

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 25TH DAY OF NOVEMBER 2019

THE HON'BLE MR. JUSTICE K.KALYANASUNDARAM

A.No.6300 and 6301 of 2019

in

E.P.NO.52 and 53 of 2016

E.P.No.52 of 2016:

M/S INTEC CAPITAL LIMITED

701, Manjusha, NO.57, Nehru Palace,

New Delhi - 110019

..DECREE HOLDER

-VS-

1. M/S RAJESWARI INFRASTRUCTURE LIMITED,
18/23, 2nd Cross Street, East CIT nagar,
Nandanam, Chennai - 35, TAMIL NADU.

2. Mr.G.RAMAMURTHY

No.11, Jagannath Street,
Sri Lakshman Nagar, Chennai

3.Mrs. R.USHA

No.11, Jagannath Street,
Sri Lakshman Nagar, Chennai

..Judgment Debtors

A.No.6300 of 2019:

1. M/S RAJESWARI INFRASTRUCTURE LIMITED,
18/23, 2nd Cross Street, East CIT nagar,
Nandanam, Chennai - 35, TAMIL NADU.

2. Mr.G.RAMAMURTHY

No.11, Jagannath Street,
Sri Lakshman Nagar, Chennai

3.Mrs. R.USHA

No.11, Jagannath Street,
Sri Lakshman Nagar,
Chennai

..Applicant/Applicants/Judgment Debtors

-vs-

M/S INTEC CAPITAL LIMITED

701, Manjusha, NO.57, Nehru Palace,

New Delhi - 110019

..Respondent/Respondent/DECREE HOLDER

This application praying that this Honble Court be pleased to set aside the order dated 13/12/2018 on the following grounds.

Grounds

- a. The order passed by the Learned Master in bad in law and facts of the case.
- b. The learned Master ought to have valid assigned reason by dismissing the application filed by the applicant.
- c) The Learned Master has gone in to aspect which is subject matter of adjudication before Honorable Supreme Court while deciding the issue. With regard to the raising the order of attachment.
- D) The Learned Master erred by observing that the judgement debtor is deemed to be served in the notice in the arbitration proceedinds, Deciding the execution proceedings.
- E) The Learned Master erred by observing the application had been filed only to delay of the execution prodeeding without taking tin to the consideration the pending Special Leave Petition before the Honorable Suprememt Court.
- f) The Learned Master failed to consider the contention put forth in application that the order of attachment has been passed without notice of the applicant.
- g) The learned Master is without application of Mind the application is liable to dismissed.

In view of the above it is prayed that this Honourable Court may be pleased to set aside order dated 13.12.2018 passed in A.No.5046 of 2016 in E.P.No.52 of 2016 and the Application to raise the order of attachment dated 27.04.2016 in 52 of 2016 pertaining to the property bearing phase II (Mudp-I block No.3, Plot No.524 D1 at Kodungaiyur Phase-II, Muthamil Nagar) as per Corporation Tax receipt New Door No.9, Old No.9, Old Door No.3/524, 71st Street, Phase-II, TNHB, Kodungaiyur Village Fort, Tondiarpet Taluk, Chennai-600 118.

E.P.53 of 2016:

INTEC CAPITAL LIMITED
NO.701 MANJUSHA BUILDING,
NO.57 NEHRU PLACE,
NEW DELHI 110 019.

..Decree Holder

-vs-

1.M/S.RAJESWARI INFRASTRUCTURE LIMITED.
18/23, 2nd Cross Street,
East CIT Nagar,
Nandanam,
Chennai-600 035,
Tamilnadu, India.

2 MR.G.RAMAMURTHY
18/23, 2nd Cross Street,
East CIT Nagar,
Nandanam,
Chennai-600 035,
Tamilnadu, India.

3. MRS.R.USHA
18/23, 2nd Cross Street,
East CIT Nagar,
Nandanam,
Chennai-600 035,
Tamilnadu, India.

..Judgment Debtors

A.No.6301 of 2019:

East CIT Nagar,
Nandanam,
Chennai-600 035,
Tamilnadu, India.

2 MR.G.RAMAMURTHY
18/23, 2nd Cross Street,
East CIT Nagar,
Nandanam,
Chennai-600 035,
Tamilnadu, India.

3. MRS.R.USHA
18/23, 2nd Cross Street,
East CIT Nagar,
Nandanam,
Chennai-600 035,
Tamilnadu,
India.

...Applicants/Applicants/Judgment Debtors

-vs-

INTEC CAPITAL LIMITED
NO.701 MANJUSHA BUILDING,
NO.57 NEHRU PLACE,
NEW DELHI 110 019.

