

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :21.12.2018

Coram

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.M.A.No.2795 of 2017

P. Adhavan

...Appellant

Vs.

1. M/s Sundaram Finance Limited
No.21, Patullos Road.

2. Mrs.A.Kalaiselvi

.... Respondent

PRAYER :

Civil Miscellaneous Appeal filed under Section 37 of the Arbitration & Conciliation Act, 1996 to set aside the order dated 08.11.2018 made in I.A. No.152 of 2018 in Arbitration No. SSP/SF/111/2018 and to grant permanent injunction restraining the first respondent company not to take any steps to sell the harvesting machine, the Ashok Leyland Lorry bearing Registration No. TN 20 BS 8868. Two Iron Ramps, one big Iron Box containing Spare Parts & Kits and paddy weighing about 500 K.G. and to direct the respondent company to hand over the harvesting machine the Ashok Leyland Lorry bearing Registration No. TN 20 BS 8868, Two iron Ramps, one big Iron Box containing Spare Parts & Kits and paddy weighing about 500 K.g., to the appellant and to direct the respondent company to pay a compensation and to direct the respondent company to pay the loss of income incurred by the appellant from the date of taking repossession till the date of handover at the rate of Rs.12,000/- per day and to take necessary legal action against the respondent company for the illegal repossession taken by them and contempt of the Arbitral Tribunal committed by the respondent company and to award cost.

For Appellant

:Mr. M. Ganesh

For Respondent-1

:Mr. S. Suresh

For Respondent-2

:Mr.R.Kalidass

J U D G M E N T

This Civil Miscellaneous Appeal filed under Section 37 of the Arbitration & Conciliation Act, 1996 to set aside the order dated 08.11.2018 made in I.A. No.152 of 2018 in Arbitration No. SSP/SF/111/2018 to grant permanent injunction restraining the first respondent company not to take any steps to sell the harvesting machine, the Ashok Leyland Lorry bearing Registration No.TN-20-BS-8868. Two Iron Ramps, one big Iron Box containing Spare Parts & Kits and paddy weighing about 500 K.G. and to hand over the harvesting machine the Ashok Leyland Lorry bearing Registration No. TN 20 BS 8868, Two iron Ramps, one big Iron Box containing Spare Parts & Kits and paddy weighing about 500 K.g., to the appellant and to direct the respondent company to pay the compensation and the loss of income incurred by the appellant from the date of taking repossession till the date of handover at the rate of Rs.12,000/- per day and also to take necessary legal action against the first respondent-company for the illegal repossession taken by them.

2. The case of the appellant is that he approached the first respondent company with a request to extend the loan facility for the purchase of a Claas Combine Harvester Machinery from the dealer M/s. Vijie and Majeeth Agencies, and the said request was considered favorably by the 1st respondent company. Thereafter, the appellant entered into a loan agreement dated 27.09.2016 bearing agreement No.L033400100 in respect of the loan of Rs.18,00,000/- availed by him. The second respondent executed a guarantee dated 27.09.2016 in favour of the first respondent company. Prior to the loan agreement, the appellant executed a Memorandum of Deposit of Title Deed dated 14.09.2016 by depositing the tile documents of the land measuring to an extent of Acre 1.40 cents worth about Rs.60,00,000/- as collateral security and the same was registered as Document No.2670/2016 on the file of Sub Registrar Office, Vallam.

3. The further contention of the appellant is that the first respondent company sent a demand notice dated 23.05.2018 to the appellant calling upon him to pay the entire instalment with interest and other charges i.e Rs.16,86,022.92 in the event of failure to pay the fifth and sixth installments within 10 days from the date of receipt of the said notice. Thereafter, the first respondent-company filed a claim statement before the Arbitral Tribunal vide Arb.CaseNo.SSP/SF/111 of 2018. After receipt of the said notice the appellant entered appearance through their counsel and filed the Statement of Defence on 09.08.2018. On 18.09.2018, the respondent-company repossessed/seized the Harvester Machine along with Ashok Leyland Lorry bearing Registration No. TN-20-BS-8868, Two Iron

Ramps, one big Iron Box containing Spare Parts & Kits and paddy weighing about 500 K.g without getting any prior orders from the Tribunal, that too, in the absence of the appellant, which is illegal, arbitrary and an unjustifiable one. Having no other alternative, the appellant has filed this C.M.A seeking to get back his vehicles.

4. Earlier this Court, by an order dated 29.11.2018 granted an order of interim stay with a condition that the petitioner/appellant should deposit 50% of the arrears amount due to the respondents. As per the said direction, the respondent has paid the amount of Rs.3,30,000/- by way of Demand Draft No. 34823 dated 11.12.2018 drawn on State Bank of India. Now, the appellant is further directed to pay Rs.1,00,000/- to the first respondent within a period of two weeks from the date of receipt of a copy of this order.

5. When the matter is taken up for hearing today, the learned counsel for the appellant stated that the matter may be remitted back to the Arbitration for fresh consideration. Accordingly, the matter is remitted back to the Arbitrator and the sole arbitrator is directed to pass fresh orders on merits and in accordance with law.

6. In the mean time, the respondents are directed to return the seized vehicles including Lorry within a period of one week from the date of receipt of a copy of this order without waiting for the further payment of Rs.1,00,000/- as ordered today.

With the above observations and directions, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-
Assistant Registrar (CS-III)

//True copy//

सत्यमेव जयते
Sub Assistant Registrar

smn

To

Dr.S.S.P.Darwesh, Aarbitractor,

No.15/33, Srinivasa Street,

Perembur, Chennai-11

+1cc to Mr.S.Suresh, Advocate SR.No.89705

+1cc to Mr.M.Ganesh, Advocate SR.No.89537

C.M.A.No. 2795 of 2018

BS (CO)

GMV (04/01/2019)