

A. Nos.3442 and 6131 of 2015**K.RAVICHANDRABAABU,J.**

Application No.6131 of 2015 is filed to raise the order of attachment dated 21.05.2015 passed in application No.3442 of 2015 in respect of subject matter asset namely, Crusher Plant Machinery.

2. Heard the learned counsels appearing for the either sides.

3. Today the applicants who are the respondents in the application No. 3442 of 2015, filed an affidavit dated 02.04.2016 stating that a sum of Rs. 25,00,000/- was paid by Demand Draft dated 30.03.2016 to the respondent and they are making serious efforts to close the loan account within a month's time. It is further stated in the affidavit originally filed in support of their application seeking to raise attachment that the applicants have paid a sum of Rs.8,96,946/- on 30.04.2015 and a sum of Rs.8,69,946/- on 14.08.2015 by RTGS transfer to the account provided by the respondent, which payments were made subsequent to the order of attachment. It is also stated in the affidavit dated 02.04.2016 that the applicant will not alienate, encumber or cause any damage to the secured assets except reasonable wear and tear. Para No. 7 of the said affidavit reads as follows;

“7. I further respectfully submit that we ourselves have agreed to pay a sum of Rs.25,00,000/- to show their

earnestness in discharging the dues of the respondent/applicant and bonafide and a sum of Rs.25,00,000/- was paid by Demand Draft drawn in favour of the respondent/applicant, dated 30.03.2016, drawn at M/s. State Bank of India, HSR Layout Branch, Bangalore and making serious efforts to close loan account of the respondent/applicant. I further respectfully submit that the applicants/respondents are taking serious steps to discharge the loan liability of the respondent/applicant within a months time till the discharge of the lean liability of the respondent/applicant, the applicants/respondents assured and undertakes to this Hon'ble Court that they will not alienate, encumber or cause damage to the secured assets except reasonable wear and tear and this Hon'ble Court may be pleased to raise the order of attachment passed in Application No. 3442 of 2015 on 21.05.2015.

I therefore undertake and assure this Hon'ble Court that the applicants/respondents will not alienate, encumber or cause damage except reasonable wear and tear to the secured assets and further undertakes that the applicants/respondents taking serious steps to discharge the loan liability of the respondent/applicant within a month's time and the order of attachment passed in A.No.3442 of 2015 on 21.05.2015 may be raised and thus render justice.

4. Though a counter affidavit is filed by the respondent in application No. 6131 of 2015, it is not denied therein about such

payments made and on the other hand, it is stated that the present applicants have defaulted in paying the instalment and that the payments were made at erratic intervals.

5. It is also seen that the subsequent payment of Rs. 25,00,000/- by way of Demand Draft is not disputed by the learned counsel appearing for the respondent. She is also not seriously objecting to the recording of the undertaking given by the applicants in the above said affidavit. However, the learned counsel for the respondent seeks for inclusion of a default clause in this order by directing the applicants herein to redeliver or repossess the assets to the Financier, in case if they are not going to discharge the loan liability within a month's time as undertaken.

6. It is not in dispute that an Arbitration proceedings has already commenced and the dispute between the parties with regard to the claim made by the Financier is to be finally adjudicated upon by the Arbitral Tribunal. What is to be seen by this Court at this stage, while dealing with an application under Section 9 of the Arbitration and Conciliation Act is as to what could be the interim measure that could protect the interest of both the parties as a balancing act, pending disposal of the Arbitration proceedings that

could be passed. In this case the applicants herein have paid some substantial amount as stated supra, after the attachment order was passed and they have also given an undertaking that they will not alienate, encumber or cause damage to the secured asset namely, the property attached and that they have also given a further undertaking to discharge the loan liability within a period of one month. Under these circumstances, this Court is of the view that in all fairness the order of attachment should be raised and the machineries so attached, should be repossessed to the applicant herein so as to enable them to run the business by utilising the machineries.

7. Needles to say that, as contended by the learned counsel for the applicant, for raising the fund the applicants have to undoubtedly dependent upon the running of the Crusher for which the machineries are definitely required. Therefore, I am of the view that the interest of both the parties will be protected by passing the following order;

a) The order for attachment of the machineries passed by this Court on 21.05.2015 passed in application No.3442 of 2015 is raised and the respondent is directed to repossess the machineries within a period of seven days from the date of receipt of copy of this order.

b) The applicants/borrowers herein shall not alienate, encumber or cause damage to the machineries pending disposal of the arbitration proceedings.

c) It is open to the applicants to settle the dues even before the conclusion of arbitral proceedings.

d) If no such settlement is arrived, the learned Arbitrator shall take up the matter and dispose of the same on merits and in accordance with law within a period of two months from the date of receipt of copy of this order.

In the above terms Application Nos. 3442 of 2015 and 6131 of 2015 are closed.

07.04.2016

Note: Registry to issue order copy on 11.04.2016.

rms

K.RAVICHANDRABAABU,J.

rms

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