

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.02.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

O.P.No.664 of 2018
and A.No.5865 of 2018

G.Lingamoorthy

... Petitioner

vs.

1.M/s. Sriram City Union Finance Ltd.
Having its registered office at
123, Angappa Naicken Street
Chennai - 1.

2.K.N.Redin

3.T.Nirmala

4.K.Anand

... Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, praying to

(1) set aside the award dated 20.04.2018, passed by the sole Arbitrator in the Arbitration Proceedings bearing Case No.C.P.No.KSG/SCUF/153 of 2017, in the matter of dispute between the petitioner and the respondents and consequently reject the claim of the first respondent as against the petitioner;

(2) Pay the costs of these proceedings; and

(3) Pass such further or other orders as this Hon'ble Court may deem fit in the circumstances and thus render justice.

For Petitioner : Mr.D.Senthil Kumaar

For Respondents : Mr.R.Umashankar for R1

ORDER

There is a sole petitioner and there are four respondents in this 'Original Petition' (hereinafter 'OP' for brevity).

2. Mr.D.Senthil Kumaar, learned counsel on record for sole petitioner and Mr.R.Umashankar, learned counsel on record for the contesting first respondent are before this Court. With regard to respondents 2, 3, and 4, while respondent No.2 is a borrower, respondents 3 and 4 are guarantors. To be noted, there was a loan transaction between the second respondent and the first respondent, in which petitioner stood as a guarantor along with respondents 3 and 4.

3. Both learned counsel before me submit that parties have arrived at a compromise and have reduced the terms to writing by way of a memo of compromise, which is captioned 'Joint Memo of Compromise filed by the petitioner and first respondent' and the same is dated 21.02.2019 (hereinafter 'said MOC' for brevity).

4. Today, petitioner Mr.G.Lingamoorthy, is present before this Court. On behalf of the first respondent, Ms.E.Ramya, Executive, duly authorized by way of

an Authorisation Letter dated 19.09.2018 given by the first respondent company, is before this Court.

5. Aforesaid learned counsel and their respective clients who are before this Court confirm that they have executed said MOC in the presence of one another and both learned counsel, on instructions, from their respective clients request that the same may please be recorded.

6. Said MOC reads as follows:

**'JOINT MEMO OF COMPROMISE FILED BY THE PETITIONER AND
FIRST RESPONDENT**

The above named Petitioner and the first Respondent respectfully submit as follows:

1) *The Second Respondent herein entered into a Loan Agreement dated 03.10.2016, bearing No:TFH01TF1610030002, with this respondent under which a sum of Rs.1,78,56,000/- is repayable in 60 monthly instalments. Under the said Loan Agreement, between the second and the first respondent, the petitioner, third and the fourth respondents joined as guarantors guaranteeing the due performance of the obligations under the aforesaid contract. In order to secure the amount due under the aforesaid Loan Agreement, this petitioner herein has mortgaged his property at Devi Karumari Amman Nagar, Pallikaranai, Chennai in favour of this respondent. The first Respondent herein, in view of the default committed by the second respondent herein being the borrower, initiated Arbitration*

proceeding in C.P.No:KSG/SCUF/153 of 2017, in which the learned Arbitrator has passed an award dated 20.04.2018, directing the second, third, fourth respondents and the petitioner to pay jointly or severally a sum of Rs.1,78,87,463/- with further interest @ 18% P.A. from 24.10.2017 till realization in full. The Petitioner, said to have been aggrieved by the award passed by the learned Arbitrator, has filed the present O.P. before this Hon'ble Court, praying for setting aside the award.

