

(2013) 03 MAD CK 0190

In the Madras High Court

Case No : O.S.A. No. 64 of 2012 and M.P. No's. 1 and 2 of 2012

Hinduja Leyland Finance Limited

APPELLANT

Vs

Mr. Robert Sam and Mr. Mariya Sebastin

RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9

Citation : (2013) 2 LW 190

Hon'ble Judges : M.M. Sundresh, J;M. Jaichandren, J

Bench : Division Bench

Advocate : M.S. Krishnan, for Mr. M. Moorthy, for the Appellant; A.L. Ganthimathi for R1, for the Respondent

Final Decision : Allowed

Judgement

M.M. Sundresh, J.—This appeal has been preferred by the appellant being aggrieved against the judgment and decree rendered in Application No. 5908 of 2011, in Application No. 5546 of 2011, dated 2.2.2012, by the learned single Judge, directing the appellant to release the vehicle subject to the condition imposed therein. There was an Hire Purchase Agreement between the appellant and the respondents for a sum of Rs. 97,61,400/- to be payable in 34 equal monthly installments of Rs. 2,87,100/- per month. The said amount is inclusive of the financed amount of Rs. 76,50,000/- and the finance charge of Rs. 21,11,400/- towards the purchase of excavator. As per the Hire Purchase Agreement, dated 31.5.2010, the first respondent took possession of the vehicle. The second respondent is the guarantor of respondent No. 1. Since the respondents have defaulted in making the payment of monthly installments, the loan was foreclosed and thereafter the application was filed u/s 9 of the Arbitration and Conciliation Act, 1926, by the appellant seeking prayer to seize the vehicle. The said application was allowed. Thereafter, the respondent No. 1 herein filed an application in Application No. 5908 of 2011 seeking an order of interim injunction restraining the appellant from selling the scheduled asset

pending disposal of the arbitration proceedings. The learned single Judge, by way of an interim arrangement directed the respondent No. 1 to make payment of Rs. 8,00,000/- and thereafter, a further amount of Rs. 7,00,000/- was also directed to be paid within the time stipulated therein. The learned Single Judge on his own came to the conclusion that the amount due is Rs. 21,00,000/-. Challenging the same present appeal has been filed.

2. It is seen that even as per the records produced by the respondent No. 1 only a sum of Rs. 30,22,400/- was paid, out of the total amount of Rs. 91,87,200/-. Moreover an award was also passed by the arbitrator against the respondent No. 1 for a sum of Rs. 69,13,202/-. Therefore, we are of the considered view that the order of the learned single Judge fixing the balance amount payable by the respondent No. 1 as Rs. 21,00,000/- is contrary to facts. It is trite law that the parties are governed by the terms of the agreements entered into between them. This Court, especially, while exercising the powers, u/s 9 of the Arbitration and Conciliation Act, 1996, cannot rewrite the terms of the agreement. Furthermore, as observed earlier, there is already an award against the respondents for a sum of Rs. 69,13,202/-.

Hence, considering the above facts we set aside the order of the learned single Judge, dated 2.2.2012, made in Application No. 5908 of 2011, in Application No. 5546 of 2011.

Accordingly, the appeal stands allowed.