

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2015

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

O.S.A.No.129 of 2015

1.R.Vijayalakshmi

2.Mr.N.Rajkumar

... Appellants

Vs.

M/s.Kotak Mahindra Bank Limited,
Rep., by its Authorised Signatory,
Mr.S.Karthikeyan,
2nd Floor, No.3, Dass India Power,
2nd Line Beach, Parrys,
Chennai - 600 001.

... Respondent

Prayer:-Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules r/w clause 15 of Letter Patent, against the order dated 04.06.2015 in Application No.7820 of 2014.

For Appellants : M/s.Girija Velmurugan

JUDGMENT

(Judgment of the Court was made by T.S.SIVAGNANAM, J.)

This appeal is directed against the order dated 04.06.2015, in Application No.7820 of 2014, filed by the first respondent herein.

2. The first respondent filed the said application under Section 9 of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as the 'Act'), to appoint an Advocate Commissioner to seize the commercial vehicle Mahindra Bolero SLE B5-IV bearing registration No.TN19F 5274, and hand over the same to the respondent

in as is where is condition. An order was passed on 04.12.2014, appointing an Advocate Commissioner and a warrant of Commission was issued to seize the vehicle.

3. The learned Advocate Commissioner filed a report before this Court stating that when she reached the residence of the petitioner, she found that there were local politicians, who were intimidated prior to her visit and were waiting with the group of henchman and they blocked the Advocate Commissioner from entering into the petitioner's premises, where the vehicle was parked. It is further stated that there were more than 20 Goondas and they abused the Advocate Commissioner and the Bank officials in unparliamentary words and the Sub-Inspector of Police instead of escorting the Advocate Commissioner to assist in the execution of the warrant issued by this Court, simply stood without even protecting her or responding the situation or to obey the order of this Court. It is further stated that while the Advocate Commissioner was inside the premises, the front gate was locked and she was dragged and threatened not to touch the vehicle, failing which she would face dire consequences. The Advocate Commissioner said to have lodged a complaint before the Superintending of Police, Kancheepuram. Apart from the above averments, the report also states about other occurrences, which are said to have taken place while she went to execute the warrant of commission.

4. Subsequently, the application was heard on 31.03.2015, wherein the learned Single Judge recorded the submission of the learned Advocate Commissioner that she was humiliated by the Sub-Inspector of Police E4, Kalapakkam Police Station at the time of execution of the warrant and directed the learned Government Pleader (Criminal Side) to intimate the said Sub-Inspector of Police to appear before the Court on 06.04.2015. The time for execution of the warrant was extended by four weeks.

5. The appellants have filed their objections to the report submitted by the learned Advocate Commissioner denying and disputing the allegations made in the report. Thereafter, the application was once again listed before the learned Single Judge and an order was passed on 04.06.2015, directing the petitioners to pay a sum of Rs.2,58,400/- on or before 03.07.2015 and if they do not pay the amount, the learned Advocate Commissioner was directed to re-possess the vehicle and hand over the same to the respondent. Challenging this order dated 04.06.2015, the appellants have preferred this appeal.

6. The learned counsel appearing for the appellants submitted that the first respondent in their application, filed under Section 9 of the Act, has stated that out of 47 instalments, the appellants have paid 30 instalments and 17 instalments are due as on 20.11.2014 and when the default in payment is only for three instalments, there is no reason to repossess the vehicle. Further the allegation that the petitioners are taking hasty steps to dismantle the vehicle and dispose of the same, is a false and frivolous averment, in the light of the fact that the substantial payments have been effected by the petitioner and even as per the admission of the first respondent, the appellants have defaulted only three instalments. The learned counsel further submitted that they are ready to pay the entire amount and without considering these aspects, the impugned order has been passed.

7. We have heard the learned counsel appearing for the appellant and perused the materials placed on record.

8. Prima facie we do not approve the conduct of the appellants in preventing the Officer of this Court from carrying out the directions issued by this Court. If the appellants had any grievance against the order passed in the application, the appellants ought to have moved the Court and there can be no justifiable reason to prevent the Court order from being executed. We find from the impugned order that the appellants were granted time to pay a sum of RS.2,58,400/-, on or before 03.07.2015. If the appellants wanted extension of time or modification of the order, they should have moved by way of appropriate application before the concerned Court and the present appeal is thoroughly misconceived. We may hasten to add that the appellants, being a borrower, are bound to repay the amount and such repayment shall be in terms as agreed to by the appellants at the time of availing the loan. In the event of default, the respondent is entitled to exercise its rights under the Agreement/Contract and this being purely a commercial transaction, the question of this Court interfering in the impugned order does not arise.

9. Accordingly, the Appeal being devoid of merits is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

pbn

To

1.M/s.Kotak Mahindra Bank Limited,
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Chennai - 600 001.

2.The Sub Assistant Registrar,
Original Side,
High Court, Madras.

CNR(CO)
CA(22/07/2015)

O.S.A.No.129 of 2015



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