

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.11.2020

Coram :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

O.S.A. Nos. 261 and 262 of 2020
and
CMP No.13043 of 2020

1. Chandrasekaran
2. Sanjeev Kumar
3. S.C. Vijayakumar
4. M/s. V.N.S. Leather Exports Pvt Ltd.,
No.851, Flat No. 1B & 1C
K.G.S. 'Vrudh Apartments'
1st Floor, Kilpauk
Chennai - 600 010
at present
No.6/25, C.M. Gramani Street
Periamet, Chennai - 600 003

..Appellants in both the appeals

Versus

M/s. Raga Foundation Pvt Ltd.,
No.23/12, Desika Road
Alwarpet, Chennai - 600 004

..Respondent in both the appeals

OSA No. 261 of 2020:- Original Side Appeal filed under Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of Letters Patent against the Order dated 25.09.2020 passed in Application No. 424 of 2020 against E.P. No. 56 of 2019.

OSA No. 262 of 2020:- Original Side Appeal filed under Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of Letters Patent against the Order dated 25.09.2020 passed in Application No. 425 of 2020 against E.P. No. 56 of 2019.

For Appellants	:	Mr. E. Om Prakash, Senior Advocate for Mr. A. Damodaran in both the appeals
For Respondent	:	Mr. K.V. Balu in both the appeals

COMMON JUDGMENT

(The Common Judgment of the Court was delivered by R. Subbiah, J)

Both these appeals have been filed challenging the order dated 25.09.2020 passed by the learned Single Judge, dismissing the application Nos. 424 and 425 of 2020 in E.P. No. 56 of 2019 filed by the appellants herein.

2. The respondent herein is engaged in the business of constructing residential/commercial complexes. During the course of such business, the appellants herein engaged the respondent for developing the property belonging to the appellants 1 to 3. For this purpose, a joint development agreement dated 15.06.2012 was entered which contain various clauses. As per the agreement dated 15.06.2012, the respondent is entitled to 25% of the built up area while the appellants are entitled to the remaining 75%. There was a dispute between the appellants and the claimant in payment of money to the tune of Rs.2.63 Crores. For resolution of the dispute, the parties approached the Arbitral Tribunal. Before the Arbitral Tribunal, the appellants have also raised a counter-claim. After adjudicating the rival dispute, the Arbitral Tribunal passed an award dated 12.07.2018 directing the appellants to pay the sum of Rs.2.40 crores to the respondent together with interest at the rate of 18% per annum from 19.07.2013 till the date of realisation, while rejecting the counter claim raised by the appellants.

3. Challenging the award passed by the Arbitral Tribunal, the appellants have filed O.P.No.1063 of 2018 before this Court and it was dismissed on 03.12.2018. As against the order of dismissal dated 03.12.2018, O.S.A.SR.No.123051 of 2019 was filed. In the meantime, in order to execute the award of the Arbitral Tribunal, respondent filed E.P. No. 141 of 2019 before this Court for arrest of the appellants and it was dismissed on 27.03.2019. Thereafter, another Execution Petition No. 56 of 2019 was filed for arrest of the appellants. In the said Execution Petition No. 56 of 2019, the respondent has filed E.A. No. 6038 of 2019 seeking a direction to the appellants to file an affidavit of assets, both movable and immovable, including the Bank Accounts held by them as contemplated under Order XXI Rule 4 (2) of the Code of Civil Procedure. The learned Master was pleased to close the said Execution Application No.6038 of 2019 on 27.03.2019 upon satisfying with the details of the assets furnished by the appellants herein. Thereafter, the learned Master posted the Execution Petition for arguments on 21.01.2020. When the Execution Petition was posted for argument on 21.02.2020, the appellants have filed a Memo stating that they have filed an appeal in OSA.SR.No.123051 of 2019 and sought for adjournment. The learned Master refused to accept the plea for adjournment and rejected the memo with a direction to post the Execution Petition for hearing on 29.01.2020. Aggrieved by

the same, the appellants have filed Application Nos.424 and 425 of 2020 before the learned Single Judge to set aside the order dated 21.02.2020 of the learned Master inter-alia to stay all further proceedings in the Execution Proceedings. The learned Single Judge, upon hearing the counsel for both sides, observed that the Execution Petition is posted before the learned Master for recording evidence and no order has been passed thereof. Further, the order passed by the learned Master is not an appellable order and the learned Master has only posted the Execution Petition for recording the evidence. Therefore, the learned Single Judge dismissed the applications filed by the appellants on 25.09.2020 and directed the learned Master to continue the recording of evidence of witnesses. It is this order dated 25.09.2020 of the learned Single Judge that is sought to be assailed by the appellants in these appeals.

4. The learned Senior Counsel appearing for the appellants mainly contended that during the pendency of the Application Nos. 424 and 425 of 2020, there were negotiations held between the parties by virtue of the same, the appellants have also paid a sum of Rs.25 lakhs to the respondent. However, the respondent did not agree for any further settlement with the appellants. It is further submitted that an order for arrest of the appellants can be passed only if it is shown that the appellants/ Judgment Debtors are having sufficient means to pay but are deliberately not making the payment to the award-holder/respondent. In the present case, the award passed by the Arbitral Tribunal is sought to be executed without affording sufficient opportunity for them to prove their means. It is further submitted that the appellants were also not given opportunity to file their counter in the main Execution Petition, however, the award passed by the Arbitral Tribunal is sought to be executed. While so, the learned Single Judge ought to have granted an interim stay of all further proceedings in the Execution Petition, instead of dismissing it.

