

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.5506 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

MR.ASHARAM

RAMDULARE SONI AND

ANOTHER

arising under Loan Agreement

No.XVFPSRT00002021099

Dated 22.06.2017.

M/S. CHOLAMANDALAM INVESTMENT AND FINNCE
COMPANY LIMITED

DARE HOUSE,NO.2, N.S.C.BOSE ROAD,

PARRYS, CHENNAI-600001.

REPRESENTED BY ITS AUTHORISED

SIGNATORY

..Applicant

-VS-

1. MR.ASHARAM RAMDULARE SONI ,

S/O.RAMDULARE KALU SONI,

185, SHREE NIVAS,

GREEN CITY, KADODARA,

BARDOLI ROAD, SURAT,

GUJARAT - 394 327.

2. MRS.MADHU ASHARAM SONI
W/O.ASHARAM SONI,
185, SHREE NIVAS, GREEN CITY,
KADODARA,
BARDOLI ROAD,
SURAT, GUJARAT - 394 327.

..Respondents

This application praying that this Hon'ble Court be pleased to direct the Respondent to furnish security for the sum of Rs.3,65,162.52 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 and a copy of the attachment order be transmitted through the DISTRICT COURT, SURAT, GUJARAT and the attachment order may be 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 is filed by the applicant seeking a direction to the respondents to furnish security to the tune of Rs.3,65,162.52/-, failing which, to order attachment of the immovable properties morefully described in the schedule to the Judges Summons, pending disposal of the arbitration proceedings.

2. As notice could not be served, the learned counsel for the appellant prayed for paper publication.

3. Hence, the applicant is permitted to take paper publication in any local daily both in regional language and in English with significant circulation in Surat, Gujarat, stating the date of hearing as 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 Gujarat. 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. "

6. 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 been taken, and that apart, the original order for furnishing security was in 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.

WEB COPY

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.