

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

O.P.No.749 of 2018
and O.A.No.786 of 2018
and A.No.6421 of 2018

M.Ahamed Musthafa
S/o.Mohamed Yousuff

.. Petitioners

vs.

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

2.M.Mohideen Fathima
W/o.Mohamed Yousuff

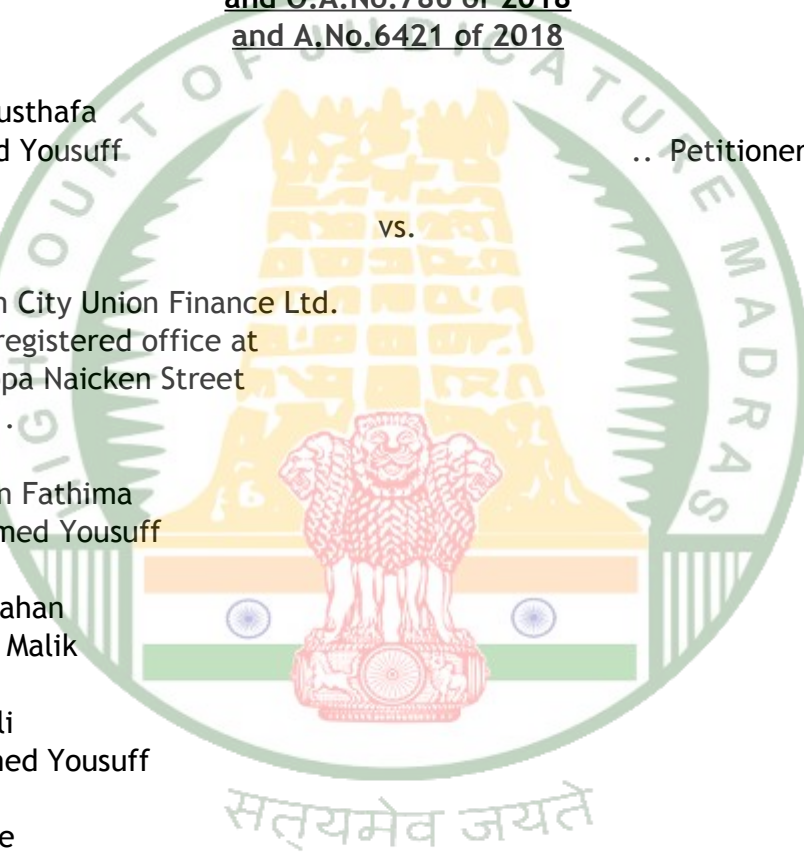
3.A.Nasreenjahan
W/o.Abdul Malik

4.M.Sarrah Ali
S/o.Mohamed Yousuff

5.U.Shrambee
W/o.Usman

6.Mr.K.S.Gowthaman
Sole Arbitrator
Gayathri Kripa
New No.49, Old No.224B
4th Cross Street, Natesan Nagar
Virugambakkam, Chennai - 92.

... Respondents



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Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the arbitration award passed by the 6th respondent in C.P.No.KSG/SCUF/254/2017, dated 09.08.2018.

For Petitioner : Ms.I.Kowser Nissar

For Respondents : Mr.R.Umashankar for R1

ORDER

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

2. Ms.I.Kowser Nissar, 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, 4 and 5, while respondent No.2 is petitioner's mother, respondents 3 and 5 are his blood sisters and respondent No.4 is his blood brother. Respondent No.6 is the sole Arbitrator, who constituted the Arbitral Tribunal.

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 it is dated 21.02.2019 (hereinafter 'said MOC' for brevity).

4. Petitioner Mr.M.Ahamed Musthafa, who is present in Court, reiterates

that said MOC has been signed after fully understanding the contents of the same and reiterates the same.

5. With regard to first respondent, Mr.R.Umashankar, learned counsel on record for first respondent company submits that there is some personal inconvenience for the legal resource of the first respondent, owing to medical emergency for her child. On this basis learned counsel, pointing out that the vakalatnama given by the first respondent has been signed by the same legal resource, who has signed the said MOC, requests that the presence of the legal resource may please be dispensed with for recording said MOC. Certified true copy of the Authorisation Letter given by the Executive Director of the first respondent company dated 17.07.2017 authorising Ms.E.Ramya, Officer-I, who has signed the said MOC, to represent the first respondent company in this OP has also been placed before this Court.

6. On the aforesaid basis, on instructions, from their respective parties both learned counsel request that the said MOC may please be recorded and this OP may please be disposed of.

7. 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 Petitioner herein entered into a Loan Agreement dated 29.02.2016, bearing No:AMBT2TF1602270001, with this respondent under which a sum of Rs.27,40,500/- is repayable in 60 monthly instalments. Under the said Loan Agreement, between the second and the first respondent, the second, third, fourth and the fifth 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 and the second, third, fourth and the fifth respondents have mortgaged their property at Soorappa Mudali Street, Triplicane, Chennai infavour of this respondent. The first respondent herein, in view of the default committed by the Petitioner herein being the borrower, initiated Arbitration proceeding in C.P.No.KSG/SCUF/254 of 2017, in which the learned Arbitrator has passed an award dated 09.08.2018, directing the petitioner, the second, third, fourth and the fifth respondents to pay jointly or severally a sum of Rs.25,03,428/- with further interest @ 18% P.A. from 20.02.2018 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 agreed to pay the a sum of Rs.24,00,000/- as against the award amount and the in the manner set out hereunder and entered into this Memo of Compromise with this respondent.

