



IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 07.06.2021

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CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. Nos.524 to 526 of 2021
and
C.M.P.Nos.4536 & 4538 of 2021

S.Vairavanathan ...Petitioner in all cases
Vs

M/s.Prem Finance Corporation
Rep by its Power of Attorney
Vishal Lodha
S/o.Prem Prakash Lodha,
No.1, Mangappan Street,
Sowcarpet,
Chennai-600 079.

...Respondent in C.R.P.Nos.524 & 526/2021

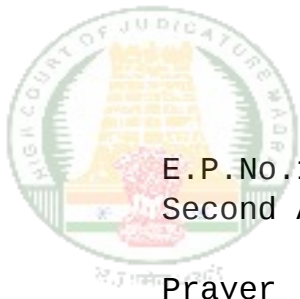
1.M/s.Prem Finance Corporation
Rep by its Power of Attorney
Vishal Lodha
S/o.Prem Prakash Lodha,
No.1, Mangappan Street,
Sowcarpet,
Chennai-600 079.

2.C.Soundararajan

... Respondents in C.R.P.No.525 of 2021

Prayer in C.R.P.No.524 of 2021: Civil Revision Petition filed under Section 115 Code of Civil Procedure, to set aside the fair and decretal order dated 21.02.2020 made in E.A.No.3 of 2010 in E.A.No.1 of 2019 in E.P.No.113 of 2017 on the file of the Second Additional District and Sessions Court, Poonamallee.

Prayer in C.R.P.No.525 of 2021: Civil Revision Petition filed under Section 115 Code of Civil Procedure, to set aside the fair and decretal order dated 24.02.2020 made in E.A.No.1 of 2019 in



E.P.No.113 of 2017 in Arb.No.226 of 2009 on the file of the Second Additional District and Sessions Court, Poonamallee.

Prayer in C.R.P.No.526 of 2021: Civil Revision Petition filed under Section 115 Code of Civil Procedure, to set aside the fair and decretal order dated 21.02.2020 made in E.A.No.2 of 2019 in E.A.No.1 of 2019 in E.P.No.113 of 2017 on the file of the Second Additional District and Sessions Court, Poonamallee.

For Petitioner : Mr.N.Manokaran
(in all Cases)

C O M M O N O R D E R

These respective civil revision petitions have been filed against the orders in E.A.No.3 of 2010 in E.A.No.1 of 2019 in E.P.No.113 of 2017; in E.A.No.1 of 2019 in E.P.No.113 of 2017 in Arb.No.226 of 2009 and E.A.No.2 of 2019 in E.A.No.1 of 2019 in E.P.No.113 of 2017 on the file of the learned II Additional District and Sessions Court, Poonamallee.

2. Since the facts of the parties and the issues raised therein are common, these revision petitions are taken up together and being disposed of vide this common order.

3. The brief facts leading to the filing of the above execution applications are as follows:

The petitioner herein is the judgment debtor, while the respondent is the decree holder. The petitioner has availed financial assistance under the hire-check purchase agreement for parties of Ford Icon bearing Registration No.TN 10 K 1618 dated 28.05.2007. Since, the petitioner has not repaid the loan, the respondent herein invoked arbitration clause which contained in the hire purchase agreement and initiated arbitral proceedings against the petitioner, which ended in passing of arbitral award in Arb.No.226 of 2009 dated 30.10.2009. Thereafter, in order to execute the award, the respondent being the decree holder of the award filed the execution petition in E.P.No.113 of 2017 on the file of the learned II Additional District and Sessions Judge, Thiruvallur, Poonamallee. During the pendency of the execution proceedings the respondent herein has moved an application in E.A.No.1 of 2019 under Section 47 of CPC., seeking to decide execution proceedings as to the executability and discharge and



satisfaction of the decretal amount.

4. Resisting the same, the petitioner herein/respondent filed counter affidavit wherein, he has stated that the application is not maintainable since the respondent judgment debtor has filed the application with false and fabricated documents and the claim made by the respondent in the execution proceedings is not maintainable and hence, he seeks to dismiss the application.

5. By common order dated 21.02.2020 the Court below dismissed both the applications.

6. Be that as it may, the petitioner herein has moved two applications in E.A.No.2 and 3 of 2019 before the Court below, seeking to dismiss the petition filed by the respondent under Section 47 CPC and also to redo the trial of the award and decide whether the petition filed under Section 47 CPC is maintainable after the respondent having filed a petition under Section 5 of the limitation Act.

7. By order dated 24.02.2020, having considered the submissions made on behalf of both sides, the Court below allowed the E.A.No.1 of 2019 having held that the execution Court has only limited jurisdiction to consider if the decree was passed by the Court/arbitrator had jurisdiction to decide the issue and it cannot hold any kind of factual enquiry/retrial of the dispute which has already been decided by the arbitrator.

8. Aggrieved by the respective orders passed in E.A.Nos.1 to 3 of 2019 dated 21.02.2020 and 24.02.2020 the petitioner has come forward with the present revision petitions.

9. Heard the learned counsel for the petitioner and perused the entire materials available on record.

10. On a perusal of the entire materials placed before this Court, including arbitral award and the orders passed in the E.A.Nos.1 to 3 of 2019, this Court does not find any irregularity or illegality to interfere with the same. It is not in dispute that the petitioner/judgment debtor has availed the financial assistance by execution of hire purchase agreement in favour of the respondent herein. It is also not in dispute that the said agreement contains arbitration clause in case of any



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dispute arises between the parties. Admittedly, the petitioner has failed to repay the loan amount availed by him, which prompted the respondent to invoke arbitration clause, initiated arbitral proceedings against the respondent wherein, the arbitrator has passed an award on 30.10.2009 having issued notices to the petitioner herein. If at all the petitioner is aggrieved by the award of the arbitrator, it is for him to work out his remedy in the manner known to law before the appropriate forum. However, he approached executing Court by moving an application under Section 47 CPC, which, the Court below has rightly rejected the same on the ground that it is not maintainable. It is a well settled law that once the execution of arbitration agreement is not in dispute and all the issues including jurisdiction are to be decided by the arbitrator and any factual aspects must be raised before the arbitrator. There is an appeal remedy before the appellate forum only under Section 34 of the Act, certainly knowing that they cannot be raised in an execution petition as, once the award is passed, it attains finality and to be executed as a decree of a civil Court.

11. It is pertinent to note that in this case, the award attained finality, since it was passed by the arbitrator after issuing notices to the petitioner on 30.10.2010. In fact, the petitioner canvassed before the executing Court, on the ground questioning the authority of the arbitrator and merits of the award, which certainly cannot be raised before the executing Court. Therefore, having allowed the arbitral proceedings to attain finality when the award is passed, to check the arbitral award cannot be challenged before the executing Court. Therefore, the Court below has rightly observed so and dismissed the execution applications filed by the petitioner.

12. For the foregoing reasons, this Court does not find any scope to interfere with the order passed by the Court below. Accordingly, the civil revision petitions fail and they are dismissed as devoid of merits. No costs. Consequently, connected civil miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar



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To

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II Additional District and Sessions Court,
Poonamallee.

Copy to

The Section Officer, VR Section, High Court, Madras.

+3CCs to M/s.N.Manokaran, Advocate, SR.No. 27504

C.R.P. Nos.524 to 526 of 2021
and
C.M.P.Nos.4536 & 4538 of 2021

SR II(CO)

B.VC (26/08/2021)