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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 15TH DAY OF DECEMBER 2021

THE HON'BLE MR. JUSTICE N. SENTHILKUMAR RAMAMOORTHY

Arb.Application. Nos. 40 to 44, 49, 50 and 51 of 2021

Arb.Appln.No.40 of 2021:-

In the matter of Arbitration &
Conciliation Act 1996

And

In the matter of Disputes between M/s
TVS Credit Services Limited and
Mr.Karthikeyan P. & others arising
under Loan Cum Hypothecation
Agreement Dated 10.04.2019 bearing
Agreement No.TN3004UV0000186.

M/s TVS Credit Services Limited,
Jayalakshmi Estates,
New No.29, Old No.8,
Haddows Road, Chennai – 600 006,
Represented by its Authorised Signatory.

... Applicant

-Vs-

1.Mr.Karthikeyan P,
S/o Palaniappan,
No.23, Pasupathi Puram,
Karur, Bus Stand,
Karur H.O., Tamil Nadu – 639 001.

2.M/s Siva Karthikeyan Transports,
Rep. By Its Partner,
No.23, Pasupathi Puram,
Karur, Bus Stand,
Karur H.O., Tamil Nadu – 639 001.



3. Mrs. Parameswari P.
W/o Palaniappan,
No.23, Pasupathi Puram,
Karur, Bus Stand,
Bus Stand, Karur H.O.,
Tamil Nadu – 639 001.

... Respondents

Arbitration Application praying that this Hon'ble Court be pleased to direct the Respondents to furnish security for the sum of Rs.5,90,830/- within a time fixed by this Hon'ble Court failing which to order the respondents to surrender the vehicle morefully described in the Schedule to the Judges Summons to the applicant.

Arb.Appln.No.41 of 2021:-

In the matter of Arbitration &
Conciliation Act 1996

And

In the matter of Disputes between
M/s TVS Credit Services Limited and
Mr.Karthikeyan P. & others arising
under Loan Cum Hypothecation
Agreement Dated 10.04.2019 bearing
Agreement No.TN3004UV0000192.

M/s TVS Credit Services Limited,
Jayalakshmi Estates,
New No.29, Old No.8,
Haddows Road, Chennai – 600 006,
Represented by its Authorised Signatory.

... Applicant

-Vs-

1. Mr. Karthikeyan P,
S/o Palaniappan,
No.23, Pasupathi Puram,
Karur, Bus Stand,
Karur H.O., Tamil Nadu – 639 001.



2.M/s Siva Karthikeyan Transports,
Rep. By Its Partner,
No.23, Pasupathi Puram,
Karur, Bus Stand,
Karur H.O., Tamil Nadu – 639 001.

3.Mrs.Parameswari P.
W/o Palaniappan,
No.23, Pasupathi Puram,
Karur, Bus Stand,
Bus Stand, Karur H.O.,
Tamil Nadu – 639 001.

... Respondents

Arbitration Application praying that this Hon'ble Court be pleased to direct the Respondents to furnish security for the sum of Rs.3,53,430/- within a time fixed by this Hon'ble Court failing which to order the respondents to surrender the vehicle morefully described in the Schedule to the Judges Summons to the applicant.

Arb.Appln.42 of 2021:-

In the matter of Arbitration &
Conciliation Act 1996

And

In the matter of Disputes between
M/s TVS Credit Services Limited and
Mr.Karthikeyan P. & others arising
under Loan Cum Hypothecation
Agreement Dated 10.04.2019 bearing
Agreement No.TN3004UV0000191.

M/s TVS Credit Services Limited,
Jayalakshmi Estates,
New No.29, Old No.8,
Haddows Road, Chennai – 600 006,
Represented by its Authorised Signatory.

... Applicant



1.Mr.Karthikeyan P,
S/o Palaniappan,
No.23, Pasupathi Puram,
Karur, Bus Stand,
Karur H.O., Tamil Nadu – 639 001.

2.M/s Siva Karthikeyan Transports,
Rep. By Its Partner,
No.23, Pasupathi Puram,
Karur, Bus Stand,
Karur H.O., Tamil Nadu – 639 001.

