



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2015

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE M.M.SUNDRESH

O.S.A.No.35 of 2015
& M.P.No.1 of 2015

1. Mr.M.Mahalingam
2. Mrs.M.Vasundaradevi ... Appellants

Versus

Sundaram Finance Limited,
Rep. by its Deputy Manager(Legal),
Mr.G.S.Narayanakrishnan,
21, Patullos Road,
Chennai-600 002. ... Respondent

Prayer: Original Side Appeal filed under Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of Letters Patent against the Order and Decree dated 04.12.2014 made in Application No.5843 of 2013 on the file of this Court.

For Appellants : Mr.R.Murali

For Respondent : Mr.T.Srinivasa Raghavan

JUDGMENT

(Judgment of Court was made by M.M.Sundresh.J.,)

The appellants were the respondents before the learned single Judge, who allowed the application filed under Section 9 of the Arbitration and Conciliation Act, 1996, at the instance of the respondent herein.

2. On 31.03.2010, an agreement seeking loan was duly entered into between the parties towards the purchase of vehicles. As the appellants committed default in payment from the very first instalment, notices were issued by the respondent. The appellants



sought for time without complying with the terms of the agreement. After waiting in vain, the respondent duly invoked the arbitration clause by appointing an Arbitrator by letter dated 16.12.2010. Pending arbitration, an application in Appln.No.5843 of 2013 was filed seeking a direction to the appellants to furnish security to the tune of Rs.16,31,518/- and in default thereof, attach the property set out in the schedule to the judge's summons. In the affidavit filed in support of the application, the respondent has contended that the relief sought for was also for the reason that the whereabouts of the vehicles could not be traced.

3. The appellants filed a counter affidavit stating that the action of the respondent lacks bona fide since even after the discharge with respect to five contracts, original title deeds were not handed over to them.

4. When the matter was taken up on 27.10.2014, the learned single Judge has passed the following order.

"Before the Arbitrator, first respondent/borrower has filed a counter affidavit, stating that as per the compromise entered into between the parties, a sum of Rs.8,89,552/- alone has to be paid without interest and penal interest and that the same would be discharged within six months. The alleged compromise has been made in January 2013.

2. It is represented by the learned counsel for Sundaram Finance Company Ltd., that since January, 2013, no instalment has been paid.

3. Financial assistance has been granted for the purchase of Hindustan Ambassador Car, which according to the respondents, is now used as transport vehicle in

Trichy. Insofar as payment regarding the admitted amount, the learned counsel for the respondents seeks time. Post on 31.10.2014."

5. After noting the failure of the appellants in making any payment, the learned single Judge passed an order appointing an Advocate Commissioner to seize and hand over the vehicles. Challenging the said order, the present Original Side Appeal has been filed.

6. The learned counsel appearing for the appellants made two submissions before us. The first submission is that for the reasons known, the respondent has not handed over the documents even after the discharge of liabilities and the second submission being, a



different relief granted by the learned single Judge than the one sought for by the respondent.

7. The fact remains, the appellants have not paid the dues starting from the first instalment. For the alleged failure on the part of the respondent in not handing over the documents pertaining to other transactions, the appellants have already initiated action through the Court of law and in any case, it has got no bearing to the case on hand. The respondent has taken appropriate action in initiating arbitral proceedings at the earliest point of time. The power under Section 9 of the Arbitration and Conciliation Act, 1996, is rather wide. Though a submission is sought to be made on the scope and ambit of the Civil Procedure Code, it is irrelevant to go into it in this proceeding initiated under Section 9 of the Arbitration and Conciliation Act, 1996. Even in the decision relied upon by the appellant in SUNDARAM FINANCE LIMITED VS. M.K.KHUNHABDULLA ((2014) 3 CURRENT TAMIL NADU CASES 159) it has been held that Section 9 of the Arbitration and Conciliation Act, 1996, enjoins a Court of law to pass appropriate order of interim measure or protection. Thus, the Original Side Appeal stands dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

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To

1. The Sub.Asst.Registrar,
Original Side, High Court,
Madras.

+lcc to Mr.R.Murali, Advocate, S.R.No.10338
+lcc to Mr.T.Srinivasa Raghavan, Advocate, S.R.No.9942

O.S.A.No.35 of 2015

JP(CO)
CA(09/03/2015)