

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 04TH DAY OF APRIL, 2019

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

A. No.8805 of 2018

In the matter of Arbitration
and Conciliation Act 1996
and

In the matter of disputes
between the Applicant and the
Respondents in respect of
Loan Agreement No. SA 619710
dated 23.09.2015.

M/s. Kotak Mahindra Bank Limited
Rep.by its Authorised Signatory
Mr.Kingston Michael, 8th Floor, TVH Agnitio Park,
Zone 2, No.141, Old Mahabalipuram Road,
Kandanchavadi, Chennai 96. : Applicant

Vs.

1. Manju Foundation P Ltd.,
No.39, Dr.Radhakrishnan Salai, 5th Street,
Mylapore, Chennai 600 004.

2. Km.Vidhyasagar
No.8-1, ARK Colony, No.27, Eldams Road,
Alwarpet, Teynampet, Chennai 600 018. : Respondents

Application praying that this Hon'ble Court be pleased
to pass an order appointing Mr.K.J.Durgaprasad, Manager,
Kotak Mahindra Bank, as Receiver to seize DG SET-KIRLOSKAR
BROTHERS LTD CB 125 KVA GENSET bearing Engine Number
4H79021520615 and Chassis No. ES3S115GP069897 lying at the
address of the Respondents wherever and to handover to the
Applicant in as is where is condition and file report.

This Application coming on this day before this court
for hearing and the Court made the following Order :

This Court, by order dated 20.11.2018, appointed an
Advocate Commissioner to seize the vehicle in question and
hand over the same to the applicant company.

2. Subsequently, when the case came up for hearing on 19.02.2019, the learned counsel appearing for the applicant submits that, the Advocate Commissioner could not execute the warrant and the vehicle could not be seized and therefore, in order to complete the job on behalf of the Advocate Commissioner, the learned counsel appearing for the applicant submitted that, an extension of two weeks may be granted to the Advocate Commissioner to execute the warrant and report before this Court. Accordingly, by order dated 19.02.2019 two weeks time has been given. Thereafter, the case has come up before this Court today and the learned counsel appearing for the applicant submits that, despite the extension granted by this Court, the vehicle in question has not been seized by the Advocate Commissioner for the reason that, in the meanwhile the respondent has come forward for negotiation for settlement and hence, the warrant has not been executed and in order to give a chance for the respondent to settle the matter, two weeks extension already granted to the Advocate Commissioner can further be extended, for a period of one week and by making use of that, the applicant company can negotiate with the respondent borrower and try to settle the matter.

3. I am afraid, the application filed seeking interim relief under Section 9 of the Arbitration and Conciliation Act, 1996 is only an interim measure, that can be sought for either before Arbitration commences or during the Arbitration proceedings or even after the award is passed. The said clause is provided under the Act, only to safeguard the interest of the parties during the interregnum by way of some urgent interim remedy as has been enumerated in Section 9 of the Act itself. This application in fact has been filed even prior to the matter being referred to Arbitrator and taking the over all situation into consideration, this Court has granted an interim order on

20.11.2018 appointing the Advocate Commissioner, to seize the vehicle in question. This interim arrangement was made in order to secure the vehicle, for which the amount has been advanced by the applicant company to the respondent borrower and in order to have the security for the money payable by the respondent, unless the said interim arrangement is made, the respondent may exploit the vehicle in question thereby, the lawful claim on the side of the applicant would get defeated. Only in order to avoid the said situation, in order to make an interim protection/interim arrangement, such kind of interim orders are passed.

4. Though such an order was passed on 20.11.2018, where, six weeks time was granted to execute the warrant, for the entire period granted by this Court, the warrant has not been executed. No plausible reason also has been given by the counsel for the applicant or by the Advocate Commissioner, for not executing the warrant. When the case came up for hearing subsequently, on 19.02.2019, it was submitted by the applicant company that, if an extension of two weeks time is granted, the warrant would be executed and the learned Advocate Commissioner would complete the job and report before this Court.

5. Accepting the said plea made by the learned counsel for the applicant on behalf of the Advocate Commissioner, two weeks time was granted and that his how, this application has come up today. When that being the situation, the learned counsel appearing for the applicant has now made the submission that, since the respondent has come forward for negotiation and settlement, the warrant has not been executed.

6. Be that as it may, the litigant, who approached this Court, invoking Section 9 of the Arbitration and Conciliation Act, cannot use the orders passed by this Court, as a tool to settle the matter between the parties.

If at all, the parties wanted to settle the matter, they can very well do the same and report before this Court, by filing a Memo of Settlement. Otherwise, both the parties can refer the matter to the Arbitrator, before whom, the settlement can be reported. However, no party can have any right to use the interim order of this Court, as a tool, to have a clutch over the other party to bring for negotiation and settlement and for the said purpose, the interim orders passed by this Court, under Section 9 of the Act, cannot be used. Moreover, if this kind of indulgence is shown by this Court, and the parties are permitted to use the interim orders passed by this Court as a tool, to achieve some other purpose the very purpose of having Section 9 in the statute would get defeated.

7. In that view of the matter, this Court has no hesitation to hold that, this applicant does not deserve to have any interim arrangement, by way of interim order, under Section 9 of the Act. Moreover, the learned counsel for the applicant submits that, after filing this application, the matter has been referred to Arbitrator, before whom, the proceedings are pending. Therefore, if any interim arrangement has to be made, the parties can very well make an application before the learned Arbitrator, by invoking the provisions of the Act and therefore, for all these reasons, this Court is inclined to reject this application. Accordingly, this application is dismissed.

Sd./-R.S.K.J

04.04.2019

//Certified to be true copy//

Dated at Madras this the day of 2018.

COURT OFFICER(O.S.)

GJM-11.4.2019

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.