

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 12TH DAY OF DECEMBER 2018

THE HON'BLE MR. JUSTICE M.GOVINDARAJ

A. Nos.8672 & 8673 of 2018

In the matter of interim application filed under Sec.17 of the Arbitration and Conciliation Act, 1996 amended by Act 3 to return the hypothecated assets seized along with other accessories and paddy belong to 3rd party and for compensation.

M/s.Sundaram Finance Limited,
No.21, Patullos Road, Chennai-600 002
rep. by its Manager-Legal,
Mr.M.G.Srinivasan

... Applicant

(in both the applications)

-Versus-

Mr.P.Adhavan,
S/o.Mr.K.Punniyamoorthy,
No.138, 8th Cross, Arulanandammal Nagar,
VOC Nagar, Thanjavur-613 007
also at 21/2A, Kalaimagal Street,
Marungulam, Thanjavur-613 006.

Also at:

21/2A, Kalaimagal Street, Marungulam
Thanjavur - 613 006.

... Respondent
(in both the applications)

A. No.8672 of 2018:-

Application praying that this Hon'ble Court be pleased to set aside the order in respect of direction to return Ashok Leyland Lorry bearing Regn. No.TN 20 BS 8868, two iron ramps, one big iron box containing spare parts and kits and paddy weighing about 500 kg which do not form part of the loan agreement immediately as paddy is perishable item passed by the arbitral tribunal dated 08.11.2018 made in IA. No.152 of 2018 in arbitration case SSP/SF/111 of 2018 pending before the arbitral tribunal.

A. No.8673 of 2018:-

Application praying that this Hon'ble Court be pleased to stay the order dated 08.11.2018 passed in I.A. No.152 of 2018 in Arbitration Case No.SSP/SF/111 of 2018 till the pending disposal of the above application.

These Applications coming on this day before this court for hearing the court made the following order:

A.No.8672 of 2018 has been filed to set aside the order in respect of direction to return Ashok Leyland Lorry bearing Registration No.TN 20 BS 8868, two iron ramps, one big iron box containing spare parts and kits and paddy weighing about 500 kg which do not form part of the loan agreement immediately as paddy is perishable item passed by the arbitral tribunal dated 08.11.2018 made in IA.No.152 of 2018 in Arbitration case SSP/SF/111 of 2018 pending before the arbitral tribunal;

2. A.No.8673 of 2018 is filed seeking for an order staying the order dated 8.11.2018 passed in I.A.No.152 of 2018 in Arbitration Case No.SSP/SF/111 of 2018 till the pending disposal of the above application.

3. Heard the learned counsel for the applicant.

4. When the matter is taken up for hearing today, this Court, by its order dated 14.11.2018, stayed the order passed in I.A.No.152 of 2018 dated 08.11.2018 with a direction not to alienate the vehicle till the disposal of the applications.

5. It is seen that the Arbitral Tribunal under section 17 of the Arbitration and Conciliation Act, in I.A.No.152 of 2018 in Arbitration Case No.SSP/SF/111 of 2018, directed the applicant to return the Ashok Leyland Lorry bearing Registration No.TN 20 BS 8868, two iron ramps, one big iron Box containing spare parts and kits and paddy weighing about 500 K.gs which do not form part of the loan agreement immediately, as paddy is a perishable item.

6. Challenging the said order passed by the Arbitral Tribunal, the applicant Finance Company approached this Court stating that even the application filed by the 1st respondent herein admits that the subject matter of the above arbitration proceedings is only the machinery and when it is not the case of both the parties before the tribunal and when the subject vehicle bearing No. TN 20 BS 8868 which is not covered under the above said loan agreement and no dispute or claim made in the above arbitration proceedings, the arbitral tribunal has no power to

order return of the vehicle which is the hypothecated asset in the other loan agreement and for which contract, there is no dispute pending before the tribunal and as such the tribunal ought not to have directed the applicant to return the vehicle as he same is beyond the scope of reference and pertaining to a different contract which is not pending before the arbitrator.

7. It is the further contention of the applicant that there is no paddy bag found in the vehicle and more so, the respondent has not proved the existence of the paddy bags in the vehicle and in any event, the arbitral tribunal could not go into the merits of the matter as the said contract was never the subject matter of the dispute before it.

8. He would further submit that if the vehicle is allowed to be released to the respondent, the applicant will lose its valuable security and the claim in the said contract will become unsecured, as a result of which the ap-

plicant will not be able to realise its legitimate claim and irreparable injury would be caused to the applicant, thus he prayed that the order passed in I.A.No.152 of 2018 dated 08.11.2018 by the arbitrator be stayed pending disposal of the above application and to set aside the order in respect of direction to return Ashok Leyland Lorry bearing Registration No.TN 20 BS 8868, two iron ramps, one big iron box containing spare parts and kits and paddy weighing about 500 Kgs which do not form part of the loan agreement.

9. When the matter is taken up today, the learned counsel for the respondent took this Court to the counter filed by the applicant before the Arbitrator in Interim Application No.154 of 2018. On perusal of the counter affidavit, it is seen that there is no specific denial of the factual averments made in the application made by the respondent/borrower to the a specific prayer as to return of 500 Kg of paddy and the harvesting machine the Ashok Ley-

land Lorry bearing Registration No.TN 20 BS 8868 along with accessories. The inventory report submitted by the Finance Company also discloses nothing about the harvester as well as the paddy said to have been taken possession of. The counter filed by the finance company is very vague and it does not reveal any specific denial as to the actual happenings.

10. In the circumstances, the tribunal has rightly presumed that the paddy was also available at the time of seizure of the harvesting machine. It is an admitted case that both lorry as well as harvesting machine were seized by the applicant finance company. In these circumstances, I do not find any infirmity in the order passed by the Arbitrator .

11. Learned counsel for the respondent submitted that against the order of the arbitrator, he preferred a Civil Miscellaneous Appeal in C.M.A.

No.2795 of 2018, in which, an interim order staying the

sale of the lorry has been passed in CMP.No.21306 of 2018 on 4.12.2018. Therefore, this Court is not inclined to pass any orders on that aspect. It is open to the parties to agitate their claim before the Appellate Court.

12. With the above observations, these applications are dismissed. The applicant company is directed to return 500 Kgs of paddy seized at the time of seizure of vehicle along with harvesting machine forthwith as it is a perishable item.

Sd/- M.G.R.J.
12.12.2018

//Certified to be a true copy//
Dated this the day of 2019.

DL/31.01.2019

COURT OFFICER

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From 25.09.2008 the

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