3.Mrs.Parameswari P.
W/o Palaniappan,
No.23, Pasupathi Puram,
Karur, Bus Stand,
Bus Stand, Karur H.O.,
Tamil Nadu – 639 001.

... Respondents

Arbitration Application praying that this Hon'ble Court be pleased to direct the Respondents to furnish security for the sum of Rs.6,11,095/- within a time fixed by this Hon'ble Court failing which to order the respondents to surrender the vehicle morefully described in the Schedule to the Judges Summons to the applicant.

Arb.Appln.No.43 of 2021:-

In the matter of Arbitration &
Conciliation Act 1996

And

In the matter of Disputes between
M/s TVS Credit Services Limited and
Mr.Karthikeyan P. & others arising
under Loan Cum Hypothecation
Agreement Dated 10.04.2019 bearing
Agreement No.TN3004UV0000189.



M/s TVS Credit Services Limited,
Jayalakshmi Estates,
New No.29, Old No.8,
Haddows Road, Chennai – 600 006,
Represented by its Authorised Signatory.

... Applicant

-Vs-

1.Mr.Karthikeyan P,
S/o Palaniappan,
No.23, Pasupathi Puram,
Karur, Bus Stand,
Karur H.O., Tamil Nadu – 639 001.

2.M/s Siva Karthikeyan Transports,
Rep. By Its Partner,
No.23, Pasupathi Puram,
Karur, Bus Stand,
Karur H.O., Tamil Nadu – 639 001.

3.Mrs.Parameswari P.
W/o Palaniappan,
No.23, Pasupathi Puram,
Karur, Bus Stand,
Bus Stand, Karur H.O.,
Tamil Nadu – 639 001.

... Respondents

Arbitration Application praying that this Hon'ble Court be pleased to direct the Respondents to furnish security for the sum of Rs.4,21,343/- within a time fixed by this Hon'ble Court failing which to order the respondents to surrender the vehicle morefully described in the Schedule to the Judges Summons to the applicant.



WEB COPY **Arb.Appln.No.44 of 2021:-**

In the matter of Arbitration &
Conciliation Act 1996

And

In the matter of Disputes between
M/s TVS Credit Services Limited and
Mr.Karthikeyan P. & others arising
under Loan Cum Hypothecation
Agreement Dated 10.04.2019 bearing
Agreement No.TN3004UV0000190.

M/s TVS Credit Services Limited,
Jayalakshmi Estates,
New No.29, Old No.8,
Haddows Road, Chennai – 600 006,
Represented by its Authorised Signatory.

... Applicant

-Vs-

1.Mr.Karthikeyan P,
S/o Palaniappan,
No.23, Pasupathi Puram,
Karur, Bus Stand,
Karur H.O., Tamil Nadu – 639 001.

2.M/s Siva Karthikeyan Transports,
Rep. By Its Partner,
No.23, Pasupathi Puram,
Karur, Bus Stand,
Karur H.O., Tamil Nadu – 639 001.

3.Mrs.Parameswari P.
W/o Palaniappan,
No.23, Pasupathi Puram,
Karur, Bus Stand,
Bus Stand, Karur H.O.,
Tamil Nadu – 639 001.

... Respondents



Arbitration Application praying that this Hon'ble Court be pleased to direct the Respondents to furnish security for the sum of Rs.2,93,707/- within a time fixed by this Hon'ble Court failing which to order the respondents to surrender the vehicle morefully described in the Schedule to the Judges Summons to the applicant.

Arb.Appln.No.49 of 2021:-

In the matter of Arbitration & Conciliation Act 1996

And

In the matter of Disputes between M/s TVS Credit Services Limited and Mr.Karthikeyan P. & others arising under Loan Cum Hypothecation Agreement Dated 31.03.2019 bearing Agreement No.TN3004UV0000183.

M/s TVS Credit Services Limited,
Jayalakshmi Estates,
New No.29, Old No.8,
Haddows Road, Chennai – 600 006,
Represented by its Authorised Signatory.

... Applicant

-Vs-

1.Mr.Karthikeyan P,
S/o Palaniappan,
No.23, Pasupathi Puram,
Karur, Bus Stand,
Karur H.O., Tamil Nadu – 639 001.

