IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.02.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.No.369 of 2021

S.Mohankumar ... Applicant

Vs.

D.Shankar ... Respondent

Prayer: Judges summons filed under Order XIV Rule 8 of OS Rues r/w Section 9 (2) b & e of the Arbitration and Conciliation Act, 1996, to direct the respondents to furnish security for the sum of Rs.4,76,00,000/- within a time fixed by this Hon'ble Court failing which to order attachment of the immovable property more fully described in the schedule-I to VII to the Judges summons pending initiation and disposal of 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 to be transmitted through the District Court, Bangalore, and the attachment order may be hand delivered to the applicant for transmission.

For Applicants : Ms.Neela Narayani

ORDER

This application has been moved by the applicant for a direction to the respondent to furnish security to the tune of Rs.4,76,00,000/-, failing which to attach the immovable property morefully described in Schedule I to VII to the Judges Summons.

2. When the matter had come up, this Court found the following glaring discrepancies, which gives rise to a doubt regarding the very genuineness of the document containing arbitral agreement. Before commenting on this it is necessary to extract the case as projected by the applicant.

3. The applicant has moved this Court contending that he has extended a loan to the respondent for his business purposes and a total

loan amount of Rs.3,00,00,000/- was transferred from the Joint account held by the applicant and his daughter Bhavika Jain on 29.10.2018. It is also the case of the applicant that on the disbursement of the above amount the respondent on the very same day had executed a promissory note – cum – arbitration agreement promising to repay the entire loan amount on demand. However, there was a default in the payment and the cheque dated 13.03.2019 issued by the respondent had also bounced on account of insufficiency of funds.

4. The applicant had thereafter initiated proceedings under Section 138 of the Negotiable Instrument Act before the Metropolitan Magistrate, Fast Track I, Allikulam, Chennai in C.C.No.8801/2019 and the same is pending trial.

5. The applicant would further submit that despite repeated requests the respondent has not come forward with a concrete offer of

repayment constraining the applicant to invoke the arbitration clause. The applicant would further submit that as on date a sum of Rs.4,76,00,000/- is due towards principal and interest. Therefore, the applicant has come forward with this application under Section 9 of the Arbitration and Conciliation Act, hereinafter referred to as the Act, for a direction to the respondent to furnish security, failing which to attach the property.

6. The application and the document filed along with the said application gives rise to serious doubts in the mind of this Court with reference to the very execution of the document containing the arbitration clause for the following reasons:

(i)Promissory note dated 29.10.2018 has been enclosed as document No.2. It is this promissory note that also doubles up as an arbitration agreement. The promissory note is dated 29.10.2018 and it was executed by the respondent in favour of M.Bhavika Jain, daughter of S.Mohankumar (the applicant herein). A sum of

Rs.3,00,00,000/- is said to have been given to the applicant on the said date.

(ii)The promissory note is signed only by the respondent and does not contain the signature of the promisee i.e., M.Bhavika Jain. The promissory note having signed by only one party does not comply with the requirement of an arbitration agreement as provided under Section 7 of the Act.

(iii)Bank statement has been enclosed which would show that as on 29.10.2018 only a sum of Rs.2,45,00,000/- had been disbursed and it is only on 02.11.2018 that a further sum of Rs.55,00,000/- was paid thereby making it total of Rs.3,00,00,000/-. Therefore, on the date of alleged promissory note a sum of Rs.3,00,00,000/- had not been disbursed and the contents of the promissory note is false. This assumes significance as the respondent in reply to the notice has denied the execution of the document as well as knowledge of the petitioner.

(iv)Though the promissory note has been executed in favour of

M.Bhavika Jain, she has not chosen to file the application, on the contrary the application is filed by her father S.Mohankumar.

7.Therefore, the filing of this application invoking the Arbitration and Conciliation Act cannot be sustained in the light of there being glaring discrepancies in the very execution of the promissory note which contains the Arbitration clause. In the absence of an arbitration clause as contemplated under Section 7 of the Act this application under Section 9 of the Act is unsustainable. In the result, the application is dismissed.

09.02.2021

Internet : Yes/No
Index :Yes/No
Speaking / Non-Speaking
kan

P.T. ASHA. J,

kan

A.No.369 of 2021

09.02.2021