



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2021

CORAM :

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRP.(PD).No.1394 of 2017 and

CMP.No.6450 of 2017

1.Dhanalakshmi.S (Borrower)

2.Subbhramaniam. M.(Guarantor)

...Petitioners

Vs.

M/s.INDO ASIA FINANCE LIMITED,
Rep.by its Authorized Signatory,
Ms.Ganesan,
No.15, New Giri Road(Opp Hotel Accord)
T.Nagar, Chennai - 600 017.

...Respondent

Prayer: This Civil Revision Petition has been filed under Article 227 of Constitution of India to strike down the claim petition in ARC/IAFL/VL/041/16 of 2016 before the Sole Arbitrator S.S.Mariappan, Arbitration Tribunal, Chennai.

For Petitioners : Mr.MA.P.Thangavel

For Respondent : No appearance

ORDER

(This case has been heard through video conference)

This civil revision petition has been filed to strike down the claim petition in ARC/IAFL/VL/041/16 of 2016 before the Sole Arbitrator S.S.Mariappan, Arbitration Tribunal, Chennai.

2.Mr.MA.P.Thangavel, learned counsel for the petitioners would submit that the petitioners are the borrowers of the vehicle loan under the hire purchase. The petitioners entered into the hire purchase agreement with the respondent on 13.04.2007 and took a vehicle loan for purchase of a Tanker Lorry bearing registration No.TN 57 F 7709. As per the hire purchase agreement, the petitioners have borrowed a sum of Rs.17,00,000/- payable in 35 equal installments. Out of the 35 installments, 10 installments have to be paid at the rate of Rs.56,250/- and the remaining 25 installments have to be paid at the rate of Rs.45,500/-. The petitioners had paid the installment amount without any dues and the petitioners had at onestroke paid a sum of Rs.4,60,000/- by way of Demand Draft towards the remaining balance amount and the entire hire amount was closed.



3. Pursuant to the same, the respondent also issued no objection certificate and also cancelled the loan cum hypothecation agreement dated 13.04.2007. The petitioners approached the concerned Motor Vehicle Authority and the Motor Vehicle Authority by their proceedings dated 26.02.2009 cancelled the hypothecation on the vehicle. After clearing the loan, the petitioners have also sold the vehicle to the third parties. While so, to the shock and surprise, the petitioners received a notice for Arbitration from one Mr.S.S.Mariappan, B.Com.B.L., Senior Civil Judge (Retd.) claiming him to appoint as sole Arbitrator of the respondent in respect of the loan account No.HP04931.

4. Immediately, following the notice from the Arbitrator, a legal notice was also sent by the respondent through an advocate viz., Mr.M.Ajmal Azzath, B.A., B.L., on 16.04.2016 under reference No.AA/1AFL/LRN/035/16 claiming that the amount of Rs.18,36,900/- was pending. The petitioners had immediately sent a reply to the counsel as well as the respondent with proof on 11.05.2016 stating that the entire loan amount has been settled and only based on the no objection certificate, the vehicle was transferred and sold to the third parties. However, without taking into consideration the document submitted by the petitioners and the reply sent by them, the respondent has sent the notice for arbitration proceedings, against which, the civil revision petition has been filed.

5. The learned counsel for the petitioners would submit that the proceedings initiated by the respondent is a clear case of abuse of process of law as well as Court. The petitioners have repaid the entire loan amount and only based on the No objection Certificate, the vehicle was sold to one Mr.P.Gunasekaran and when the loan has been settled and the hypothecation has been cancelled, the proceedings claiming the amount through the claim petition is a clear abuse of process of law and thereby would pray for quashing of the proceedings before the Arbitrator.

6. On earlier two occasions, this Court, based on the representation and the document filed along with the revision, had directed the counsel for the respondent to get instructions with regard to the loan. Today, there is no representation for the respondent.

7. Heard the counsel for the petitioner and perused the materials available on record.

8. In this case, the petitioners have entered into a hire purchase agreement for purchase of Tanker Lorry, based on the agreement necessary endorsements have been made in the RC Book. Subsequently, the petitioners have closed the entire loan, the



respondents have also issued necessary no objection certificate, based on which the petitioners have approached the Motor Vehicle authorities and the Motor Vehicle authorities by proceedings dated 26.02.2009 had also cancelled the hypothecation. Based on the cancellation of Hypothecation endorsement, the vehicle has been sold to a 3rd party. Whiles, an Arbitrator had been appointed by the respondent and the legal notice had also been sent by the counsel for the respondent claiming that an amount of Rs.18,36,900/- was pending. The petitioners have immediately sent a reply to the counsel as well as to the respondent on 11.05.2016 stating that the entire loan amount has been settled and they also enclosed necessary proofs, without taking into consideration, the reply, the proof of payment and the NOC issued, the respondents had mechanically continued with the Arbitration proceedings. When the entire amount has been settled and NOC has been issued, there is no need for the respondent to initiate Arbitration proceedings and it has been done mechanically without application of mind. In the opinion of this Court, the Arbitration proceedings is nothing but abuse of process of law.

9. In view of the above, the civil revision petition stands allowed and the proceedings initiated by the respondent in ARC/IAFL/VL/041/16 of 2016 before the Sole Arbitrator S.S.Mariappan, Arbitration Tribunal, Chennai stands quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sms

To

The Arbitrator, S.S.Mariappan,
Arbitration Tribunal, Chennai.

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.34369

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UM (CO)
RGA(13/08/2021)



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