

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 25th DAY OF SEPTEMBER 2018

THE HON'BLE MR. JUSTICE C.SARAVANAN

A. No.4870 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. Mr.Mohammed Jaffer.H,
S/o. Mr.Mohammed Ibrahim,
No. 13/12, IInd Floor, Artillary Road,
Gowthamapuram, Halsuru,
Bangalore 560 008.

...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.48 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:

By this application, the applicant arbitrator seeks to punish respondent No. 2-4 for contempt of interim order dated 5.3.2018 passed by him. Relevant portion of the interim order reads as under:-

The respondent/Garnishee herein be and is hereby prohibited and restrained from making payment upto a sum of Rs.4,000/- (Rupees Four Thousand only) every month until further orders to the first and second respondents herein and the Garnishee is directed to remit upto a sum of

Rs.4,000/- (Rupees Four Thousand only) 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. 15.03.2018 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.

2. Respondent No.1 is the claimant before the applicant/learned arbitrator. Respondents No.2 and 3 have borrowed an amount of Rs.40 lakhs from respondent No. 1 and allegedly owe an amount of Rs.35,49,389/- to respondent No.1 in respect of which arbitration proceedings had been initiated before the applicant herein.

3. The said proceeding, respondent Nos.2 and 3 have remained absent. In the said proceedings, respondent No.1

filed application under section 17 of the Arbitration and Conciliation Act, 1996 for an interim relief which came to be granted by the applicant/ learned arbitrator.

4. The learned counsel for the applicant has filed a type set of documents to show service of notice on the respondent, in pursuant to the interim order passed by the applicant/learned arbitrator.

5. In the proceeding before this court notice was ordered on respondent Nos. 2 to 4. Despite of notice on the respondents 2 and 3 there is no representation on behalf of respondent No.2 and 3.

6. In the proceeding before the applicant/ learned arbitrator, respondent No.1 submitted that they have reliably learned that respondent No.4 is paying respondent Nos.2 and 3, a sum of Rs.4,000/- per month towards rent and therefore prayed for an interim direction against respondent No.4 to deposit a sum of Rs.4,000/- every month to them before the Arbitral Tribunal pending resolution of the dispute between the parties therein.

7. I have perused the documents filed by the parties herein. Though, notice has been sent to respondent Nos.2 to 4 , pursuant to the interim order dated 5.3.2018, only notice on the respondent Nos.2 and 3 alone has been served.

8. There are no orders against these two respondents. Consequently, question of punishing these two respondents for contempt in terms of Section 27 (5) of the Arbitration and Conciliation Act, 1996 does not arise.

9. As far as, respondent No.4 is concerned, from the type set of the document filed by the applicant, it is evident that though notice was sent to the address given by respondent No.1 in support of the interim application for the relief, the notice sent by the applicant to respondent No.4 has been returned with an endorsement "left". In fact, earlier notice sent to respondent No.4 before the interim order was also returned with an endorsement "left".

10. Thus, there is no service of notice as far as respondent No.4 is concerned either before the applicant/learned arbitrator or before this Court. In absence of communication of the interim order dated 25.4.2018 passed by the applicant/learned arbitrator, respondent No.4 cannot be punished for contempt.

11. In view of the above observation the above application filed to punish respondent Nos.2 to 4 is liable to be dismissed and is accordingly dismissed.

Sd/- C.S.N.J
25.09.2018

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

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KY/05.10.2018

COURT OFFICER

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