...Respondent/Respondent/Decree Holder

This application praying that this Honble Court be
pleased to set aside the order dated 13/12/2018 on the
following grounds.

Grounds

a. The order passed by the Learned Master in bad in law
and facts of the case.

b. The learned Master ought to have valid assigned reason
by dismissing the application filed by the applicant.

c) The Learned Master has gone in to aspect which is
subject matter of adjudication before Honorable Supreme
Court while deciding the issue. With regard to the raising
the order of attachment.

D) The Learned Master erred by observing that the

judgement debtor is deemed to be served in the notice in the arbitration proceedings, Deciding the execution proceedings.

E) The Learned Master erred by observing the application had been filed only to delay of the execution proceeding without taking into the consideration the pending Special Leave Petition before the Honorable Supreme Court.

f) The Learned Master failed to consider the contention put forth in application that the order of attachment has been passed without notice of the applicant.

g) The learned Master is without application of Mind the application is liable to be dismissed.

In view of the above it is prayed that this Honourable Court may be pleased to set aside order dated 13.12.2018 passed in A.No.5047 of 2016 in E.P.No.53 of 2016 passed by the learned Master and the application for to raise the order of attachment dated 27.04.2016 in E.P.No.53 of 2016 pertaining to the property bearing Old No.56, Door No.156, New Door No.10, Vanniar Street, Choolaimedu, Chennai 600 094, of an extent of 1556.75 sq.ft. Comprised in Pymash No.594 T.S.No.99 Block No.21 in Puliyur Village Egmore, Nungambakkam Taluk.

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

These applications have been filed challenging the order of the learned Master passed in A.Nos.5046 & 5047 of 2016 in E.P.Nos.52 and 53 of 2016, dated 13.12.2018.

2. It appears that the applicants availed two loans from the respondent-Decree Holder. In view of default in paying the loan amount, Award came to be passed on 05.11.2015 in Arbitration Nos.47 & 48 of 2015. The appeals preferred against the Award came to be dismissed by this Court for lack of jurisdiction and thereafter, the

applicants have filed a case before the Delhi High Court along with condone delay applications in O.M.P.(COMM)Nos.255 & 256 of 2018. Since the applications seeking to condone the delay were dismissed, Special Leave Petition in S.L.P.No.23894 of 2018 is pending.

3. It is not disputed that under the two Awards, the applicants are liable to pay more than Rs.4.5 Crores. In the Execution Petition filed in the year 2016, an order of attachment was passed and to raise the order of attachment, the applicants filed A.Nos.5046 and 5047 of 2017 in E.P.Nos.52 and 53 of 2016 and both applications were dismissed by the learned Master. Challenging the same present appeals.

4. The learned counsel for the applicants would submit that a Memo, dated 24.08.2018 was filed before the learned Master stating that the Special Leave Petition came up for hearing before the Hon'ble Apex Court on 12.10.2018 and the Court has ordered notice to the respondent-Decree Holder, however, without considering the fact, these applications were dismissed.

5. *Per contra*, learned counsel for the respondent-Decree Holder would submit that admittedly, no interim order was granted in Special Leave Petition and the learned Master, after considering the entire issue has dismissed the applications.

6. Heard the learned counsel on either side and perused the materials available on record.

7. It is not disputed that in two Arbitration Cases in Arbitration Nos.47 & 48 of 2015, Award has been passed in favour of the respondent-Decree Holder. It appears that the Award passed in Arbitration cases were challenged by the applicants before this Court and for lack of jurisdiction, the appeals were dismissed and the applicants have filed petitions before the Delhi High Court along with condone delay applications. Since the applications seeking to condone the delay were dismissed, Special Leave Petition

is pending.

8. In the instant case, even though the Special Leave Petition in S.L.P.No.23894 of 2018 is pending, no interim order has been granted against the Execution of the Award. Hence, mere pendency of the Special Leave Petition, cannot be a ground to raise an attachment order passed in the Execution Petitions in E.P.Nos.52 & 53 of 2016. Therefore, I find no illegality or irregularity in the orders impugned in these applications, warranting interference. In such view, both the applications are dismissed.

Sd/. M.K.K.S.J

25.11.2019

//Certified to be a true copy//

Dated this the day of 2019.

S.U./12.12.2019

COURT OFFICER

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

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