

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 06TH DAY OF JUNE 2018

THE HON'BLE MR. JUSTICE N.SATHISHKUMAR

A. No.7288 of 2017

IN

E.P. No.46 of 2017

In the matter of Arbitration
and Conciliation Act, 1996
and in the In the matter of
disputes between
K.R.Ramakrishnan &
G.Sethuraman under a Deed of
Partnership dated 01.07.1986
and Reconstituted

Mr.K.R.Ramakrishnan
No.1, 5th Street,
Gopalapuram
Chennai 600 086

..Petitioner/Claimant/
Decree Holder

VS

G.Sethuraman
No.27, Teacher's Colony
Kamaraj Avenue,
Adyar, Chennai 600 020.

..Respondent/Respondent
Judgment Debtor

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Application praying that this Hon'ble Court be pleased to set aside the attachment order dated 02.11.2017 made in E.P.No.46 of 2017 in Arbitration Final Award dated 30.09.2013 before the Arbitral Tribunal (Mr.Justice J.Kanakaraj, Former Judge High Court, Madras)

This application coming on this day before this court for hearing, and the court made the following order:

This application has been filed against the order passed by the learned Master on 02.11.2017 in E.P.No.46 of 2017.

2.The order of attachment passed in filed to execute the Award is challenged in this Appeal. In the Award, the following amounts were ordered to be paid by the applicant:

1. *Rs.41,84,989/- as commission received from the various principals over the period 2007 - 2008 till September 2009.*
2. *Rs.1,50,000/- as his share of the good will.*
3. *Rs.50,000/- being the return of capital.*
4. *Rs.1,54,000/- being the loan advanced by him with interest at 12% p.a. From the date of loan till date of payment.*
5. *The entire balance shall be appropriated by the respondent towards his share of the profits and income.*

Thereafter, the execution petition in E.P.No.46 of 2017 has been taken out claiming a sum of Rs.62,84,454/-.

3.It is admitted by both sides that towards the said sum of Rs.62,84,454/-, a sum of Rs.57,50,000/- is already settled by the Judgment Debtor. Only outstanding balance to be paid to the Decree Holder is a sum of Rs.5,34,454/-, which is not disputed by both sides.

4.It is the main contention of the learned counsel appearing for the applicant that as per the Award except the Award amount of Rs.45,38,989/- the rest of the amount lying in the Bank in the name of the firm has to be appropriated to the Judgment Debtor towards the share of the profits and income.

5.As per the learned counsel for the applicant, admittedly there is a sum of Rs.6,28,453/- is in the current account of the firm which was already frozen and there is another sum of Rs.2,45,067/- in the fixed deposits which is also frozen. Similarly, the Commission of Rs.7,57,686/- is also pending from M/s.Scimed Pte. Ltd., Singapore.

6.According to the learned counsel for th applicant that the total amount to be appropriated to the Judgment Debtor is Rs.16,31,206/-. The balance amount pending in the

firm is not disputed.

7.However, the contention of the learned counsel for the respondent is that the applicant is entitled to only 50% in the above amount and not the entire amount. This above submissions cannot be countenanced for the simple reason. When the Award itself clearly states that the entire balance amount of the firm shall be appropriated to the respondent towards the share of the profits and income, therefore, at this stage, it is not for the Decree Holder to contend that they are also entitled for a share of 50%.

8.Admittedly, there are excess amount lying in the credit of the firm towards the satisfaction of the Execution Petition. Only a sum of Rs.5,34,454/- is due to be discharged towards execution petition, same be adjusted from the remaining balance which are admittedly frozen.

9.After such adjustment, the remaining amount shall be paid to the applicant. In the event of failing to appropriate the amount, the applicant is entitled to recover the same from the respondent as per law.

10.In view of the above, I am of the view that attachment passed by the learned Master in respect of the property has to be raised. Accordingly, the order passed by the learned Master for attachment is raised.

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