

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY THE 15TH DAY OF FEBRUARY 2018

THE HON'BLE DR. JUSTICE ANITA SUMANTH

A. No.8278 of 2017

in

A. No.3338 of 2017

A. No.3338 of 2017:-

In the matter of Arbitration
and Conciliation Act, 1996

And

In the matter of dispute
between M/s.Shriram City
Union Finance Ltd., and
M/s.Kirpal Singh, Prop. of
A.K.Metals Agreement
No.RSTNGTF1609040008 dated
04.09.2016.

M/s.Shriram City Union Finance Ltd.,
rep. by its Authorised Signatory, P.Nawin,
Registered office at No.123,
Angappa Naicken Street,
Chennai-600 001
branch office No.221,
Royapettah High Road,
Mylapore, Chennai-600 004.

... Applicant

-Versus-

1. Mr.Kirpal Singh,
Proprietor of A.K.Metals,
No.70/2, 70/1A, G.N.T.Road,
Alinjivakkam Village,
Sholavaram Post, Chennai-600 067
also at Mr.Kirpal Singh,
S Block No.105/D,
4th Main Road, Anna Nagar,
Chennai-600 040.
2. Mrs.Amarjit Kaur,
S Block No.105/D,
4th Main Road, Anna Nagar,

Chennai-600 040.

... Respondents

A. No.8278 of 2017:-

M/s.SLO Industries Ltd.,
No.447/365, Poonamallee High Road,
Chennai-600 029. ... Applicant/Third Party

-Versus-

1. M/s.Shriram City Union Finance Ltd.,
rep. by its Authorised Signatory, P.Nawin,
Registered office at No.123,
Angappa Naicken Street,
Chennai-600 001
branch office No.221,
Royapettah High Road,
Mylapore, Chennai-600 004. ... Respondent/Applicant
2. Mr.Kirpal Singh,
Proprietor of A.K.Metals,
No.70/2, 70/1A, G.N.T.Road,
Alinjivakkam Village,
Sholavaram Post, Chennai-600 067
also at Mr.Kirpal Singh,
S Block No.105/D,
4th Main Road, Anna Nagar,
Chennai-600 040.
3. Mrs.Amarjit Kaur,
S Block No.105/D,
4th Main Road, Anna Nagar,
Chennai-600 040. ... Respondents

Application praying that this Hon'ble Court be pleased to raise the order of attachment dated 29th August, 2017 passed in Application No.3338 of 2017 in respect of Item Nos.1 and 2 of the schedule (which are items 1 and 5 to the schedule herein) mentioned property.

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

This application is filed by M/s.SLO Industries Ltd., seeking to raise the order of attachment dated 29.08.2017 passed in A.No.3338 of 2017 in respect of the schedule mentioned properties.

2. Heard Mr.K.Manoj Menon, learned counsel for the applicant and Ms.R.Divya Priya, learned counsel for the respondent.

3. No objection is raised by the respondent (applicant in the main application) to the maintainability of the present application.

4. The sole objection to the attachment ordered on 29.08.2017 is to the effect that the applicant, a third party to the transaction between the parties in A.No.3338 of 2017, holds a pre-existing charge over the schedule property.

5. It is seen that the attachment ordered on 29.08.2017 is itself only a second charge upon the property as per paragraph 14 of the affidavit filed in A.No.3338 of 2017 to the following effect:

'14.... I am advised to state that even in the event of attachment of the property mortgaged to the M/s.SLO Industry Ltd., the applicant will get only second charge over the said property that too only on surplus/residue amount if at all available after adjustment of the Sale proceeds towards the amount due to M/s.SLO Industry Ltd. Therefore the applicant is constrained to approach this Hon'ble Court with the present application for attachment of Schedule property.....'

6. That apart, the provisions of Order 38 Rule 10 of the Code of Civil Procedure read thus:

'10. Attachment before judgment not to affect rights of strangers, nor bar decree-holder from applying for sale - Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.'

7. Thus, in terms of Order 38 Rule 10 extracted above, the attachment of the schedule property ordered on 29.08.2017 will be subject to all pre-existing charges as on the date of order.

8. In the light of the above, there is no necessity to lift the attachment ordered except to record the position that the same will be subject to all pre-existing charges.

9. The application is ordered in the above terms.

Sd/-DR.A.S.M.J

15.02.2018

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

JJ 04/05.2018

COURT OFFICER

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