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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 24TH DAY OF JANUARY 2017

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

A. No.249 OF 2017

in

A. No.1853 OF 2015

A. No.1853 OF 2015

In the matter of Arbitration and
Conciliation Act, 1996

And

In the matter of Arbitration of the
dispute Between Sundaram Finance
Limited and Mr. E.P. Paramasivam,
Agreement No. HZ267667, Dated
30/05/2012.

Sundaram Finance Limited
Rep. by its Senior Manager (Legal),
Mr. G.S. Narayanakrishnan
21, Pattullos Road
Chennai 600 002.

...Applicant

-Versus-

1. Mr. E.P. Paramasivam
S/o. Mr. E.R. Palanisamy
No.6/90, Kumarikadu
Goundanur, Ingur,
Perundurai, Erode-638058
Tamilnadu

Also at
No.21, Veerama Muniver Street
Teachers Colony, Erode - 638 011

2. Mr. K.S. Ganesh Kumar
S/o. Mr. Sadasivam
Old No.131, New No.132
Ricemill Street, Kullampalayam
Gobichettipalayam
Erode - 638 476

...Respondents

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...Applicant / Respondent

Vs.

1.Sundaram Finance Limited
Rep. by its Senior Manager (Legal),
Mr. G.S. Narayanakrishnan
21, Pattullos Road
Chennai - 600 002.

...Respondent / Applicant

2. Mr. K.S. Ganesh Kumar
S/o. Mr. Sadasivam
Old No.131, New No.132
Ricemill Street, Kullampalayam,
Gobichettipalayam
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...Respondent / Respondent

Application praying that this Hon'ble Court be pleased
to raise the attachment order dated 16.6.2016 passed in A.
No.1853 of 2015 thereby raising the order of attachment
made therein and to grant time to the applicant herein to
furnish alternative security and to direct the arbitration
proceedings to be expedited.

This application coming on this day before this court for hearing the court made the following order:-

Heard the learned counsels appearing on either side.

2.This application has been filed to raise the attachment order passed on 16.06.2016 in A.No.1853 of 2015.

3.The main application, namely, A.No.1853 of 2015 was filed by the applicant M/s.Sundaram Finance Limited. The Court while considering the prayer sought for, ordered notice and subsequently when the matter came up before the Court on 15.07.2015, subject to the condition that the main applicant/Finance Company shall proceed with the arbitration proceedings, the respondent/borrower was directed to furnish security to the extent of the claim made in the application within a period of two weeks. Thus, it is clear that the Finance Company had represented before this Court that arbitration proceedings have to be initiated in accordance with the loan agreement and in the event of executing a decree that may be passed against the respondent/borrower and if the property is disposed of, they will be affected. Subsequently, the matter came up before the Court on several occasions and since the borrower did not contest the matter, the Court by order dated 16.06.2016 granted an order of attachment. However, the property which is the subject matter of attachment is

not owned by the borrowers but by the guarantor, who is the brother-in-law of the borrower.

4. In this application the applicant/borrower apart from stating that his family is living in penury and struggling to make the both ends meet, he is more aggrieved by the fact that his brother-in-law's property has been attached for no fault committed by him. Before the Court considers as to whether the property of the guarantor could have been attached, the Court will have to examine as to whether the respondent Finance Company was justified in seeking for obtaining an order of attachment before the Court. What is shocking to note is that the applicant/borrower who had availed the loan of Rs.23,31,000/- repayable in 47 installments commencing from 01.07.2012 and ending with 01.05.2016 was not a chronic defaulter. The affidavit filed in support of the application in A.No.1853 of 2015 signed by the Senior Manager-Legal of the Finance Company shows that up to the 14th installment, the borrower has been paying the dues properly and even as per the default occurred in 15th installment which fell due on 01.09.2013, the power to repossess the vehicle cannot be used in an arbitrary and whimsical manner and the object of ordering this application is only to secure the asset so that the arbitration award does not become a paper award.

5.However, in the instant case on hand, the Court finds that the respondent Finance Company has misused the power of repossession by mentioning that the petitioner had defaulted from 01.09.2013 and he surrendered the vehicle on 20.11.2013. The Court is not inclined to accept the stand that the first respondent had voluntarily surrendered the vehicle on 20.11.2012. Even assuming it to be true, that only goes to show the bonafides of the borrower. In such circumstances, it has to be seen as to whether the respondent Finance Company could have approached this Court seeking for appropriate order of attachment of the property of the guarantor.

6.Considering the conduct of the Finance Company that they have resorted to arm twisting tactics for recovery of the amount by suppressing the fact that the applicant is not a chronic defaulter, this Court is of the view that since proper facts were not placed before the Court, the Court had exercised its discretion and directed to furnish security and thereafter ordered for attachment. Further, the Court may note that the claim for which attachment is sought for is only with regard to the interest. That apart, the borrower is aggrieved by the fact that the vehicle which costs more than Rs.20 lakhs was sold only for Rs.8 lakhs.

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7.Thus, considering the peculiar facts and circumstances of the case and taking note of the admission of the Finance Company that the borrower is not a chronic defaulter, the Court is of the considered view that the order of attachment needs to be raised. Accordingly, the application in A.No.249 of 2017 is allowed and the order of attachment dated 16.06.2016 stands raised.

Sd./-T.S.S.J

24/01/2017

//Certified to be true copy//

Dated at Madras this the day of 2017.

COURT OFFICER(O.S.)

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