

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 13.06.2017

CORAM

THE HONOURABLE THIRU JUSTICE **V. PARTHIBAN**

Appeal No.3377 of 2010
in E.P.No.2225 of 2004

M.Sivaram Appellant

versus

M.Krishnamurthy Respondent

Prayer: This Appeal is filed against the order dated 18.2.2010 passed by the learned Master in E.P.No.225 of 2004, praying to set aside the same.

For Appellant : Ms.R.Vaishnavi for
Mr.S.R.Rajagopal

For Respondent : Mr.R.Sivakumar

JUDGMENT

The present appeal has been directed against the order passed by the learned Master in E.P.No.225 of 2004, dated 18.2.2010.

2. The appellant herein is the Judgment debtor and the respondent is the Decree holder. Execution Proceedings were initiated by the appellant against the respondent in terms of Section 36 r/w Section 30 of the Arbitration and Conciliation Act, 1996 (in short, 'the Act'), seeking for recovery of a sum of Rs.76,96,900/-.

3. The brief facts necessitated for filing the present appeal, are stated hereunder:

The appellant and the respondent herein are the brothers. Both of them have entered into a family settlement on 17.8.1998 in regard to the compliance of the schedule of payment contained therein. Since the appellant did not comply with the payment of settlement, a dispute was referred to two Arbitrators, who passed an award on 30.7.1999. As per the Award amount, the appellant/J.Dr. had to pay Rs.40,51,000/- to the respondent/D.Hr. by way of monthly installment of Rs.1,00,000/-

each payable from September 1999 onwards. Apart from the said amount, the J.Dr. has to pay Rs.2,00,000/- on or before 15.8.1999. However, it appears that the J.Dr. had defaulted of payment and total due payable to the respondent herein had come to Rs.76,96,900/-. In the said circumstances, the respondent/D.Hr. filed the E.P. for executing the Award which was called for Modification Deed dated 30.7.1999.

4. In the E.P. proceedings before the learned Master, the appellant herein raised an objection stating that the E.P. was not maintainable since family settlement cannot be considered as an award as per the provisions of the Act. Moreover, the award, according to the appellant, was unenforceable. It was also contended on behalf of the appellant in the E.P. proceedings, that the respondent/decreed holder already instituted a suit before the City Civil Court for recovery of same amount. The learned Master passed a very detailed order overruling the objections of the appellant herein. In fact, the learned Master had categorically held after adverting to the various submissions and on perusal of the documents, that the modification deed was ended in award

and there was no ambiguity with reference to the rights and obligations of the parties. The learned Master also referred to admission of the appellant herein while facing to arbitration proceedings that the deed amended to an award. Therefore, the learned Master held that it was not open to the appellant/judgment debtor to raise the said objection. The learned Master also held that pending civil suit cannot be a bar for filing E.P. on the basis of the award.

5. Assailing the above order, the present appeal has been filed by the appellant, raising various grounds which were already raised before the learned Master, who dealt with the same elaborately and answered. I am unable to persuade myself to the objections now raised on behalf of the appellant and I do not find any iota of infirmity in the order passed by the learned Master since all the legal and factual objections were appreciated well and finally, the objections raised by the appellant were clearly overruled in favour of the respondent/decreed holder. In the above circumstances, I do not find any merit in the contention

raised on behalf of the appellant as the learned counsel attempted to raise the same objections which were already overruled and discountenanced. In such view of the matter, the appeal fails and it is dismissed. No costs.

suk

13.06.2017

V.PARTHIBAN, J.

suk

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