



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.03.2022**

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.296 of 2018

D.Dhinakaran

... Appellant/Petitioner

vs.

1.M/s.Shriram Transport Finance
Company Limited
Tenkasi Branch,
Represented by its Authorised Representative
Tr.K.Rajeshkumar

2.M.Ramanathan

3.S.Ayyadurai

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under 37(1)&(2) of Arbitration and Conciliation Act, praying this Court to set aside the executable and fair order dated 10.02.2017 made in Arbitration O.P.No.86 of 2015 by the learned Principal District Judge, Tirunelveli, against the award in Arbitration Case No.563 of 2013 dated 05.02.2015 passed by the learned Sole Arbitrator, Tirunelveli, by allowing this Civil Miscellaneous Appeal with costs throughout.

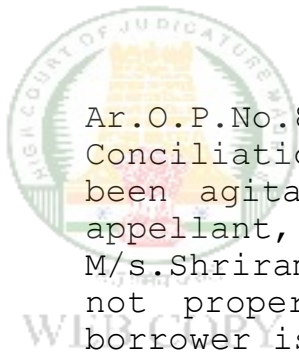
For Appellant	:	Ms.S.Akila
For R1	:	Mr.Anand C.Rajesh
For R2 & R3	:	No appearance

JUDGMENT

This Civil Miscellaneous Petition is filed to set aside the executable and fair order dated 10.02.2017 made in Arbitration O.P.No.86 of 2015 by the learned Principal District Judge, Tirunelveli, against the award in Arbitration Case No.563 of 2013 dated 05.02.2015 passed by the learned Sole Arbitrator, Tirunelveli.

2.The financier has initiated the arbitration proceedings by appointing the arbitrator and the case was taken as Arbitration Case No. 563 of 2013. Notice was served upon the appellant and he has also engaged an advocate. Subsequently, he has not contested the case and an award was passed on 05.02.2015 directing the petitioner/appellant herein to pay a sum of Rs.54,579/- along with 18% interest from the date of claim petition till the date of realization.

3.Challenging the said award, Arbitration OP has been filed before the learned Principal District Judge, Tirunelveli, in
<https://hcservices.ecourts.gov.in/hcservices/>



Ar.O.P.No.86 of 2015 under Section 34 of the Arbitration and Conciliation Act. In the said proceedings, three major points have been agitated namely sufficient opportunity was not given to the appellant, the factum that the vehicle was subsequently sold by the M/s.Shriram Transport Finance Company Ltd., and the said amount was not properly adjusted and the rate of interest claimed by the borrower is higher.

4.The learned Principal District Judge, Tirunelveli, after going through the records has found that one advocate Mr.M.A.Abdul Majeeth has entered appearance for the appellant herein. In spite of sufficient opportunity being offered, he has not contested the case. Hence, the Arbitrator decided the case on merits and therefore, the plea of insufficiency of the hearing has also been negatived. The insurance premium for the vehicle has to be paid by the borrower as per Article 4 of the Hypothecation Agreement (Ex.A2) and therefore, the same cannot be treated as excessive payment. With regard to rate of interest, there is a specific clause in the Hypothecation Agreement as rightly observed by the Arbitrator. Considering the scope of Section 34 of the Arbitration and Conciliation Act, 1996, the learned Principal District Judge, has rejected the said Arbitration OP and hence, the appellant/respondent in the Arbitration Proceedings has filed the present appeal.

5.The learned counsel for the appellant would contend that the excess payment has not been considered by the Arbitrator and there is no sufficient opportunity to defend the case.

6.The very same objections have been raised before the lower Appellate Court and the same has been negatived by assigning the reasons as stated supra.

7.In view of the factual position as revealed from the records, I do not find any merits in this case. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

cp

To

1.The Principal District Judge,

Tirunelveli.

<https://hcservices.ecourts.gov.in/hcservices/>



2.S.Ayyadurai,
Sole Arbitrator, 38A, puthupettai North Street,
Palayamkottai
Tirunelveli.

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The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.ANANTH C RAJESH, Advocate (SR-9485[F] dated
02/03/2022)

C.M.A(MD) No.296 of 2018
02.03.2022

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