

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 14TH DAY OF OCTOBER 2020

THE HON'BLE MS.JUSTICE P.T.ASHA

A.No.3942 of 2019

In the matter of Arbitration and
Conciliation Act, 1996

and

In the matter of Disputes
between M/s.Cholamandalam
Investment and Finance
Company Limited and
M/s.Sadaf Travels and another
arising under Loan Agreement
No. XVFPTEV0000187024

Dated 31.12.2016.

M/S.CHOLAMANDALAM INVESTMENT AND
FINANCE COMPANY LIMITED
DARE HOUSE,NO.2, N.S.C.BOSE ROAD, PARRYS,
CHENNAI-600001.

REPRESENTED BY ITS
AUTHORISED SIGNATORY

..APPLICANT

-VS-

1. M/S.SADAF TRAVELS
PROP.MR.SALEEM NAEEM KHAN
ROOM NO.7/8, SELF SOCIETY,
HALAW POOL ROAD,
KURLA (W),
MUMBAI, MAHARASHTRA-400 070.

2. MR.MOHD NAEEM WASI KHAN,
S/O.WASI SAMIT KHAN,
ROOM NO.7/8, SELF SOCIETY,
HALAW POOL ROAD,
KURLA(W), MUMBAI,
MAHARASHTRA-400 070.

..RESPONDENTS

This application praying that this Hon'ble Court be pleased to direct the Respondent to furnish security for the sum of Rs.3,90,149.69/- within a time fixed by this Hon'ble Court failing which to order attachment of the immovable properties morefully described in the schedule to the Judges summons pending initiation and disposal of arbitration proceedings between the Applicant and the Respondents and till enforcement of the award that may be ultimately passed in the arbitration proceedings between the Applicant and the Respondents and till enforcement of the award that may be ultimately passed in the arbitration proceedings and a copy of the attachment order be transmitted through the HIGH COURT, MUMBAI, MAHARASHTRA and the attachment order maybe hand delivered to the applicant for transmission.

This application coming on this day before this Court for hearing, the Court made the followings order:-

It is informed by the learned counsel for the applicant that an award

has been passed as early as in August 2019.

2. On 16.09.2020, this Court has passed the following order:

" This application has been filed to direct the respondents to furnish security for a sum of Rs.3,90,149.69/-, failing which, to pass an order of attachment of the immovable properties described in the schedule to the Judges Summons pending initiation and disposal of arbitration proceedings between the applicant and the respondents and till enforcement of the Award that may be ultimately passed in the arbitration proceedings.

2. Despite service of notice to the respondents, none appeared on behalf of the respondents.

3. In view of the same, the respondents are directed to furnish security for a sum of Rs.3,90,149.69/- on or before 14.10.2020.."

3. Therefore, though the Award has been passed as early as in August 2019, to date, the applicant has not taken any steps to execute the same. The property that is sought to be executed is situated at Kurla, Bombay. The applicant cannot convert this Court as an Executing Court when a remedy is available to them under the Act.

4. Section 9 of the Arbitration and Conciliation Act clearly states that interim measures can be granted before or during the arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36 of the Arbitration and Conciliation Act.

5. Section 36 of the Arbitration and Conciliation Act would state as follows:

" 36. Enforcement - Where the time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court. "

5. Therefore from a reading of Section 36 and considering the object for which the Arbitration and Conciliation Act is enacted, the minute the time for filing of the application for setting aside the award is over, the clock starts ticking for executing the award. In the instant case, it is over an year and two months since the Award has been passed and no steps have

force till the date of the award had been passed and since its enforcement time having elapsed in the month of November 2019, this Application stands dismissed.

Sd/.P.T.A.J.
14.10.2020

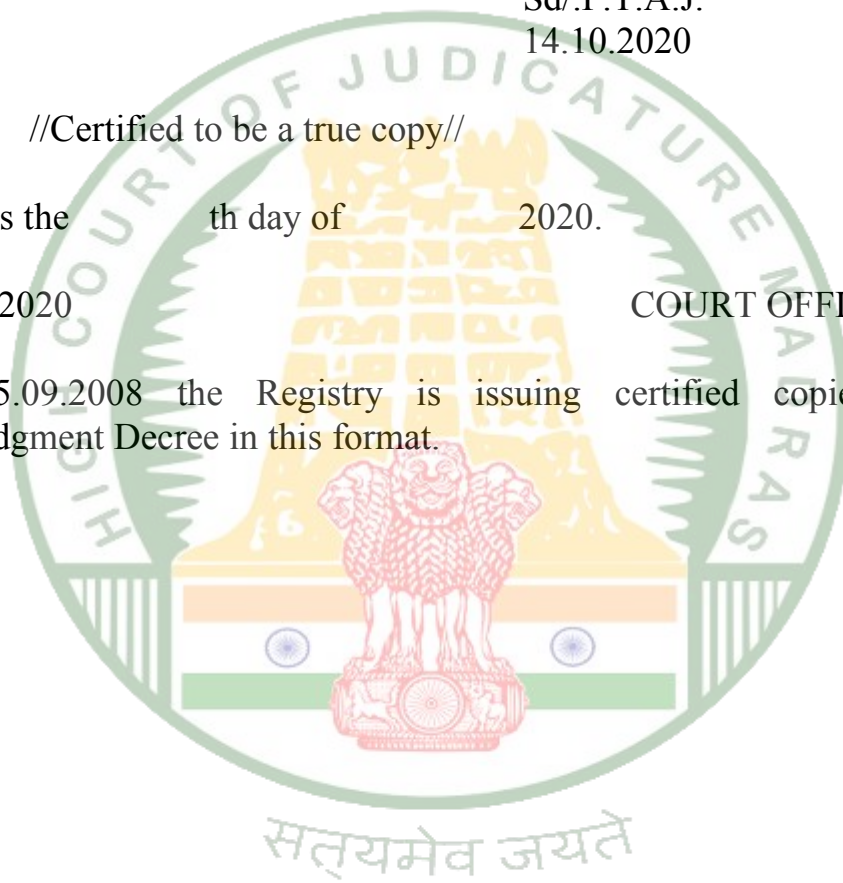
//Certified to be a true copy//

Dated this the th day of 2020.

su.02.11.2020

COURT OFFICER(O.S.)

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



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