2.M/s Siva Karthikeyan Transports,
Rep. By Its Partner,
No.23, Pasupathi Puram,
Karur, Bus Stand,
Karur H.O., Tamil Nadu – 639 001.



3. Mrs. Parameswari P.
W/o Palaniappan,
No.23, Pasupathi Puram,
Karur, Bus Stand,
Bus Stand, Karur H.O.,
Tamil Nadu – 639 001.

... Respondents

Arbitration Application praying that this Hon'ble Court be pleased to direct the Respondents to furnish security for the sum of Rs.5,45,237/- within a time fixed by this Hon'ble Court failing which to order the respondents to surrender the vehicle morefully described in the Schedule to the Judges Summons to the applicant.

Arb.Appln.No.50 of 2021:-

In the matter of Arbitration &
Conciliation Act 1996

And

In the matter of Disputes between
M/s TVS Credit Services Limited and
Mr.Karthikeyan P. & others arising
under Loan Cum Hypothecation
Agreement Dated 10.04.2019 bearing
Agreement No.TN3004UV0000187.

M/s TVS Credit Services Limited,
Jayalakshmi Estates,
New No.29, Old No.8,
Haddows Road, Chennai – 600 006,
Represented by its Authorised Signatory.

... Applicant

-Vs-

1. Mr. Karthikeyan P,
S/o Palaniappan,
No.23, Pasupathi Puram,



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Karur, Bus Stand,
Karur H.O., Tamil Nadu – 639 001.

2.M/s Siva Karthikeyan Transports,
Rep. By Its Partner,
No.23, Pasupathi Puram,
Karur, Bus Stand,
Karur H.O., Tamil Nadu – 639 001.

3.Mrs.Parameswari P.
W/o Palaniappan,
No.23, Pasupathi Puram,
Karur, Bus Stand,
Bus Stand, Karur H.O.,
Tamil Nadu – 639 001.

... Respondents

Arbitration Application praying that this Hon'ble Court be pleased to direct the Respondents to furnish security for the sum of Rs.18,53,502/- within a time fixed by this Hon'ble Court failing which to order the respondents to surrender the vehicle morefully described in the Schedule to the Judges Summons to the applicant.

Arb.Appln.No.51 of 2021:-

In the matter of Arbitration &
Conciliation Act 1996

And

In the matter of Disputes between
M/s TVS Credit Services Limited and
Mr.Karthikeyan P. & others arising
under Loan Cum Hypothecation
Agreement Dated 10.04.2019 bearing
Agreement No.TN3004UV0000185.



M/s TVS Credit Services Limited,
Jayalakshmi Estates,
New No.29, Old No.8,
Haddows Road, Chennai – 600 006,
Represented by its Authorised Signatory.

... Applicant

-Vs-

1.Mr.Karthikeyan P,
S/o Palaniappan,
No.23, Pasupathi Puram,
Karur, Bus Stand,
Karur H.O., Tamil Nadu – 639 001.

2.M/s Siva Karthikeyan Transports,
Rep. By Its Partner,
No.23, Pasupathi Puram,
Karur, Bus Stand,
Karur H.O., Tamil Nadu – 639 001.

3.Mrs.Parameswari P.
W/o Palaniappan,
No.23, Pasupathi Puram,
Karur, Bus Stand,
Bus Stand, Karur H.O.,
Tamil Nadu – 639 001.

... Respondents

Arbitration Application praying that this Hon'ble Court be pleased to direct the Respondents to furnish security for the sum of Rs.3,38,097/- within a time fixed by this Hon'ble Court failing which to order the respondents to surrender the vehicle morefully described in the Schedule to the Judges Summons to the applicant.

These Arbitration Applications coming on this day before this court for hearing in the presence of Mr.D.Pradeep Kumar, Advocate for the applicant in all applications, and Mr.S.Girish, Advocate for the respondents



in all applications and upon reading the Judges's Summons and the Affidavit of Mrs. Shanthi G.K. Filed in all applications, and this court having observed that the applications were filed after the constitution of the Arbitral Tribunal and the applicant has failed to establish that the section 17 remedy is inefficacious, **it is ordered as follows :-**

That these Arb.A.Nos.40, 41, 42, 43, 44, 49, 50 and 51 of 2021 be and are hereby dismissed.

