



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 06.02.2020

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THE HONOURABLE MRS. JUSTICE R.THARANI

C.R.P. (PD) (MD)No.1568 of 2019

and

CMP (MD)No.8294 of 2019

M.Arumugam

... Petitioner/Respondent/
1st Respondent

Vs.

M/s.Sri Ram Transport Finance Co.Ltd.,
Rep by its Power of Attorney,
Mr.S.Surendran, Branch Office,
1st Floor, Pandian Complex,
Alangulam,
Tirunelveli District.

... Respondent/Petitioner/
Claimant

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed in I.A.No.74 of 2019 in Arbitration Case No.795 of 2015 dated 15.06.2019 passed by the Arbitral Tribunal, Tirunelveli, and to allow this Civil Revision Petition.

For Petitioner : Mr.M.S.Sureskumar

For Respondent : Mr.Ananth C.Rajesh

ORDER

This petition has been filed against the order passed in I.A.No.74 of 2019 in Arbitration Case No.795 of 2015 passed by the Arbitral Tribunal, Tirunelveli, dated 15.06.2019.

2.The petitioner herein is one of the respondent in Arbitration No.795 of 2015. The respondent is the claimant in the Arbitration proceedings.

3.In the arbitration proceedings, an award was passed on 22.12.2015. Subsequently, on 04.04.2019, the Arbitrator has passed an interim order of attachment. That order was questioned by the revision petitioner in this petition.



4.The brief substance of the petition in I.A.No.74 of 2019 is as follows:-

The respondent has filed a petition before the Arbitrator to recover the out standing loan amount arising out of the financial assistance rendered by the respondent for purchasing a vehicle bearing Reg.No.TN-76-J-5014. The respondent failed to settle the out standing amount. The respondent is the owner of the schedule property. He is taking active steps to dispose of the property and prayed the property is to be attached pending arbitration proceedings under Section 17 of the Arbitration & Conciliation Act, 1996.

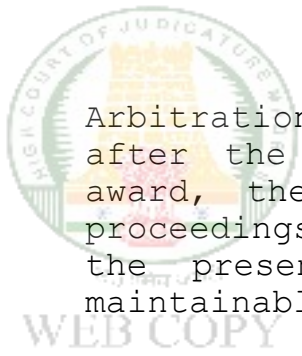
5.The learned Arbitrator passed an order of attachment on 04.04.2019. Against which, the revision petitioner preferred this revision on the following grounds:-

The arbitration Tribunal has no power to pass an order of attachment under Section 17 of the Arbitration & Conciliation Act, 1996. As per Section 36 of the Arbitration Act, the respondent has to take only execution proceedings as per the Civil Procedure Code. The order of attachment was passed without giving an opportunity to the petitioner to represent himself. Therefore, that order has to be set aside.

6.On the side of the revision petitioner, it is stated that already an award was passed and subsequently, after three years, an Interlocutory Application was filed and that the Arbitrator has no jurisdiction to attach the property, after passing of the award and that the only remedy available to the respondent is to file an execution petition under the Civil Procedure Code. As per Section 36 of the Arbitration Act, the Arbitrator has no jurisdiction, after the passing of the award. It is stated that the award dated 22.12.2015, is an ex-parte award and the interim order of attachment was made only on 04.04.2019. Section 17 of the Arbitration & Conciliation Act, is not applicable unless a proceedings is pending before the Arbitrator. In the notice by the Arbitrator, the revision petitioner was directed to furnish security. Without giving an opportunity for the revision petitioner to furnish security, passing an order of attachment is erroneous. The attachment was made absolute by way of single line order, which is also erroneous.

7.On the side of the petitioner, it is stated that the vehicle was hypothecated with the respondent and the same was sold without informing the petitioner. No summons was served upon the petitioner in the arbitration proceedings. Further, it is stated that the suit property was not hypothecated and the respondent has no right over the suit property.

8.On the side of the respondent, it is stated that Section 17 of the Arbitration & Conciliation Act, amendment gives power to the Arbitrator to pass an interim order under Section 9 of the



Arbitration & Conciliation Act and that the Tribunal got power even after the passing of an award without challenging the original award, the revision petitioner cannot questioned the subsequent proceedings. The interim order already passed was made absolute and the present petition filed by the petitioner herein is not maintainable.

9.On the side of the petitioner, it is stated that already the vehicle was sold without giving any notice and without fixing an upset price. The Arbitrator cannot attach the immovable property of the petitioner, which is not the subject matter in the hypothecation agreement. If at all, the respondent propose to take any auction, he has to proceed only as per Section 36 of the Arbitration & Conciliation Act. After passing an award, in the arbitration proceedings an attachment before judgment is not possible. The wordings 'At any stage of the suit' clearly denotes that the proceeding should be pending. An award has to be executed like a decree and without calling for furnishing security, the arbitrator cannot straight away attach the property.

10.It is seen that the petitioner has got a loan from the respondent. The respondent initiate arbitration proceedings, an arbitration award was passed. Under Section 17 of the Arbitration and Conciliation Act, the Arbitrator has powers to pass an interim order during the pendency of the proceedings. Whereas, here in this case, the arbitration proceedings was already over. The award was passed on 22.12.2015, and Section 17 of the Arbitration Act is not applicable after the completion of the Arbitration Proceedings. On the date of filing, though a notice was ordered to be sent to the petitioner to furnish security, no opportunity was given to the petitioner to furnish security. The order of attachment was made on the same date itself. Property was not hypothecated with the respondent. In any event the Arbitrator has no power to attach the property.

11.In the above circumstances, the order passed by the Arbitrator is erroneous. Hence, the order passed in I.A.No.74 of 2019 in Arbitration Case No.795 of 2015 on the file of the Arbitral Tribunal, Tirunelveli, is hereby set aside and the revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)



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To

The Arbitral Tribunal,
Tirunelveli.

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Copy To:

The Record Keeper, (2 Copies)
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

C.R.P. (PD) (MD) No.1568 of 2019

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TK/SAR./16.03.2020/4P/4C