

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.02.2021

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.Nos.2098 to 2100, 2185 & 2186 of 2020

&
A.No.44 of 2021

M/s.Equitas Small Finance Bank Limited
4th Floor, Phase – II, Spencer Plaza,
769, Anna Salai, Chennai,
Tamil Nadu – 600 002

Represented by its Authorised Signatory
Mr.R.S.Bharath (Emp. No. 31681)

... applicant

Vs.

1.M/s.VNR AUTO LOGISTICS,
Rep by its Proprietor,
Mr.Nageswara Rao,
No.4/84, 1st Cross Street, Thirumal Nagar,
Poonamallee, Tiruvallur – 600056.

2.Mr.Ajay Kumar VN

3.INDIA YAMAHA MOTOR Pvt Ltd,
Registered Office at 1st Floor,
The Great eastern Centre,
70, Nehru Place, New Delhi – 110019.

Also at:

Having Corporate Office at:

A-3, Industrial Area, Noida – Dadri Road,
Surajpur, Gautam Budh Nagar,
Uttar Pradesh – 201306.

... respondents

Prayer: Judges summons filed under Order XIV Rule 8 of OS Rules read with Section 9 (2) (b) of the Arbitration and Conciliation Act, 1996 to pass an order to prohibiting the Garnishee / respondent 3 from making payment of Rs.12,27,502.00/- or any amount to the respondents 1 and 2 or to their mens, agents, representatives or to any one claiming on respondents 1 and 2 behalf and restrain the respondents or their men, agents representatives or any one claiming on respondents 1 and 2 from receiving a sum of Rs.12,27,502.00/- or any amount from the garnishee / respondent 3 and further direct the respondent / garnishee 3 to deposit any amount to the credit of the above application.

For Applicant : Mr.A.Damodaran
For Respondent 3 : Mr.Rahul Malhotra

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COMMON ORDER

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The applications have been filed by the applicant Bank for a prohibitory order against Garnishee / 3rd respondent from making

payments to respondents 1 and 2.

2.It is the case of the applicant that the 1st respondent had entered into a loan agreement with them for the purchase of various heavy and commercial vehicles and that they had committed a default in the payment of equated monthly installments. It is their case that they had therefore recalled the loan, terminated the agreement and initiated arbitration proceedings in all the matters. The arbitral tribunal had passed an award in favour of the applicant. The applicant has thereafter come forward with the above applications.

3.In the affidavit filed in support of the applications, they would submit that there is no other security from out of which the amounts can be recovered from the 1st respondent.

4.The Garnishee on entering appearance had filed a common counter affidavit in which they have stated that there is no contract between the Garnishee and the 1st respondent and that the contract is only

with a private limited company called M/s.VNR Auto Logistics Private Limited and therefore no amounts due to the 1st respondent or the 2nd respondent was available with them. They therefore sought for the dismissal of the applications.

5.A reply affidavit was filed by the Bank inter alia contending that the persons in management of the Private Limited company are the partners in the 3rd respondent / Garnishee company and therefore considering the fact that the partners have been granted the loan the garnishee should directed to deposit the said amount.

6.The 1st and 2nd respondent have filed a counter in which they had stated that the award of the sole arbitrator had been challenged by filing Section 34 application before this Court and that therefore the application is not maintainable. Further, there was no contract between the 1st respondent and the 3rd respondent / Garnishee.

7.By my order dated 03.12.2020 as an interim measure, I had directed Garnishee to deposit a sum of Rs.55,00,000/- to the credit of O.P.No.482 of 2020 within a period of 4 weeks. However, the garnishee had not deposited the said sum since in the interregnum, this Court had set aside the award passed by the learned arbitrator and the garnishee sought further orders from this Court. The matter was being adjourned for the parties to produce a copy of the order passed in O.P.Nos.482 to 486 of 2020. The copy of the order has also been produced before this Court.

8.A perusal of the order dated 21.12.2020 would indicate that not only as the award been set aside on a technical ground but the learned Judge has also observed that the applicant / bank has not produced any details regarding the number of equated monthly installments that were paid, the number of installment that were not paid, the number of days delay as well as the number of installments that have been paid in part. In short, the learned Judge has held that the applicant Bank has not proved the amounts that are actually due from the respondent.

9.It is also informed that pursuant to the award being set aside, the applicant Bank has initiated fresh arbitration proceedings. Considering the above there is absolutely no necessity for this Court to pass a prohibitory order since the applications have been moved based on the earlier award which the Court has set aside on the ground that the claim has not been proved.

10.The continuance of order dated 03.12.2020 would work to the prejudice of the respondent. In the result, the applications are dismissed. It is need less to state that it is well open to the applicant to approach the arbitral Tribunal for such interim measures as it deems fit.

11.In the light of the dismissal in A.Nos.2098 to 2100, 2185 & 2186 of 2020 nothing survives for consideration in A.No.44 of 2021. The application is closed.

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Internet : Yes/No
Index :Yes/No
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P.T. ASHA. J.

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