

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).Nos.1079 to 1081 of 2016

M/s.Indiabulls Housing Finance Ltd.,
rep by its Authorised Signatory
N.Subramanian
Registered Office at M-62 & 63,
First Floor, Connaught Place,
New Delhi - 110 001
also at No./9, Demonte Street,
Santhome High Road, Santhome,
Chennai - 600 004.

... Petitioner

Vs.

1.Leema Mary Rose.S
2.Shrisakratice

... Respondents

Civil Revision Petitions filed under Article 227 of the Constitution of India against the order dated 07.03.2016 made in E.P.Nos.273, 269 & 271 of 2016 on the file of the IX Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.T.Saikrishnan
for M/s.Sai Bharath and Ilan

For Respondents : Mr.M.Umashankar

COMMON ORDER

Since the issues involved in all the Civil Revision Petitions are one and the same, by consent of the learned counsel on either side, the Civil Revision Petitions are taken up together and disposed of by this common order.

2.Pursuant to the Arbitral Awards in Arbitration Case Nos.1402, 1404 & 1403 of 2014 dated 22.08.2014, the Decree Holder filed Execution Petitions in E.P.Nos.273, 269 & 271 of 2016 respectively in January 2016. Challenging the Award passed in the Arbitral Cases, the respondents filed petitions in O.P.Nos.11, 12, & 13 of 2015 under Section 34 of the Arbitration and Conciliation Act, 1996 before this Court. Subsequent to the filing of the Original Petitions under Section 34 of the Arbitration and Conciliation Act, the Execution Court, by its order dated 07.03.2016, closed the Execution Petitions stating that the filing of the Original Petitions under Section 34 itself would stay the execution of the Award under Section 34 of the Arbitration and Conciliation Act.

3.The learned counsel appearing for the petitioner submitted that the order passed by the Execution Court is liable to be set aside on the ground that under the amended provisions of Section 36 (Amended by Act

3 of 2016 with effect from 23.10.2015), the respondents have to file a separate petition to stay the operation of the arbitration and mere filing of a Original Petition under Section 34 would not stay the operation of the Award.

4.It would be appropriate to extract the amended provisions of Section 36 (2) of the Arbitration and Conciliation Act, 1996 which reads as follows:

“36.Enforcement-

(2)Where an application to set aside the arbitral award has been filed in the Court under Section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.”

From the provisions of Section 36 (2), it is clear that when an application to set aside the Arbitral Award has been filed in the Court under Section 34, filing an application by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

5.The learned counsel for the respondents submitted that since the respondents have filed Original Petitions on 19.11.2014 itself, the provisions of Section 36 would not operate retrospectively, therefore, the said provisions is not applicable to the respondents.

6.However, the learned counsel for the petitioner relied upon an unreported order passed by this Court on 27.01.2016 in A.No.7674 of 2015 in O.P.No.931 of 2015 and A.No.7675 of 2015 in O.P.No.932 of 2015, wherein this Court held as follows:

“33.Till the Arbitration and Conciliation (Amendment) Ordinance, 2015 (9 of 2015), came to be passed, once an application under Section 34 of the Principal Act, to set aside the arbitral award, is entertained by the Court, that by itself would render the award unenforceable. As per the Ordinance, 2015, from 23.10.2015, there is a requirement to file a separate application for stay, an unenforceability is not automatic.

...

78.From the introduction of the Sections (2) and (3) to Section 36 of the Principal Act, 1996 and giving effect to the provisions, from 23.10.2015, legislature has intended to rectify the defect when the award is challenged. During the arbitral proceedings, the Hon'ble Supreme Court has

consistently held that there must be a little interference from Courts. Section 26 is a stage, post arbitral proceedings. There is a distinction between the two stages. In the new Section, 26 of the Amendment Act, the Parliament has made it clear that nothing in this (Amendment) Act, shall apply to arbitration proceedings, commenced in accordance with Section 21 of the Act, and prior to the introduction of the Amendment Act, 2015, meaning thereby, the arbitral proceedings would be governed by the provisions of the Principal Act, 1996 and insofar as the proceedings commenced after the commencement of the Amendment Act, the amended provisions would apply. If the words, “in relation to arbitral proceedings” have to be read into Section 26 of the Amended Act, it would only revert to the original form, as found in Section 85(2) of the Principal Act and that in the humble opinion of this Court, it be an insertion of the words, by this Court, which is not permissible.

79. Sub-Sections (2) and (3) of the Amendment Act, applies to post arbitral proceedings. It is distinct. So also the arbitration proceedings, which is prior to the passing of award. The procedure to be applied during the stage of arbitration proceedings, ie., prior to the award, and the procedure to be followed, after the award, are distinct. A challenge to the award, with regard to the procedure followed and the rights accrued during in the arbitral proceedings, are protected in Section 26 of the Amendment Act, 2015, to the effect, “Nothing contained in this Act shall apply to the arbitral proceedings commenced in accordance

with the provisions of Section 21 of the Principal Act, before the commencement of the Amendment Act, unless the parties otherwise agree, but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act.” Section 26 of the Amendment Act cannot be extended to include post arbitration proceedings, when the award is passed, before the commencement of the Amendment Act.”

From the order passed by this Court in the above referred applications, it is clear that the provisions of Section 36 is applicable even to the pending proceedings. The ratio laid down by this Court in the above cited applications squarely applies to the facts and circumstances of the present case.

7. Though the Execution Court had closed the Execution Petitions on 07.03.2016, it has not taken into consideration the provisions of Section 36 while closing the Execution Petitions. In view of the provisions of Section 36 and the order passed by this Court dated 27.01.2016, the impugned orders are liable to be set aside. Accordingly, the same are set aside. The IX Assistant Judge, City Civil Court, Chennai is directed to take up the Execution Petitions and dispose of the same on merits and in accordance with law.

8. With these observations, the Civil Revision Petitions are allowed.

No costs.

Index : Yes/No
Internet : Yes
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08.06.2016

To

The IX Assistant Judge,
City Civil Court,
Chennai.

M.DURAIWAMY,J.
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