5. On the above contention, we have heard the learned counsel for the respondent and perused the material records placed.

6. In connection with a dispute between the parties for payment of money, the respondent has approached the Arbitral Tribunal with a claim petition. The appellants have also filed a counter-claim before the Arbitral Tribunal. The Arbitral Tribunal passed an award on 12.07.2018 while rejecting the counter-claim raised by the appellants. As the directions issued by the Arbitral Tribunal for payment of money has not been adhered to by the appellants, the respondent filed the Execution Petition for arrest of the appellants. The Execution Petition was posted for recording of evidence of the parties. It is at this stage, the appellants have filed the application Nos.424 and 425 of 2020 before the learned Single Judge for setting aside the order passed by the learned Master, rejecting

the plea of the appellants for adjournments as well as their prayer for staying all further proceedings in the Execution Petition.

7. On a perusal of the entire records, we find that the Execution Petition has been posted for recording evidence of the parties purportedly to show the means of the Judgment Debtors to pay the amount payable to the respondent as per the award passed by the Arbitral Tribunal. For better appreciation of the status of the proceeding before the learned Master, the order dated 21.01.2020 can usefully be referred to, which reads as follows:-

"Decree Holder present. Memo filed by Judgment Debtors and adjournment was sought for. Considering the period of pendency of this Execution Petition, the memo is rejected. Since there is no stay order to proceed with the Execution Petition, this Court is constrained to pass further orders. Moreover, sufficient opportunities were already given to the petitioner to advance their arguments. Considering the above and in the interest of justice, this Execution Petition is allowed. Further, it is necessary to permit the petitioner/decreed holder to let in evidence to prove the means of the Judgment Debtor. Hence, for Means evidence. Call on 29.01.2020."

8. From the aforesaid order, we find that the Execution Petition was allowed purportedly by recording a finding that inspite of opportunities, the appellants are not prepared advance their arguments in the Execution Petition. Furthermore, in order to find out the means of the Judgment Debtors/appellants to comply with the award passed by the Arbitral Tribunal, the Execution Petition was posted for recording evidence. While so, it is well open to the appellants to adduce evidence and to substantiate their claim. In such view of the matter, we are not inclined to interfere with the order passed by the learned single Judge, which is impugned in these appeals.

9. Accordingly, we confirm the Order dated 25.09.2020 passed by the learned single Judge in Application No. 424 and 425 of 2020 in E.P. No. 56 of 2019. The Original Side Appeals fail and they are dismissed. No costs. Consequently, connected miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

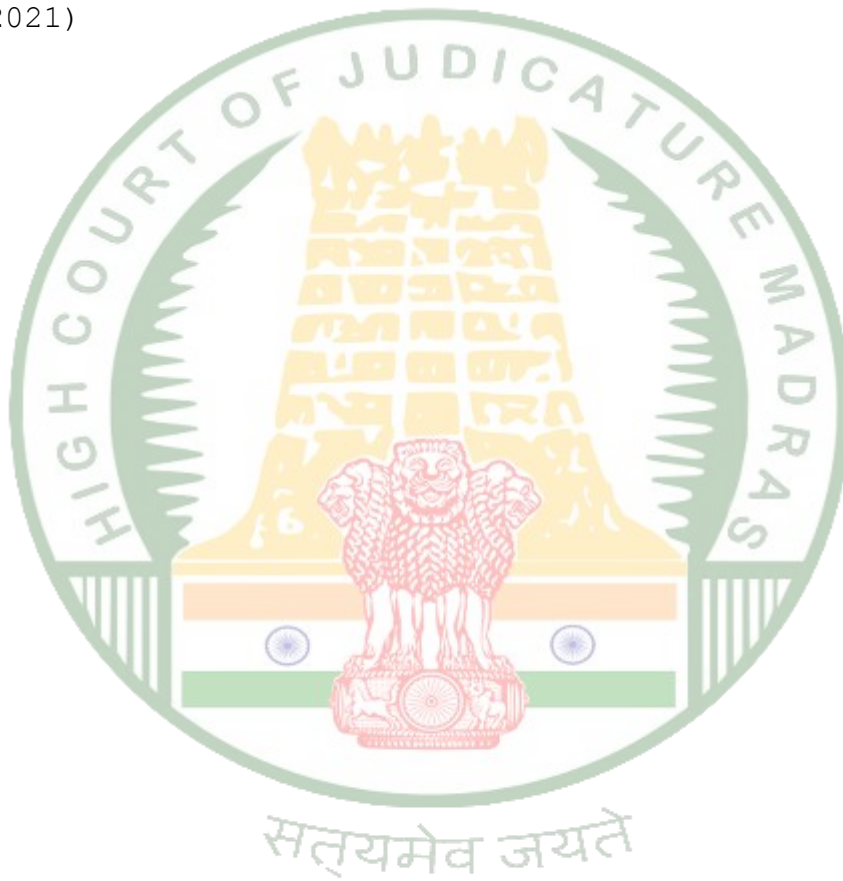
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To
The Sub-Assistant Registrar,
Original Side,
High Court,
Madras.

+2cc to Mr.K.V.Babu & Priyanka, Advocate, S.R.No.38114 & 38115

OSA Nos. 261 & 262 of 2020

ad(CO)
rv(08/01/2021)



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