

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 24th DAY OF SEPTEMBER 2018

THE HON'BLE MR. JUSTICE C.SARAVANAN

A. No.4860 of 2018

In the matter of
Arbitration and
Conciliation Act, 1996

And

In the matter of Disputes
between Mr.C.Samson and
Equitas Small Finance Bank
Ltd., Arising under Loan
Agreement

No.BLMSNRD0000058 dated
31.01.2017.

Between:

Mr.C.Samson
Sole Arbitrator
No.2/3, Jeganathan Garden Street,
Eldams Road, Teynampet,
Chennai 600 018.

... Applicant

-Versus-

1. Equitas Small Finance Bank
Rep. by its Deputy Vice President - Legal
Spencer Plaza, 4th Floor, Phase -II,
No.769, Mount Road, Anna Salai,
Chennai 600 002.

...1st Respondent

2. Mr.Abdul Jameel,
S/o. Mr.Abdul Jaleel,
Proprietor, M/s. Zener Electric Company,
Shop No.D-8 & D-9, Second Floor,
Devatha Plaza,
No.131 & 132, Field Marshal Road,
K.M.Kariyappa Road,
Bangalore, Karnataka 560 025

3. Mrs.Syed Saminussia,
W/o. Mr.Syed Jameel,
No.219, 3rd Cross, Koramangala,
First Block, Bangalore,
Karnataka 560 034.

...Respondents/Borrower/Co-Borrower/Contemptors

4. The Manager,
HDFC Bank,
Domlur Branch,
Ground Floor, Double Road,
Domlur, Bangalore 560 071.

...Respondent/Garnishee/Contemptor

Application praying that this Hon'ble Court be pleased to punish the Respondents No.2 to 4 for having committed contempt of the order dated 05.03.2018 in Application No.77 of 2018 in CS/BL/Arbitration Case No.34 of 2017.

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

The present application has been filed under Section 27 (5) of the Arbitration and Conciliation Act, 1996. The applicant, the arbitrator, entertained a claim petition at the behest of the respondent No.1 and issued summons to the respondent Nos.2 & 3.

2. According to the claim petition, respondent Nos.2 and 3 owe a sum of Rs.34,39,389/- to the respondent No.1 under a loan agreement dated 31.01.2017 signed with the said respondent.

3. The applicant submits that on 23.04.2018 an application for interim order was filed by the respondent No.1 for grant of the prohibitory order to restrain the respondent No.4 from making payment to the respondents

No.2 and 3 towards rental dues for the property owned by respondents No.2 and 3. In the said proceedings before the applicant, the respondents No.2 to 4 remained ex parte and have not entered appearance.

4. On 27.04.2018 the applicant herein passed a prohibitory order and restrained the respondent No.4 from paying the monthly rent to respondent Nos.2 and 3 and further directed respondent No.4 to deposit the monthly rent by way of a demand draft into an account to be opened by respondent No.1 by drawing Demand Draft in favour of "ESFBL-ARBITRATOR ACCOUNT-CS/BL/ARBITRATOR CASE NO 34/017".

5. Despite service of aforesaid prohibitory order dated 27.4.2018, neither the respondent Nos.2 and 3 nor the respondent No.4 have appeared nor respondent No.4 has come forward to deposit the amount.

6. Under these circumstances the applicant herein has filed the above application to punish respondent number 2 to 4 for having committed contempt of the order dated 27.4.2018 In Application No. 77 of 2018 in CS/BL/Arbitration Case No. 34 of 2017.

7. In this application notice was ordered on the respondents on 06.08.2018. Despite service of notice, respondents No.2 and 3 have neither appeared nor filed vakalat or entered appearance in person.

8. The respondent no.1/claimant is represented by the counsel who is merely a formal party. Respondent No.4, who was the Garnishee in the said application before the applicant is represented by their counsel M/s. King and Patridge, Advocates and have filed a counter.

9. They have specifically stated that the respondent No.4 has no relationship with respondent Nos.2 and 3 and that they have neither leased out nor rented out any premises of the respondent Nos.2 and 3. Consequently, prayed for dismissal of the above application as far as they are concerned.

10. According to respondent No.4, they have not even served with notice in the said arbitration proceedings and were therefore unaware. They further submitted that they cannot be punished for contempt of Court.

11. Paragraph 11 of the counter affidavit filed by respondent No.4 reads as under:-

"It is submitted that the respondent - HDFC Bank was neither the tenant nor have any relationship with the respondents 2 and 3. Therefore, this respondent does not bound to pay the monthly rent to respondents 2 and 3. As stated in paragraphs 5 & 6, this respondent is the tenant in the said premises as mentioned above."

12. Paragraph 6 of the counter affidavit reads as under:

"The 4th respondent Branch at No.299, 7th Cross, Domlur Lay Out, Bangalore - 560 071 has been leased out by the Lessor Dr.S.Syamala Reddy jointly with Dr.Sinivasa

Reddy and Dr.S.Chaitanya Reddy in favour of the 4th respondent - HDFC Bank vide Lease Deed dated 24.04.2014."

13. Recording the same, the contempt petition as far as respondent No.4 is concerned is dismissed.

14. Respondent Nos.2 and 3 have not responded to the notice order. Relevant portion of the order alleged to have been violated reads under:

"The respondent/Garnishee herein be and is hereby prohibited and restrained from making payment of the monthly rent every month until further orders to the first and second respondents herein and the Garnishee is directed to remit the monthly rent on or before 7th calendar date of every month due to the respondents by way of Demand Draft drawn in favour of ESFBL-ARBITRATOR ACCOUNT-CASE NO CS/BL/ARBITRATION CASE NO 34/2017 and deposit the same before this Arbitral Tribunal on or before the next hearing date i.e.08.03.2018 and continue to make such deposits month on month until further orders of this Tribunal. The said Demand Draft shall be deposited in an account to be opened by the claimant in the same name i.e. ESFBL-ARBITRATOR ACCOUNT-CS/BL/ARBITRATION CASE NO 34/2017. None of the parties to this proceeding shall be entitled to operate the said account until further orders of this Arbitral Tribunal and dealing with the said amount shall be subject

to the final outcome of this Arbitration case as per orders of this Arbitral Tribunal."

15. However, the order allegedly violated by the respondent No.4, who was a garnishee does not direct these respondents to make payments.

16. In view of the same, the application to punish respondents No.3 and 4 is also liable to be dismissed and accordingly dismissed.

17. In view of the above observation, the above application is dismissed.

Sd/- C.S.N.J
24.09.2018

//Certified to be a true copy//
Dated this the day of 2018.

KY/05.10.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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