

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.7.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.2045 of 2016

and

CMP No.10648 of 2016

1. R. Srimathy
2. Uma Sankar
3. Vincent.B
4. Sivagami.J

.... Petitioners

vs

M/s Shriram City Union Finance Ltd.
Represented by its Authorised
S. Dhandapani, Senior Manager,
No.6, L.B. Road, Sorrento Building,
2nd Floor, Adayar, Chennai – 600 020

.... Respondent

Civil Revision Petition filed under Section 115 of Civil Procedure Code against the judgment and Decree dated 06.04.2016 made in E.A.S.R.No.15389 of 2016 in E.P No.768 of 2014 in A.C.P No.501 of 2012 on the file of X Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.P. Ayyaswamy

ORDER

Challenging the Order passed in EASR No.15389 in E.P.No.768/2014 in ACP No.501/2012, on the file of X Assistant Judge, City Civil Court, Chennai, the judgment debtors have filed the above civil revision petition.

2. Pursuant to the award passed in ACP No.501/2012, the Decree Holder filed an Execution Petition in EP No.768/2014. Admittedly, the petition filed by the judgment debtors under Section 34 of the Arbitration Act in OP SR No.34832/2014 before this Court, was dismissed by this Court on 26.3.2015 and the order passed by this Court has become final, since the judgment debtors have not filed any appeal, as against the order passed in the said petition.

3. Thereafter, the judgment debtors have filed an application in EA in SR No.15389/2016 under Sec.47 of the Civil Procedure Code, questioning the correctness of the Award. The Executing Court, relying upon an unreported judgment of this Court made in CRP No.2105/2005 dated 12.1.2012, rejected the petition, as not

maintainable. In the order, relied upon by the Executing Court, it has been stated that the Executing Court cannot sit in appeal over the Award passed by the Arbitrator, nor is entitled to pass an Award which will virtually result in affecting the rights of the parties already settled under the decree.

4. The learned counsel appearing for the petitioner submitted that since an *exparte* Award was passed, the judgment debtors have got right to file an application under Sec.47 of the Civil Procedure Code, challenging the correctness of the Award.

5. There is no distinction between a contested award and the *exparte* award passed by the Arbitrator. In both the cases, the remedy available to the judgment debtors is to file a petition under Sec.34 of the Arbitration and Conciliation Act 1996. The judgment debtors have also rightly filed a petition under Sec.34 of the Arbitration Act before this Court, which was dismissed by this Court on 26.3.2015.

6. In these circumstance, the judgment debtors having

M. DURAISWAMY,J.,

sr

exhausted their remedy, cannot now take the very same stand in Sec.47 application. The Executing Court had rightly dismissed the petition as not maintainable. I do not find any error or irregularity in the order passed by the trial court. Hence the Civil Revision Petition is liable to be dismissed as devoid of merits and accordingly, the same is dismissed. No costs. Consequently, connected CMP is closed.

13-07-2016

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Index:no
website:yes

To

The X Assistant Judge, City Civil Court, Chennai

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