

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 27.01.2020**

CORAM

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

O.P.No.167 of 2015

Mr. Kolan Chinathan. N.

...Petitioner

Vs

1. Cholamandalam Investment and Finance Co. Ltd.,  
(Formerly Cholamandalam DBS Finance Limited)  
"Dare House", No.2, N.S.C. Bose Road,  
Parrys, Chennai- 600 001.

2. K. Damayanthi  
Advocate/Arbitrator,  
Door No.6/1, Lakshmi Nagar,  
2nd Street, Velacherry,  
Chennai- 42.

3. Mr. Shankar V.

...Respondents

WEB COPY

**PRAYER:** Original Petition is filed under Section 34 (2) (ii) and (iii) of the Arbitration and Conciliation Act, 1996 to set aside the Ex-parte award dated 07.12.2010 passed by the 2nd respondent in Arbitration Claim Petition No.1887 of 2008.

For Petitioner : Mr. R. Abdul Mubeen  
Mr. Pitty Parthasarathy  
Mr. E. Murugan  
Ms. M. Vanitha  
Ms. S. Aaliya Sultana  
For Respondents : Mr. D. Pradeep Kumar

**ORDER**

By order dated 19.12.2019, this Court directed the learned counsel for the first respondent to produce the original Award and the proof of notice sent in the form of returned covers and acknowledgment copies, the same have been produced today which show that the respondent has refused to receive the Award.

WEB COPY

2. The above OP has been filed by the first respondent in the Arbitral Proceedings challenging the Award dated 07.12.2010.

3. The facts in brief which are necessary for disposing of the above Petition are that the first respondent investment company had extended a loan to the petitioner herein in the purchase of Tata LPT 2518 Vehicle. After negotiations the loan agreement dated 24.11.2005 was entered into for a sum of Rs.9,65,000/-. The said sum was repayable in 48 equal monthly installments commencing from 1.01.2006 till 1.11.2009, however the petitioner has failed to adhere to the schedule of repayment. Therefore the claimant, exercising the rights granted to them under the agreement, had repossessed the said Vehicle and sold the same for a sum of Rs.5,70,000/-. On 16.11.2007, which was the best price that the vehicle had fetched. After adjusting the sale proceeds, a sum of Rs.3,67,719/- was still due and owing from the petitioner herein. The second and third respondents had stood as guarantors for the above loan. In view of the default in the payment of outstanding amount, the first respondent issued a legal notice on 05.12.2007 informing the respondent about the sale and asking the short fall which they refused. Therefore the first respondent had initiated arbitral proceedings. Originally a sole Arbitrator Mr.V.Kengasubbiah was appointed as Arbitrator and pending

the Arbitral proceedings he had passed away. The Arbitrator who had ultimately passed the Award was nominated by the first respondent as per the rights given to them in the Agreement. Though notice has been issued to the petitioner herein both by the earlier Arbitrator as well as by the present Arbitrator to the address given by the petitioner, they had refused to receive the said notice and the notices have been returned with the endorsement "refused". Challenging the Award the petitioner has filed the above application and the only ground on which the challenge has been made is on the ground that no notice has been received by the petitioner. This Court had called for the original records. A perusal of the original records would clearly indicate that the petitioner was put on notice at every stage but however he has chosen not to appear before the Arbitrator to put forth his case. The first respondent has submitted evidence to show that amounts were due on the loan amount. A well reasoned award has been passed by the Arbitrator taking note of the evidence on record. The petitioner has not made out any case under Section 34 to set aside the award and therefore the OP stands dismissed.

4. The learned counsel for the first respondent undertakes to handover the original records to the Arbitrator and therefore the Registry is directed to handover the original records of the Arbitrator to the learned counsel for the first respondent, under due acknowledgment from him.

**27.01.2020**

mrn

Index : Yes/No

Speaking order/non-speaking order

To,

1. The Cholamandalam Investment and Finance Co. Ltd.,  
(Formerly Cholamandalam DBS Finance Limited)  
"Dare House", No.2, N.S.C. Bose Road,  
Parrys, Chennai- 600 001.

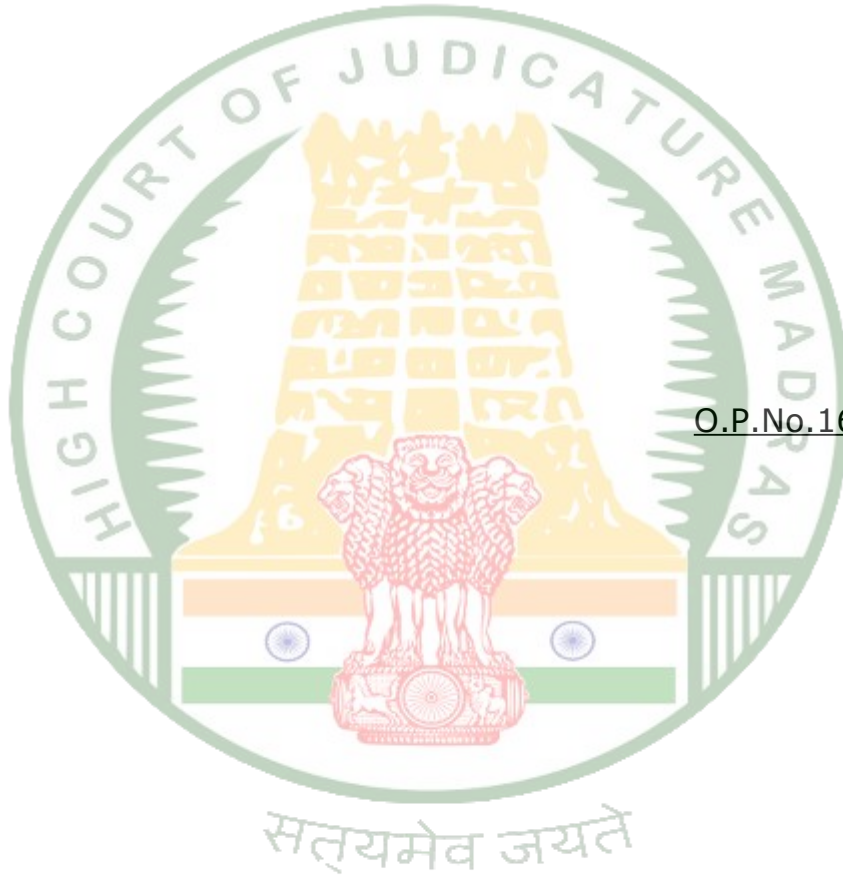
2. K. Damayanthi  
Advocate/Arbitrator,  
Door No.6/1, Lakshmi Nagar,  
2nd Street, Velacherry,  
Chennai- 42.

WEB COPY

O.P.No.167 of 2015

**P.T.ASHA, J.,**

**mrn**



O.P.No.167 of 2015

**WEB COPY**

**27.01.2020**