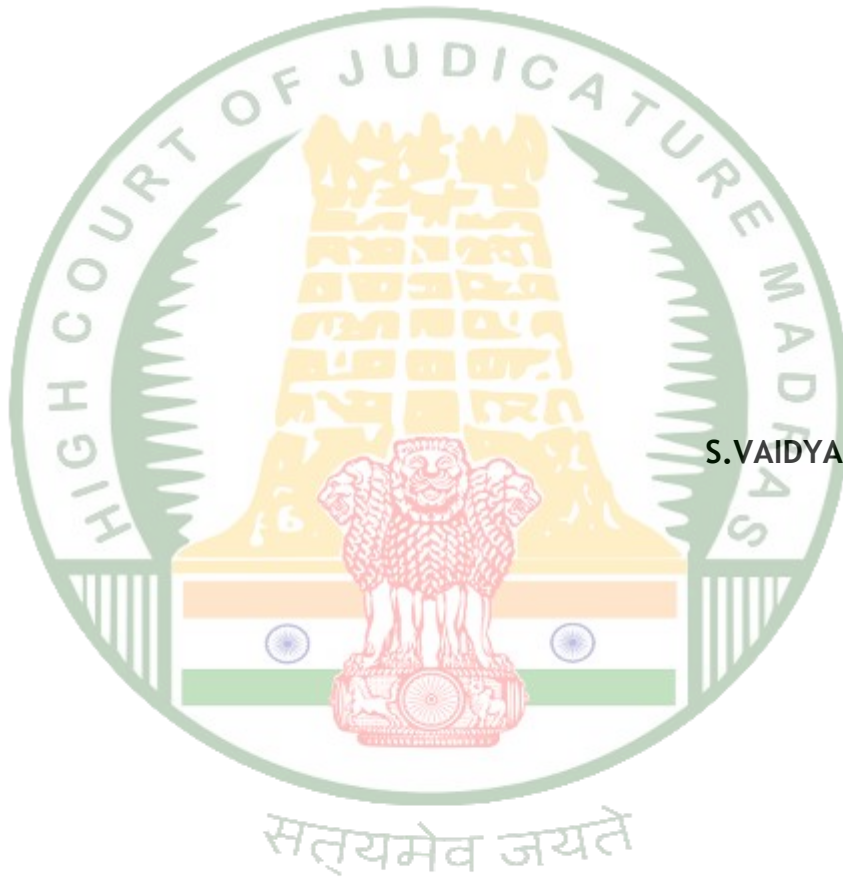
28.01.2019

Index : Yes/No  
Speaking order : Yes/No

**Note to Registry:**

Issue copy of this order on or before 20.03.2019.

(aeb)



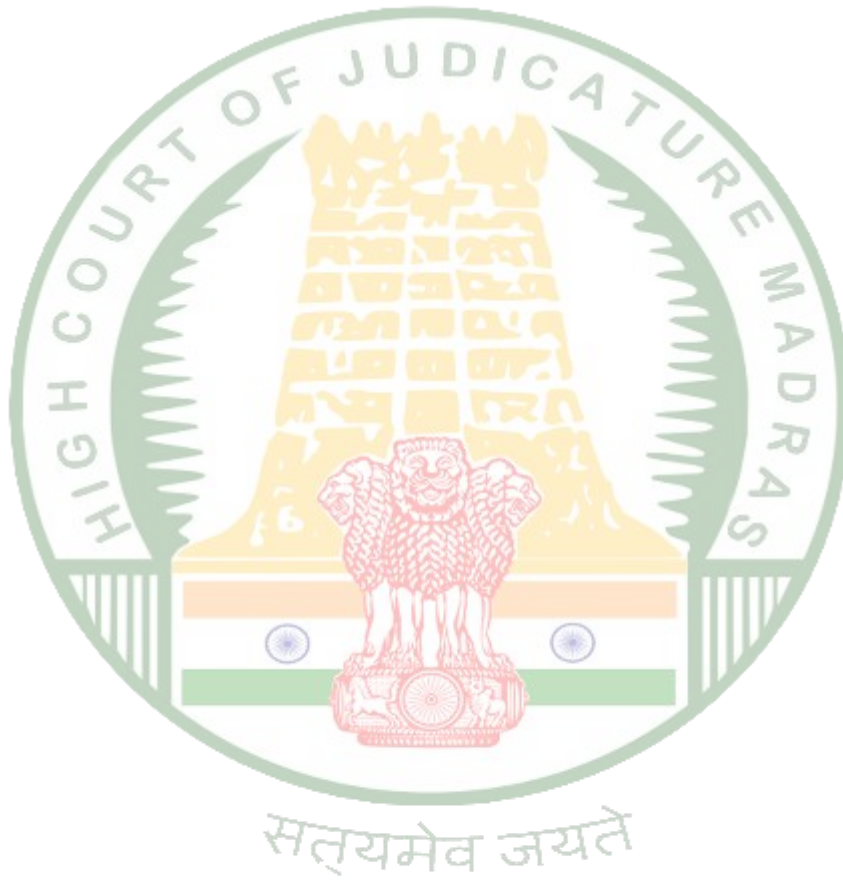
S.VAIDYANATHAN,J.

(aeb)

WEB COPY

O.P.No.435 of 2014

28.01.2019



WEB COPY