2. That there shall be no order as to costs of these applications.

3. That the applicant herein shall be at liberty to seek the same relief before the Arbitral Tribunal.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, ACTING CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 15TH DAY OF DECEMBER 2021.

Sd/-

ASSISTANT REGISTRAR (Comm.Cases)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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12

Arb.Application. Nos. 40 to 44, 49, 50 and 51 of 2021

ORDER

DATED: 15.12.2021

THE HON'BLE MR. JUSTICE

SENTHILKUMAR RAMAMOORTHY

FOR APPROVAL : 22.03.2022

APPROVED ON : 23.03.2022



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13

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.12.2021

Coram:

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Arb. Application Nos.40,41,42,43,44,49, 50 & 51 of 2021

M/s.TVS Credit Services Limited,
Jayalakshmi Estates,
New No.29, Old No.8,
Haddows Road, Chennai-600 006,
Represented by its Authorised Signatory

... Applicant

/versus/

1. Karthikeyan, P.
2. M/s.Siva Karthikeyan Transports,
Rep. By its Partner,
No.23, Pasupathipuram,
Karur, Bus Stand, Karur H.P.
Tamil nadu-639 001.
3. Parameswari, P

... Respondents

Prayer in Arb. A.No.40 of 2021: Original Application is filed under Order XIV Rule 8 of Original Side Rules read with Section 9(ii) (a)(b)(d) & (e) of the Arbitration and Conciliation Act, 1996 to furnish security for a sum of Rs.5,90,830/- within a time fixed by this Court failing which to order the respondents to surrender the vehicle morefully described in the schedule to the Judges summons to the applicant.

Prayer in Arb. A.No.41 of 2021: Original Application is filed under Order XIV Rule 8 of Original Side Rules read with Section 9(ii) (a)(b)(d) & (e) of the Arbitration and Conciliation Act, 1996 to furnish security for a sum of Rs.3,53,430/- within a time fixed by this Court failing which to order the respondents to surrender the vehicle morefully described in the schedule to



the Judges summons to the applicant.

Prayer in Arb. A.No.42 of 2021: Original Application is filed under Order XIV Rule 8 of Original Side Rules read with Section 9(ii) (a)(b)(d) & (e) of the Arbitration and Conciliation Act, 1996 to furnish security for a sum of Rs.6,11,095/-- within a time fixed by this Court failing which to order the respondents to surrender the vehicle morefully described in the schedule to the Judges summons to the applicant.

Prayer in Arb. A.No.43 of 2021: Original Application is filed under Order XIV Rule 8 of Original Side Rules read with Section 9(ii) (a)(b)(d) & (e) of the Arbitration and Conciliation Act, 1996 to furnish security for a sum of Rs.4,21,343/- within a time fixed by this Court failing which to order the respondents to surrender the vehicle morefully described in the schedule to the Judges summons to the applicant.

Prayer in Arb. A.No.44 of 2021: Original Application is filed under Order XIV Rule 8 of Original Side Rules read with Section 9(ii) (a)(b)(d) & (e) of the Arbitration and Conciliation Act, 1996 to furnish security for a sum of Rs.2,93,707/- within a time fixed by this Court failing which to order the respondents to surrender the vehicle morefully described in the schedule to the Judges summons to the applicant.

Prayer in Arb. A.No.49 of 2021: Original Application is filed under Order XIV Rule 8 of Original Side Rules read with Section 9(ii) (a)(b)(d) & (e) of the Arbitration and Conciliation Act, 1996 to furnish security for a sum of Rs.5,45,237/- within a time fixed by this Court failing which to order the respondents to surrender the vehicle morefully described in the schedule to the Judges summons to the applicant.

Prayer in Arb. A.No.50 of 2021: Original Application is filed under Order XIV Rule 8 of Original Side Rules read with Section 9(ii) (a)(b)(d) & (e) of the Arbitration and Conciliation Act, 1996 to furnish security for a sum of



Rs.18,53,502/- within a time fixed by this Court failing which to order the respondents to surrender the vehicle morefully described in the schedule to the Judges summons to the applicant.

