

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2512 of 2012
M.P.No.1 of 2012

The Branch Manager,
Sriram Transport Finance Company Limited,
No.26/1, K.M.S.Complex, First Floor,
Vandigate,
Chidambaram.

.. Petitioner

Vs.

M.Rajan

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 16.09.2011 made in I.A.No.252 of 2010 in O.S.No.70 of 2010 on the file of the Principal District Munsif, Chidambaram.

For Petitioner : Mr.K.S.Ramakrishnan

For Respondent : No Appearance

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 16.09.2011 made in I.A.No.252 of 2010 in

O.S.No.70 of 2010 on the file of the Principal District Munsif, Chidambaram.

2. The petitioner is defendant, respondent is the plaintiff in O.S.No.70 of 2010 on the file of the Principal District Munsif, Chidambaram. The respondent filed suit for permanent injunction, restraining the petitioner from interfering with respondent's peaceful possession and enjoyment of a TATA 407 Goods carrier bearing Registration No.TN-31 8136 and also restraining the petitioner from taking forcible possession. The petitioner filed I.A.No.252 of 2010 under Section 8 read with Section 5 of the Arbitration and Conciliation Act for an order to refer the suit dispute to an Arbitrator and to dismiss the suit.

3. According to the petitioner, the respondent borrowed money and executed document for re-payment of amounts due. The respondent executed the Loan cum Hypothecation Agreement dated 16.07.2017. As per the Clause 10.14, any disputes between the parties must be referred to the Arbitrator. In view of the said Clause, the suit is not maintainable and prayed for referring the matter to the Arbitration. The respondent filed counter and denied

all the averments and submitted that the officials of the petitioner obtained the execution of Loan cum Hypothecation Agreement dated 16.07.2017. According to the respondent, the petitioner had obtained his signature in number of documents. The respondent denied even having been aware of the alleged execution of Loan cum Hypothecation of Agreement. Therefore, the Alleged Loan cum Hypothecation Agreement is a forged one.

5. The learned Judge dismissed the application filed by the petitioner, holding that in view of the nature of the relief sought for in the suit filed by the respondent, it is not necessary to refer the matter to the Arbitrator.

6. Against the said order dated 16.07.2011 made in I.A.No.252 of 2010 in O.S.No.70 of 2010, the present civil revision petition is filed by the petitioner.

7. Heard the learned counsel appearing for the petitioner and perused the materials on record. No representation on behalf of the respondent.

8. The petitioner filed I.A.No.252 of 2010 for referring the matter to the Arbitrator. The learned Judge dismissed the application on the ground that in view of the nature of the relief sought for in the suit, the issue is not referable to an Arbitrator. A reading of the plaint and counter affidavit shows that the respondent has admitted borrowing amount from the petitioner for purchase of the TATA 407 Goods carrier bearing Registration No.TN-31 8136.

9. According to the respondent, he has repaid the entire amount and no amount is due to the petitioner. In spite of the same, the officials of the petitioner are threatening to cease the vehicle.

10. According to the petitioner, the respondent committed default in payment in EMI. The relief sought for by the respondent in the suit, based on the claim that he has paid the entire amount borrowed and no amount is due and Loan cum Hypothecation agreement dated 16.07.2017 is forged by the petitioner. These issues are disputes between the parties and as per the Clause

10.14 of the Loan cum Hypothecation Agreement dated 16.07.2017, the said dispute has to be decided in Arbitration proceedings.

11. The learned Judge failed to consider the averments in the affidavit and counter affidavit and dismissed the application on the ground that the relief sought for in the suit will not be covered in the Arbitration agreement. The learned Judge failed to appreciate all the materials on record in proper perspective and committed irregularity in dismissing the application filed by the petitioner.

12. In the result, the civil revision petition is allowed and the order passed in I.A.No.252 of 2010 is set aside. The learned Judge is directed to refer the matter to the Arbitrator. No costs. Consequently, connected miscellaneous petition is closed.

21.07.2017

gsa
Index: Yes/No

To

The Principal District Munsif, Chidambaram

V.M.VELUMANI, J.

gsa

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