

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 03.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

O.S.A.Nos.303 to 305 of 2013
in M.P.Nos.1 to 1 of 2013

Hinduja Leyland Finance Limited,
Represented by its Legal Manager,
R.Kumaran,
Corporate Office : No.167-169, 3rd Floor,
Annasalai, Saidapet, Chennai - 600 015.
Reg. Office: No.1, Sardar Patel Road,
Guindy, Chennai - 600 032.

... Appellant
[in all O.S.A.s]

-vs-

1.Jaffer Khan
2.Malathi

... Respondents
[in all O.S.A.s]

Common Prayer: Original Side Appeals filed under Order 36 Rule 1 of Original Side Rules r/w Clause 15 of Letters Patent of 1865, against the fair and decretal orders dated 05.04.2013 passed in Application Nos.1296 to 1298 of 2013 in Application Nos.5201 to 5203 of 2012 on the file of the Original Side of the High Court of Madras.

For Appellant : Mr.M.S.Krishnan,
[in all O.S.A.s] Senior Counsel for
Mr.K.B.Vivekanandhan
For Respondent No.1 : Mr.S.Udhayakumar (Caveator)
[in all O.S.A.s]

COMMON JUDGMENT

[Common Judgment of the Court was delivered by S.NAGAMUTHU, J.]

The appellant herein in all these appeals is a Non Banking Finance Company engaged in the business of hire purchase, leasing and advancing loans of industry equipment, machinery, trucks and other equipments and vehicles. Admittedly,

the first respondent herein purchased three Trucks bearing Registration Nos.TN02-S-9933, TN02-T-0982 and TN02-S-9931. According to the appellant, as per the Hypothecation Agreement, the first respondent did not repay the dues. The second respondent herein, the Guarantor, also had not taken any steps to clear of the arrears on behalf of the first respondent. Therefore, the appellant wanted to enforce one of the terms of the contract to repossess the vehicle. For that purpose, the appellant filed three independent Applications, viz. Application Nos.5201 to 5203 of 2012 under Section 9 of Arbitration and Conciliation Act, 1996. Interim orders were passed in those Applications permitting the appellant herein to repossess all the three vehicles. Accordingly, all the three vehicles were repossessed on various dates. Challenging the said interim orders for repossession of the vehicles, the first respondent filed three independent Applications viz. Application Nos.1296 to 1298 of 2013 before this Court. By a common order, the learned single Judge of this Court allowed the Application Nos.1296 to 1298 of 2013 and directed the appellant herein to redeliver all the three vehicles to the first respondent. Challenging the same, the appellant is before this Court with these appeals.

2.We have heard the learned senior counsel for the appellant and the learned counsel for the first respondent and also perused the materials on record carefully.

3.Since the issues involved in all these appeals are one and the same, which were arising out of the common order dated 05.04.2013, they are taken up together for final disposal.

4.It is brought to the notice of this Court that subsequent to the above impugned order, the Arbitral Tribunal has passed an award in favour of the appellant in respect of the amount allegedly due from the respondents. It is also brought to the notice that the first respondent has filed Applications to set aside the award of the said arbitrator and the same are pending.

5.In view of the above development, this Court suggested the parties that until a final decision is taken in those Applications, seeking to set aside the award of the Arbitrator, the vehicles could be retained by the appellant.

6.The learned counsel for the respondents as well as the learned senior counsel for the appellant agreed for such terms.

7.Mr.M.S.Krishnan, the learned senior counsel for the appellant submitted that the vehicles could be either allowed to be sold by the appellant or the vehicles could be taken by the respondents on their deposit of atleast Rs.6,00,000/- [Rupees Six Lakhs only].

8.The learned counsel for the first respondent submitted that the vehicles may be ordered to be kept in its safe custody of the appellant, however, subject to the outcome of the Applications filed by the respondents for setting aside the arbitral award. The said statement is recorded.

9.In view of the above, all these appeals are allowed and the impugned common order dated 05.04.2013 of the learned single Judge to return all the three vehicles to the respondents is set aside and the appellant shall retain all the three vehicles in its safe custody, however, subject to the outcome of the Applications filed by the respondents seeking to set aside the Arbitral award. It is also made clear that the appellant is also entitled to approach the learned single Judge for necessary orders in respect of the disposal of the vehicles. Consequently, connected Miscellaneous Petitions are closed. Considering the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sri

To

The Sub Assistant Registrar
Original side
High Court, Madras.

+2cc to Mr.Vivekanandan, Advocate, S.R.No.690
+1cc to Mr.Udayakumar, Advocate, S.R.No.664

MG(CO)
RS(27/01/2017)

O.S.A.Nos.303 to 305 of 2013