1) The respondents shall pay a sum of Rs.24,00,000/- (Rupees Twenty Four Lakhs only) towards the full and final settlement of all the above referred loan agreement which is the subject matter of this Arbitration in the following manner:

a) Paid a sum of Rs.4,00,000/- (Rupees Four Lakhs only) on 28.01.2019;

b) A sum of Rs.7,00,000/- (Rupees Seven Lakhs only) shall be paid on 25.03.2019

c) A sum of Rs.13,00,000/- (Rupees Thirteen Lakhs only) shall be paid on 25.05.2019.

2) On receipt of Rs.24,00,000/- (Rupees Twenty Four Lakhs only) as aforesaid, the claim against the Petitioner and the Second, third, fourth and fifth respondents under the aforesaid Loan Agreement is fully satisfied and there shall not be any claim as against each other. In such event, the claimant shall execute necessary Receipts in favour of the petitioner and the second, third, fourth and fifth respondents enabling them to cancel the Mortgage created in favour of this respondent.

3) In the event of failure to pay even one installment amount as specified above, the concession shown by this respondent shall stand withdrawn ipso facto without any notice and this respondent is entitled to recover the award amount of Rs.25,03,428/- (after appropriating the payment made) together with interest @ 18% p.a and Cost in accordance with law.

4) In addition to above, since this respondent has not prayed for any relief touching the Property Mortgaged by the second, third, fourth and the fifth respondents before this Hon'ble Tribunal, this Memo of Compromise will neither alter nor extinguish the rights of the respective parties to enforce the

Mortgage and the award in accordance with Law in the event of non compliance of the terms of this Memo of Compromise. It is made clear that this Memo of Compromise should not be construed as a Novation of the Loan Agreements which is the subject matter of this Arbitration.

5) The petitioner and the first respondent agree that this Memo of Compromise be filed before the Hon'ble Arbitrator with a prayer to pass an award in terms of this Memo of Compromise.

Dated at Chennai on this 21st day of February 2019

*Sd/-
Petitioner*

*Sd/-
First respondent*

*Sd/-
Counsel for Petitioner*

*Sd/-
Counsel for first respondent'*

8. In the light of the joint request made and the reiteration of the same by the party present before this Court (party reiterates that the said MOC has been signed after taking into confidence respondents 2, 3, 4 and 5 also), said MOC is recorded in the instant OP.

9. Petitioner, who is present in Court, has produced his photo identity card viz., Aadhar Card and also self-attested photocopy of photo identity card.

10. Said MOC together with a certified true copy of the Authorisation

Letter given by the Executive Director of the first respondent Company dated 17.07.2017 and self attested photocopy of photo identity card of the petitioner produced before this Court are taken on record.

11. Recording said MOC, instant OP is disposed / closed. No costs. Consequently, connected miscellaneous petitions are closed.

Speaking Order/Non-Speaking Order
Index : Yes/No
Internet: Yes/No
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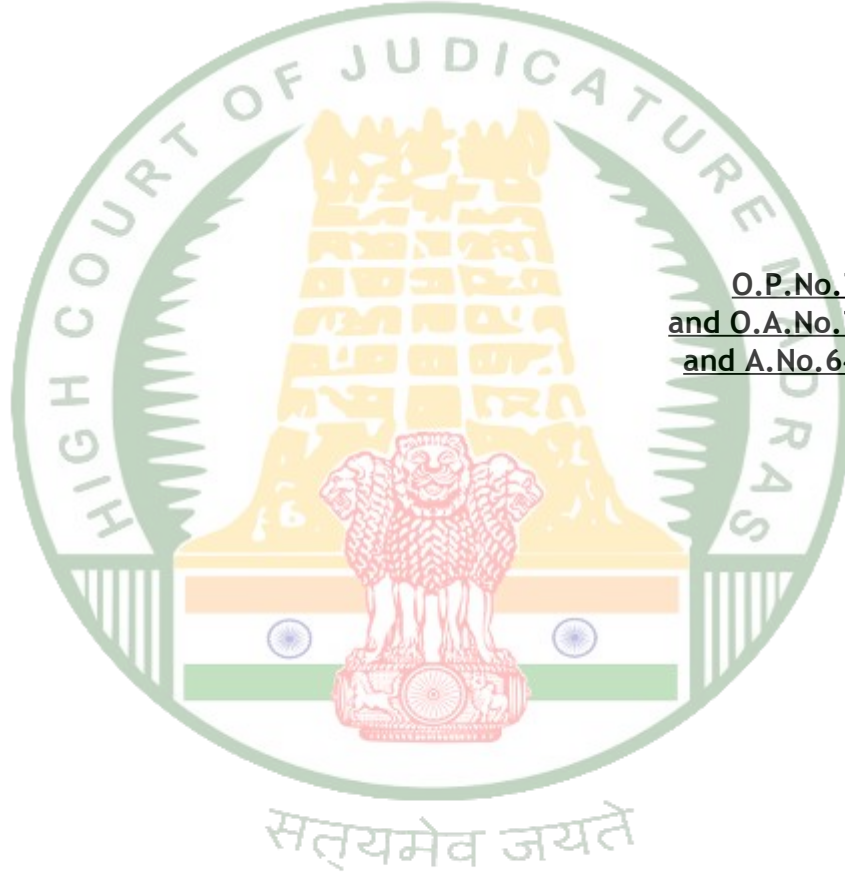
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M.SUNDAR.J.,

vsm



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