

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

**DATED : 08.07.2021**

**CORAM :**

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA**

**CRP(NPD)No.4809 of 2017**  
**and CMP No.22666 of 2017**

1. P.Vijayakumar
2. P.Sakthivel
3. P.Pappu

... petitioners

Vs.

M/s.Sakthi Finance Limited,  
Rep. By its General Manager (Operations)  
No.62, Dr.Nanjappa Road,  
Coimbatore – 641 018.

... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India against the attachment and sale passed in REP.No.166 of 2014 in AC.No.63 of 2013 dated 04.11.2017 on the file of the Fast Track Mahila Court, Namakkal.

For Petitioners : Mr.P.R.Balasubramanian  
for M/s.A.Loba Mudra

For Respondent : M/s.Elaiyakumar  
for M/s.Ramalingam Associates.

**ORDER**

(This case has been heard through video conference)

This civil revision petition has been filed against the order of

attachment and sale passed in REP.No.166 of 2014 in AC.No.63 of 2013

dated 04.11.2017 on the file of the Fast Track Mahila Court, Namakkal.

2. The brief facts of the case is that the revision petitioners are the judgment debtors. The first petitioner is the hirer having availed a vehicle loan from the respondent under hire purchase agreement No.023120305000, to the tune of Rs.7,60,375/- (advance amount of Rs.5,50,000/- finance charges Rs.2,10,375/-) in respect of the Vehicle 2007 model Tata 2515 Goods Vehicle bearing Registration No.TN46-E-9122. The loan was to be repaid in 35 monthly instalments at the rate of Rs.21,725/- commencing from 09.09.2011 and ending on 09.07.2014. The first petitioner had took possession of the vehicle and 2<sup>nd</sup> and 3<sup>rd</sup> petitioners have stood as guarantors to the loan availed by the first petitioner. The 3<sup>rd</sup> petitioner as guarantor for the loan availed by the 1<sup>st</sup> petitioner had executed personal guarantee agreement on 30.07.2011. Thereby, the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners stood jointly and severally liable to pay the loan amount borrowed by the first petitioner. The first petitioner had paid only 12 instalments and part of 13<sup>th</sup> monthly instalment totalling to a sum of Rs.2,76,276/- and he had not paid the balance amount thereby became a chronic defaulter and became liable to pay the additional hire charges and expenses on delayed and defaulted instalments. In view of the default committed by the petitioners in payment of hire instalments

and additional finance charges, the respondent/claimant decided to exercise the rights available under the hire purchase agreement to repossess and sell the hired vehicle. At that time, the respondent/claimant came to know that the first petitioner had colluded with the other petitioners and transferred the possession and enjoyment of the hire vehicle to 3<sup>rd</sup> parties without the knowledge of the consent of the respondent/claimant and committed criminal breach of trust. Thereafter, pursuant to the hire purchase agreement the respondent/claimant initiated arbitration proceedings. As on 01.08.2013, the petitioners were liable to pay the balance of hire amount Rs.4,84,099/- expenses of Rs.4,500/- and additional hire charges of Rs.59,588/- totalling a sum of Rs.5,48,187/-. Since, the petitioners did not pay the amount, in spite of repeated demand, the respondent/claimant invoked Clause 16 of the hire purchase agreement and referred the matter to sole arbitrator.

3. The sole arbitrator had issued notice to the petitioners vide RPAD informing them of the acceptance of the nomination and to appear on 10.08.2013. Notice sent to the 1<sup>st</sup> and 3<sup>rd</sup> petitioners were returned

unclaimed and the 2<sup>nd</sup> petitioner had received the notice. Whiles, on 10.08.2013, Advocates Mr.R.Krishnan and Mr.Gopikumar filed vakalat for petitioners 1 to 3. On 12.10.2013, claim statement and documents were furnished to the counsel for the petitioners and the case was posted on 23.11.2013 for filing counter. On 23.11.2013, neither the petitioners nor their counsel appeared and the case was adjourned to 08.02.2014. On 08.02.2014, there was no representation for the petitioners, the petitioners called absent and set exparte. The respondent/claimant filed proof affidavit on 15.03.2014 and marked Ex.A1 to Ex.A11 and an award was passed directing the petitioners 1 to 3 jointly and severally to pay the respondent/claimant a sum of Rs.5,48,187/- with additional hire charges at 18%p.a. from 12.10.2013 from the date of claim petition till the date of payment and also with cost of Rs.9,000/-. Since, the petitioners did not pay the amount, the respondent/claimant had filed REP.No.166 of 2014. Thereafter, the execution Court had issued notice to the petitioners and the first petitioner had filed counter. In the counter, it was contended by the petitioners that the entire loan amount was already repaid and a receipt of Rs.1,50,000/- dated 31.05.2013 was also filed. The Court finding that the award was dated 14.06.2014 and the

above receipt was dated 31.05.2013 prior to the award and that no documents were filed to prove that the entire amount was paid, had passed the impugned order attaching the property of the 3<sup>rd</sup> petitioner and directed to sell the petition mentioned property, against which the revision has been filed.

