IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

CMA.No.1096 of 2020
and
CMP.No.6918 of 2020

1. Mrs. R. Jothi

2. Mr. G. Renganathan

3. Mr. R. Kalaivanan ... Appellants/Respondents

Vs

M/s. Equitas Small Finance
Bank Limited
Represented by Authorised Signatory,
Spencer Plaza, 4th Floor, Phase II
No.769, Mount Road, Annasalai,
Chennai- 600 002. ... Respondent/Petitioner

Prayer : Appeal filed under Section 37(2) (b) of Arbitration and Conciliation Act, 1996 praying to set aside the order dated 21.02.2020 passed in M.P.No.199 of 2020 in A.C.P. (EQUITAS-LAP) No.149 of 2020 on the file of the Sole Arbitrator, Chennai.

For Appellants : Mr. S. Nagarajan

For Respondent : Mr. A. Damodaran

JUDGMENT

The respondents in the Claim Petition are the appellants herein. The appellants have challenged the order of attachment passed by the Arbitral Tribunal on 21.02.2020. It is the case of the appellants that the Award has been passed without hearing the appellants and that too behind their back and that the appellants have not been heard before such an onerous order had been passed.

2. Mr. Damodaran, learned counsel has entered appearance on behalf of the respondent/claimant. The records would reveal that the appellants had borrowed a sum of Rs.5,01,000/- on 31.08.2016 and had created a mortgage by deposit of title deeds in respect of the property situated at Katchiperumal Village, Udayarpalayam Taluk. The loan was to be repaid in 96 equated monthly instalments and last of such instalment is payable on 10.09.2024. The Agreement provided that in case of a default, the appellants were liable to pay additional interest @ 17% from the date of default till the date of payment and that the claimant could take possession of the immovable property and attach any movable property as per the irrevocable power of attorney executed by the appellants in favour of the claimant. The case of the claimant is that the appellants had committed a default and despite repeated reminders, they had not come forward to clear the loan. Therefore, invoking the Arbitration Clause, the claimant had filed the claim petition before the Arbitrator. Pending the Arbitral proceedings, an application for attachment of the movables in the premises mortgaged was taken out. The interim order has been passed by the Arbitrator by his order dated 21.02.2020. A perusal of the order would indicate non application of mind on the part of the learned Arbitrator. Absolutely no reasons whatsoever have been given by the Arbitrator for attaching the movables in the property, especially when the claimant/respondent held a higher security in the form of a mortgage of the immovable property. Thus, the order of the learned Arbitrator is a non speaking one. The application has been allowed on the following grounds:

> " Heard the Petitioner/Claimant. Perused the documents filed in support of the main claim. The petitioner/claimant has prima facie represented their case. The balance of convenience is in favour of the petitioner/claimant for grant of interim measures, to safeguard their interest. In my view the petitioner/claimant will suffer irreparable loss and damage, if the interim measures are not granted under Section 17 of the Arbitration and Conciliation (Amendment) ACT, 2015, as prayed. Hence, I pass the following orders/directions."

3. It is needless to state that while passing an order of attachment, the Court has to first satisfy itself that the respondent is likely to abscond or leave the jurisdiction of the court or has disposed or removed his property from the local limits of the Tribunal or that there is likelihood of the respondent leaving the country. In the instant case, none of

the above has been considered. That apart, the property of the appellants has been mortgaged with the claimant and irrevocable power of attorney has also been executed by the appellants in their favour. Yet another factor that has prompted this Court to come to the conclusion that there is something more to this than meets the eye is on account of the fact that in the notice dated 21.02.2020 addressed to the appellant herein, the Sole Arbitrator had informed the parties that the matter would be heard on 23.03.2020 at 4.00. Pm. The notice does not make any mention about the interim order passed by the Sole Arbitrator. However, the ex-parte notice issued to the appellants by the Arbitrator would show the date as 24.03.2020. The notice would read that the matter was taken up for hearing on the said date namely 24.03.2020, whereas the earlier notice dated 21.02.2020 had stated that the hearing would be on 23.03.2020. That apart, the original adjourned date has been scratched out and a new date has been interpolated stating that the hearing would be on 17.08.2020. It is now informed by the learned counsel for the respondent that an Award has been passed.

4. Considering the fact that this application is filed challenging the interim order even before the Award has been passed, this Court is inclined to allow the Appeal and set aside the interim order dated 21.02.2020 passed by the Sole Arbitrator. Accordingly ordered. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

mrn

To,

1.The Authorised Signatory,
M/s. Equitas Small Finance
Bank Limited
Spencer Plaza, 4th Floor, Phase II
No.769, Mount Road, Annasalai,
Chennai- 600 002.

2.Mr.K.Venugopal,
Sole Arbitrator,
New 161, Old No.80 4th Floor,
Room D-5 A1 Amin Arcade
Thambu Chetty Street,
Mannady, Chennai.

+1cc to Mr.S.Nagarajan, Advocate SR.38740

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GP(CO)
CB(05/03/2021)