Prayer in Arb. A.No.51 of 2021: Original Application is filed under Order XIV Rule 8 of Original Side Rules read with Section 9(ii) (a)(b)(d) & (e) of the Arbitration and Conciliation Act, 1996 to furnish security for a sum of Rs.3,38,097/- within a time fixed by this Court failing which to order the respondents to surrender the vehicle morefully described in the schedule to the Judges summons to the applicant.

For Applicant : Mr.D.Pradeep Kumar
(in all applications)

For Respondents : Mr.S.Girish
(in all applications)

ORDER

These applications are filed seeking interim relief under Section 9 of the Arbitration and Conciliation Act, 1996 (the Arbitration Act) pending arbitral proceedings.

2. The affidavit in support of these applications discloses that an arbitral tribunal was constituted some time in April 2021. These applications are admittedly subsequent thereto.

3. Notwithstanding the constitution of the Arbitral Tribunal, the



applicant contends that these applications are maintainable because the Arbitral Tribunal was constituted at the instance of the respondents herein.

In addition, the applicant contends that the respondents have not filed their statement of claim as on date, and the applicant has not filed its counter statement-cum-counter claim. For such reason, it is contended that an application under Section 17 of the Arbitration Act would not lie at the instance of the applicant.

4. The second contention is that the remedy under Section 17 would not be efficacious because the applicant is not aware of any assets of the respondents, other than the hypothecated vehicle, and that surrender of such vehicle cannot be claimed under Section 17 of the Arbitration Act. Accordingly, both these contentions should be dealt with.

5. Given the fact that the Arbitral Tribunal was admittedly constituted prior to the filing of the applications, the applicant has to cross the hurdle of Section 9(3) of the Arbitration Act, which reads as under:

“(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under Sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under Section 17 efficacious.”



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6. Therefore, the applicant should discharge the burden of establishing to the satisfaction of the Court that the remedy under Section 17 would not be efficacious. The only reason cited by the applicant is that it is not aware of any assets of the respondents, other than the hypothecated vehicle, and that the relief claimed in these proceedings by way of surrender of vehicle cannot be claimed in arbitral proceedings. The said contention is untenable. Section 17 of the Arbitration Act does not contain such limitation. Section 17, *inter alia*, enables a party to the arbitral proceedings to seek an interim measure of protection in respect of the preservation, interim custody or sale of any goods which are the subject matter of the arbitration. A request for surrender of the vehicle would certainly fall within the scope of Section 17(1)(ii)(a) or (b).

7. The other contention of the applicant is that a Section 17 application is not maintainable at its instance since it has not filed its counter statement with counter claim. In other words, the applicant seeks to draw a distinction between Section 9 and Section 17 so as to contend that a section 17 application is not maintainable unless the statement of claim, in the case of a claimant, or the counter statement with counter claim, in the case of a respondent, precedes. There is nothing in the text of Section 17



which supports such proposition. Section 17 was substantially recast by Act 3 of 2016 so as to bring it in line with Section 9, including by giving orders under Section 17 the status of an order of court for all purposes, including enforcement. Indeed, if Section 17 were construed in such fashion a party would not be in a position to seek emergent orders until the pleadings are in place. Neither the text nor context supports such construction.

8. The respondent places the judgment of the Hon'ble Supreme Court in *Arcelor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd.* (2021) 7 MLJ 201, in support of the contention that a Section 9 application would be maintainable only if the applicant establishes that a Section 17 application would be inefficacious. In addition, the said judgment is relied upon for the proposition that a Section 9 application would be maintainable provided the Court had already taken up such application for consideration before the relevant arbitral tribunal was constituted.

9. Without doubt, as instructed by the above judgment, the Court has a measure of discretion in deciding whether to entertain a Section 9 application. As indicated above, in the case at hand, the applications were filed after the constitution of the Arbitral Tribunal and the applicant has



all these applications are dismissed without any order as to costs by leaving it open to the applicant to seek the same relief before the Arbitral Tribunal.

Sd./-S.K.R.J.
15.12.2021

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.