

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. Nos.2579 to 2583 of 2016

and C.M.P. Nos.18442 to 18446 of 2016

C.Mugilan .. Appellant in all the appeals

Versus

1.M/s.Indus Ind Bank Ltd.,
rep. by its power of attorney holder
Mr.S.T.Krishnakumar

2.R.Sudesh Babu .. Respondents in all the appeals

Prayer in all the appeals: Civil Miscellaneous Appeals filed under Section 37 of the Arbitration and Conciliation Act 1996 against the order dated 07.10.2010 passed in I.A. No.2 of 2016 in SRR/ACP Nos.1060, 1062 to 1065 of 2014 on the file of the Sole Arbitrator.

For Appellant in all the appeals : Mr.D.Selvaraj
for Mr.V.Ravi

For Respondents in all the appeals : Mr.K.Moorthy

C O M M O N J U D G M E N T

Aggrieved over the impugned order dated 07.10.2010 passed in I.A. No.2 of 2016 in SRR/ACP Nos.1060, 1062 to 1065 of 2014 on the file of the Sole Arbitrator, the appellant has brought these appeals.

2.Mr.D.Selvaraj, learned counsel appearing for the appellant assailing the impugned interim order passed by the learned Arbitrator in I.A. No.2 of 2016 in SRR/ACP Nos.1060, 1062 to 1065 of 2014 would contend that when the appellant is no doubt a co-borrower and he has not borrowed any money from the first respondent namely the claimant, it is not necessary for him to be present all the time before the Arbitrator till the entire proceeding comes to an end. He would further contend that although the appellant has moved an application under Section 133 of the Indian Contract Act seeking an order to discharge him from the proceeding, learned Arbitrator has failed to consider the vital aspect that as per the definition of the contract, the appellant is only the guarantor. Therefore, his rights and duties as a guarantor are covered only under Section 133 of the Contract Act. While so, the learned Arbitrator has come to the conclusion that Section 133 of the Act is not applicable to him.

Adding further, he would submit that this appeal has been filed for the purpose of safeguarding his right, in the event of allowing the claim by the Arbitrator in future, to challenge the award independently. Concluding his argument, he would submit that the first respondent/claimant cannot put a bar or case against the appellant that he has no locus to challenge the order going to be passed by the Arbitrator.

3.In reply, learned counsel for the claimant would submit that this impugned order being appealable in nature, the appeal is to be rejected at the admission stage in limine.

4.This Court finds no merit in these appeals, however, considering the fact that the appellant being a co-borrower and it is hereby made clear that in the event of any adverse order passed against the appellant, it is always open to him to challenge the correctness of the said order in the manner known to law.

5.Learned counsel appearing for the respondents mentioning that the matter is pending for a quite long time on the file of the Arbitrator, requested this Court to direct the Arbitrator to dispose of the pending proceeding at the earliest point of time.

6.Considering the submission made by the learned counsel for the respondents and as the same is pending for a quite long time, the Arbitrator is directed to dispose of the case as expeditiously as possible.

7.Accordingly, the appeals fail and the same are dismissed. No costs. Consequently, connected C.M.Ps. are also dismissed.

vga

Sd/-

Assistant Registrar (CS-)

/TRUE COPY/

Sub-Assistant Registrar

To

S.RAJINI RAMADASS, Arbitrator,
New No.68, Bahsa Street, Choolaimedu,
Chennai - 600 094

+5 CCs Mr.V.Ravi Advocate SR.No.68401

+5 CC Mr.K.Moorthy, Advocate SR.No.68717 to 68721

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