



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2020

CORAM

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THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (MD) .No.1764 of 2015 (NPD)

and

M.P. (MD) .No.1 of 2015

A.Saraswathy

... Petitioner

Vs

M/s.Shiva Texyarn Limited
Door No.252,
Mettupalayam Road,
Coimbatore

... Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Code of the Civil Procedure, to set aside the order dated 13.03.2015 passed in E.A.No.197 of 2014 in E.P.No.48 of 2014 in A.R.C.No.51 of 2004 on the file of the Sub Court, Srivilliputhur.

For Petitioner : Mr.M.Ashokkumar

For Respondent : Mr.RJ.Karthick

O R D E R

This Civil Revision Petition is directed against the order passed by the learned Subordinate Judge, Srivilliputhur, in E.A.No.197 of 2014 in E.P.No.48 of 2014 in A.R.C.No.51 of 2004, dated 13.03.2015.

2.The revision petitioner is the first respondent in the arbitrary proceedings initiated before the Arbitrator in A.R.C.No.51 of 2004. The petitioner along with two others have availed financial assistance from the respondent for buying a new vehicle viz., TATA Sumo. Since the borrowers committed default in payment, the respondent raised a dispute before the sole arbitrator appointed as per the Hire Purchase Agreement dated 27.02.2001. An arbitral award was passed by the Arbitrator on 11.08.2005 directing the revision petitioner and other borrowers to pay a sum of Rs.2,11,219/- along with interest. For execution of the said award, the respondent has filed an execution petition in E.P.No.48 of 2014 before the Principal District Court, Srivilliputhur. Thereafter, the revision petitioner filed a petition in E.A.No.197 of 2014 under Section 47 of C.P.C., to dismiss the execution petition as unexecutable on the ground that the vehicle was also secured by a mortgage of another property and that the arbitrator has no jurisdiction to direct sale of mortgaged property which can be done only by a Civil Court in a



mortgage suit. It is further submitted that the claim is not maintainable by arbitral proceedings, as the amount could be recovered only by filing a mortgage suit. However, the said petition was dismissed by the trial Court. Aggrieved by the same, one of the borrowers has preferred the present Civil Revision Petition.

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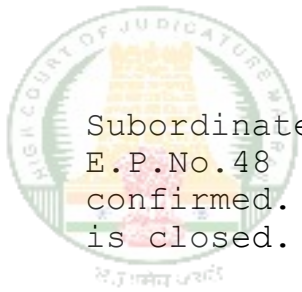
3.The learned Counsel for the revision petitioner submitted that the Civil Court is not competent to entertain the execution petition to execute a void decree. He further submitted that the Arbitrator has passed an award directing the financier/respondent to recover the money by proceeding against the properties of revision petitioner, which are mortgaged in favour of the respondent/financier.

4.The execution petition is filed only to execute the arbitral award. The award of the arbitrator can be treated as a decree for the purpose of execution. The award contain the direction issued to the borrowers to pay the default amount, which is due as per the Hire Purchase Agreement. The arbitral award directing payment is not challenged but questioned indirectly in a proceedings under Section 47 C.P.C., without understanding the scope of Section 47 C.P.C. Though it is true that the executability of a decree or award can be raised as an issue in a petition under Section 47 C.P.C., the contention that the amount could be recovered only by filing a mortgage suit, is not sustainable. The documents filed before the arbitrator clearly indicates that the Hire Purchase Agreement is proved and that the petitioner along with other borrowers, is liable to pay the money due, as per the Hire Purchase Agreement.

5.The respondent filed the execution petition for attachment and sale of the immovable property of the revision petitioner. While executing the award of the arbitrator in A.R.C.No.51 of 2005, the lower Court has jurisdiction to attach and proceed against the property of borrowers to recover the money by treating the arbitral award as a decree of Court. This is surely permissible and the execution petition filed to execute the award directing payment as a money decree cannot be faulted.

6.This Court carefully considered the factual assertion on both sides. It is admitted that the revision petitioner has suffered an arbitral award, after a full fledged hearing. From the statement of the financier and the defence taken by the revision petitioner before the Arbitrator, it is evident that the revision petitioner and other borrowers have participated in the arbitration proceeding without any hesitation or subject to any reservation. The Arbitration Award was passed after giving sufficient opportunity of hearing to both sides. Without challenging the arbitral proceeding in the process known to law, the revision petitioner petition under Section 47 CPC.

7.In view of the foregoing discussions, this Civil Revision Petition stands dismissed and the order passed by the learned



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Subordinate Judge, Srivilliputhur, in E.A.No.197 of 2014 in E.P.No.48 of 2014 in A.R.C.No.51 of 2004, dated 13.03.2015 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

Ns/cmr

To

1.The Subordinate Judge, Srivilliputhur.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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AP (09/09/2020) 3P 4C