2) The Petitioner submit that, pending proceeding, in order to safeguard his immovable property, has decided to settle the matter amicably with this Respondent. After mutual negotiations and discussions, the petitioner has paid the entire amount and settled the claim of the first respondent in full quit and the first respondent herein also acknowledged the receipt of the said amount from the petitioner. The first respondent also issued no due certificate and released and relinquished rights over the petitioner's property as there is no claim against each other in respect of the Loan Agreement cited supra. In consensus, the Petitioner and the first respondent enter into this Joint Memo of Compromise as follows:

a) The first respondent doth hereby declares and confirms that there is no due to be payable by the Petitioner and the second, third and fourth respondents to this respondent under Loan Agreement No: 03.10.2016, bearing No: TFH01TF1610030002, as the entire amount is fully settled by the petitioner herein.

b) The first respondent, taking note of the payment made by the petitioner, assigns the award dated 20.04.2018, passed by the learned Arbitrator in C.P.No:KSG/SCUF/153 of 2017, in favour of the petitioner with liberty to execute the same against the second, third and fourth respondent and without any recourse

against this respondent Finance Company.

c) This Joint Memo of Compromise may from part and parcel of the order in the above matter.

It is therefore prayed that this Hon'ble Court may be pleased to record the Joint memo of Compromise in the above O.P and pass an order in terms of the Joint memo of Compromise and thus render justice.

Dated at Chennai on this the 21st day of February 2019.

sd/-

Petitioner

sd/-

First respondent

sd/-

Counsel for Petitioner

sd/-

Counsel for First respondent'.

7. The parties present before this Court reiterate the terms of said MOC.

8. Both aforesaid parties before this Court have produced photo identity cards viz., Aadhar cards and also self-attested photocopies of the said photo identity cards.

9. Said MOC together with a certified true copy of the Authorisation Letter given by the first respondent Company dated 19.09.2018 and self attested photocopies of photo identity cards of the parties produced before this Court are taken on record.

10. Recording said MOC, instant OP is disposed / closed. No costs.

Consequently, connected miscellaneous petition is closed.

27.02.2019

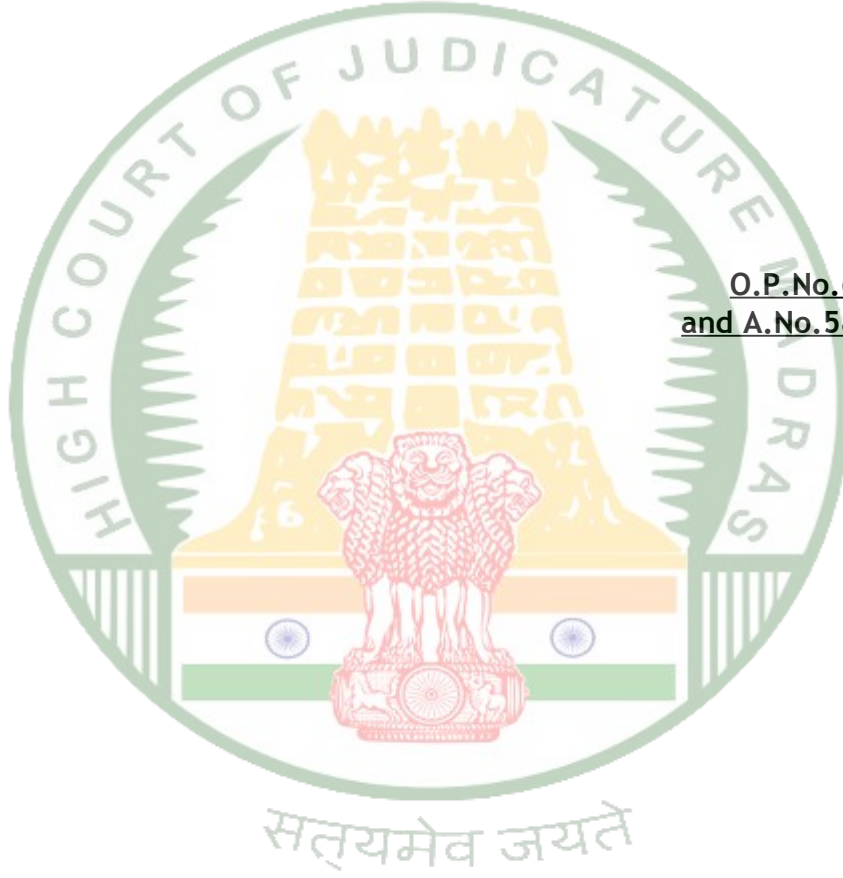
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M.SUNDAR.J.,

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