

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

O.S.A. No. 442 of 2018

1.M/s. Gen Next Motors Limited,
Rep. By its Managing Director,
Plot. No. A/70, ITC Industrial Area, Near Thane
Belapur Road, Khairane,
Navi Mumbai - 400 709.

2. Mr. Sumit Vinod GuptaAppellants

Vs.

1. Nissan Renault Financial Services India Private Limited
Rep. By its City Manager Gokulakrishnan
ASV Ramana Towers, 5th Floor,
No.52, Venkatnarayana Road,
T. Nagar, Chennai - 600 017.

2. Ms. Sheela Gupta.Respondents

Prayer: Appeals under Order XXXVI Rule 1 of O.S. Rules and
Clause 15 of Letters Patent against order dated 24.09.2018 made
in Application No. 3782 of 2018.

For Appellants : Mr. Thriyambak J. Kannan

For Respondents : Mr. S. Namasivayam

J U D G M E N T

(Delivered by M.M.SUNDRESH, J.)

This appeal has been preferred by the appellant being aggrieved over the order of the Learned Single Judge, who after hearing the parties at length, was pleased to grant the following relief:-

"71. In fine, the applicant shall be entitled for the following relief:

i) 1st and 2nd respondent shall furnish security to the applicant for an amount of Rs.17,98,84,381/- within a period of 4 weeks

from today.

ii) The Arbitral Tribunal shall hereinafter proceed further under Section 17 of the Act and also endeavor to complete the proceeding as quickly as possible preferably within one year from the date its constitution in accordance with law unless the mandate is extended by the parties or by an order of the Court."

2. There was a finance agreement between the parties pursuant to which loan was granted by the first respondent to the appellants with respect to cars. The first appellant is a dealer. As the appellants defaulted in repaying the amount, the agreement was duly canceled. Thereafter, an application was filed under Section 9 of Arbitration and Conciliation Act, 1996 (for short, "the Act").

3. The learned Single Judge was pleased to allow the application as recorded above, inter alia, holding that notwithstanding an earlier statement made expressing no objection for conduct of audit of the unsold stocks, a stand was taken subsequently to the effect that there was no stock at all. Secondly, it was held that there was no specific denial of the amount due, spanning over Rs. 17 crores and odd.

4. Learned counsel appearing for the appellants would submit that it is not as if an order for granting security can be passed without any basis. The earlier statement given with respect to conduct of audit of the unsold stocks has to be seen along with the subsequent statement made. Thus, the order would require interference.

5. Learned counsel appearing for the respondents would submit that inasmuch as there is no dispute on the liability, coupled with the fact that no amount has been paid for more than two and half years notwithstanding the sales affected, the order of the learned Single Judge is perfectly correct.

6. The scope of Section 9 of the Act is much wider than the one that is provided under the Civil Procedure Code. The learned Single Judge though on a prima facie consideration was pleased to hold, in our considered view rightly, that there was no specific denial of the liability. Secondly, the affidavit dated 27.08.2018 was rightly construed to defeat the earlier undertaking given with respect to conduct of audit of unsold stocks of cars. As per the agreement, as and when sales are affected proceeds will have to be deposited with the respondents. It appears that though the appellants are running a concern, no amount was paid over the years. The learned Single Judge has rightly taken into consideration all these factors while passing the appropriate orders.

7. In such view of the matter, we find no error in the order passed by the learned Single Judge. However, inasmuch as the appeal has been preferred by the appellants challenging the order of the learned Single Judge, we are inclined to extend the time granted by the learned Single Judge for a further period of two weeks from the date of receipt of a copy of the order, for compliance of the directions contained therein.

The appeal is disposed of. No costs. Consequently, connected CMP. No. 20134 of 2018 is closed.

s/d-
Assistant Registrar (CO)

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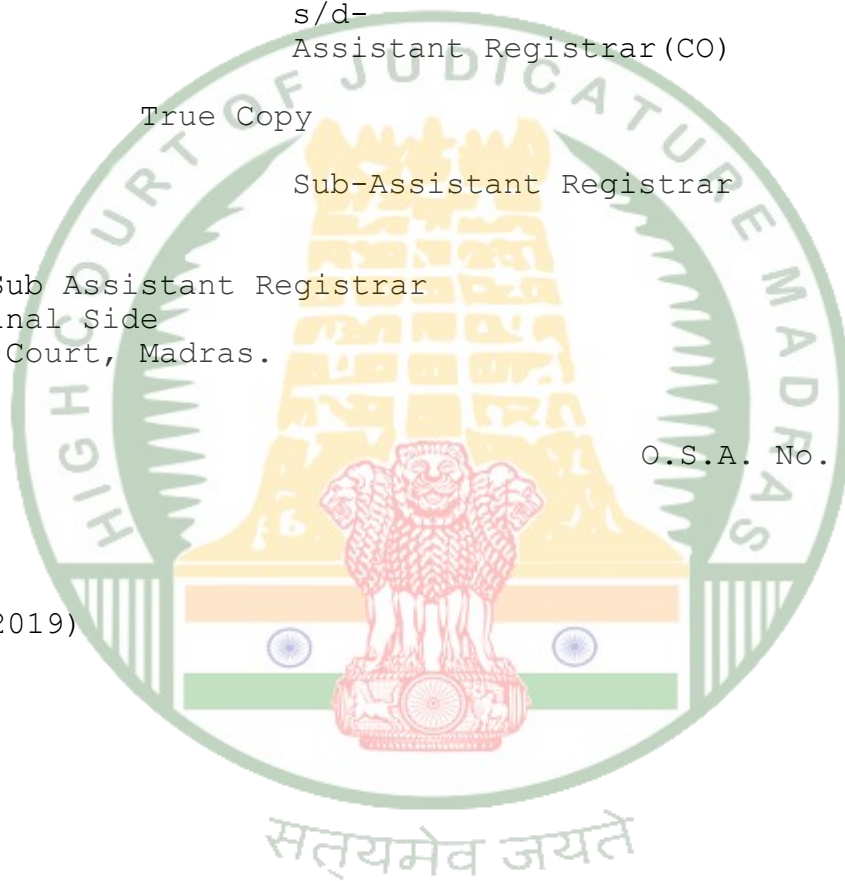
Sub-Assistant Registrar

ssm
To

The Sub Assistant Registrar
Original Side
High Court, Madras.

O.S.A. No. 442 of 2018

GP (CO)
SP (08/01/2019)



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