4. Heard the counsel and perused the materials available on record.

5. The learned counsel for the petitioners would submit that the loan amount is for Rs.5,50,000/- and the monthly instalment was fixed at Rs.21,725/-p.m. and out of 35 instalments, the petitioners have paid 12 monthly instalments and further the petitioners have also paid an amount of Rs.1,50,000/- to the Branch Manager that was not been taken into account. The executing Court without looking into the payments made by the petitioners had erroneously passed the order.

6. In response, the learned counsel for the respondent/claimant would submit that the petitioners have availed the loan amount of

Rs.7,60,375/- and they are liable to repay the amount in 35 instalments of Rs.21,725/-p.m. The petitioner had paid only 12 instalments and thereafter they had not paid any amount and the vehicle was purchased under hire purchase agreement and the respondent/claimant is the owner of the vehicle till the entire amount is settled, whereas the petitioner without the knowledge of the respondent/claimant have sold the vehicle and thereby committed the criminal breach of trust. The whereabouts of the vehicle is also not known. Further, as on 01.08.2013, the petitioners were liable to pay the balance hire amount of Rs.4,84,099/-, expenses of Rs.4,500/- and additional hire charges of Rs.59,588/- totalling a sum of Rs.5,48,187/-, thereby the respondent/claimant initiated arbitration proceedings. The Arbitrator after due notice to the petitioners, passed the award as early as 14.06.2014 and thereafter, the petitioners have not paid even a single pie, thereby the EP Court had after giving sufficient notice has passed the order. He would submit that there is no infirmity or error in the order passed by the EP Court and thereby he would seek for dismissing the present civil revision petition.

7. The arbitrator has passed the award on 14.06.2014 directing the petitioners to jointly and severally pay the respondent/claimant a sum

of Rs.5,48,187/- with an additional hire charges at 18% p.a. from 12.10.2013 date of claim statement till payment and cost of Rs.9,000/- payable within three months from the date of Award. The Award of the Arbitrator has also become final. The petitioners have not made any payment after the Award. Whereas in violation of the hire purchase agreement had sold the vehicle and committed criminal breach of trust. Even in the EP Court after service of notice, no amount has been paid. The EP Court after granting sufficient opportunity has passed the impugned order.

8. This Court does not find any infirmity or irregularity in the order passed by the Fast Track Mahila Court, Namakkal made in REP.No.166 of 2014 in AC.No.63 of 2013 dated 04.11.2017.

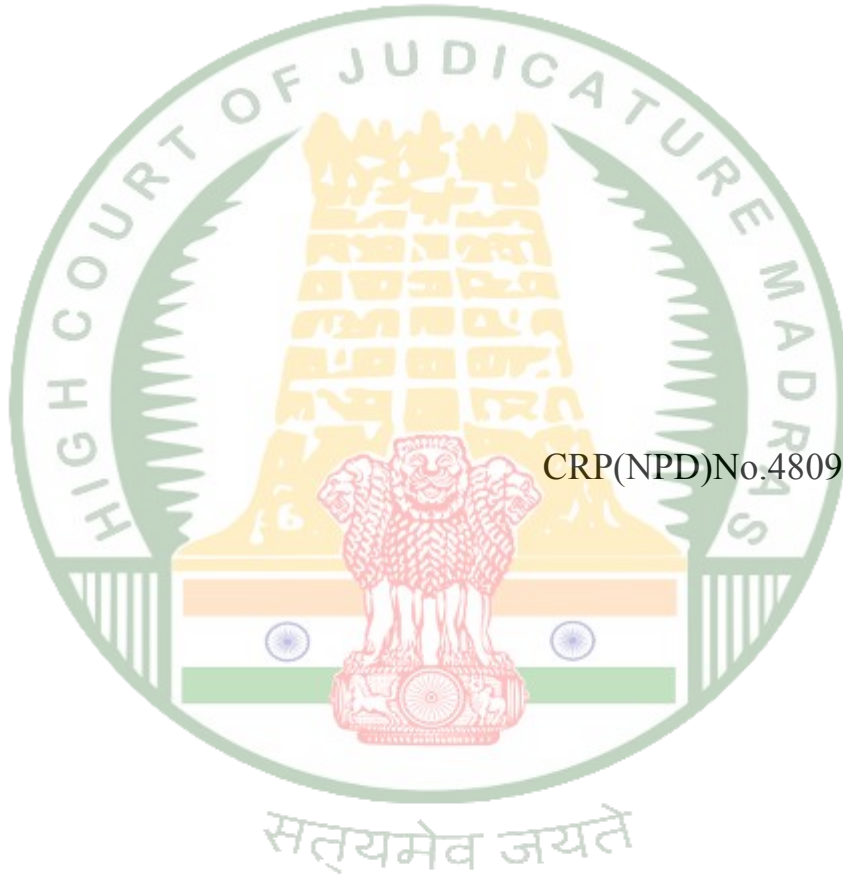
9. In the result, the civil revision petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

**08.07.2021.**

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To  
The Fast Track Mahila Court, Namakkal.

**A.D. JAGADISH CHANDIRA, J.,**

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