



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.11.2020
Delivered on : 02.02.2021

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THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.M.A.Nos.1582 and 1584 of 2020
and
C.M.P.Nos.11651 and 11656 of 2020

1.M. Mythrai
2.M.Lakshmiddevamma

...Appellants in
both Appeals

Vs

1.T.Ramesh
2.Chelvi Ramesh
3.J. Jayakrishnan
4.Kamatchi Jayakrishnan
5.Dr.Logaranjan
6.Mithas Labs Clinical Trial Research
Foundation Pvt. Ltd.,
No.19, Vellaiyan Street,
Kotturpuram, Chennai - 600085.
7.P Anbalagan
8.Prabha Stalin
9. HDFC Bank Limited
PN 2/3, KB Dasan Road,
Chennai - 600018
10.HDB Financial Services Limited
MNO Complex, Greams Road,
Thousand Lights, Chennai - 600 006
11.IDBI Bank Limited
39, CP Ramasamy Iyer Road,
Sriram Colony, Abhiramapuram,
Chennai - 600034



12.REPCO Bank Ltd.
55, Ramachandra Adithanar Road,
Gandhi Nagar, Adyar,
Chennai - 600020

...Respondents in
both Appeals

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Prayer in C.M.A.No.1582 of 2020: Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996, to set aside the impugned order passed by the Arbitrator dated 31.08.2020 passed in M.A.No.15 of 2020 in Arbitration Case No.3 of 2020.

Prayer in C.M.A.No.1584 of 2020: Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996, to set aside the impugned order passed by the Arbitrator dated 31.08.2020 passed in M.A.No.14 of 2020 in Arbitration Case No.3 of 2020.

For Applicants : Mr.V.Lakshmi Narayanan
for Ms.Harshini Jhothiraman

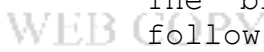
For Respondents 3 and 4 : Mr.Nithyaesh Natraj

COMMON JUDGMENT

The above Civil Miscellaneous Appeals are filed challenging the interim orders passed by the sole arbitrator in M.A.No.14 of 2020 which was filed by respondents 1 and 2 herein to implead the appellants and others who have been described as respondents 5 to 12 in the application as proper, necessary and important parties to the arbitral proceedings and M.A.No.15 of 2020 which is filed for an injunction restraining the appellants and others described as respondents 5 to 12 from transferring, alienating and encumbering the schedule mentioned properties. These applications have been filed in the arbitral proceedings initiated by the respondents 3 and 4 herein in Arbitration Case No.3 of 2020.

2.The genesis for the proceedings is a Memorandum of Understanding dated 07.11.2012, hereinafter referred to as the MOU, entered into between the 1st and 2nd respondent and the 3rd respondent herein.

3.The respondents 3 and 4 herein are the claimants before the Arbitral Tribunal. The 4th respondent is the wife of the 3rd respondent and the 2nd respondent is the wife of the 1st respondent. The respondents 1, 2, 5 and 6 are



The brief facts pleaded in the Claim Statement are as follows:

5. The respondents 1, 2 and 3 had negotiated the terms of the agreement which was reduced into writing in the MOU. The terms of the MOU which are relevant for the present appeal is that the 3rd respondent herein would pay the entire sum of Rs.4,65,00,000/- to the Federal Bank and on their clearing the same, the Original documents would be handed over to him by the Bank as well as the Key to the building that has been constructed on the schedule property.

7. The respondents 3 and 4 would submit that after the amounts were cleared to the Bank, the respondents 1 and 2 started creating obstacles. They had, in the first instance, written to the Bank asking the Bank to hand over the original documents to them. This act was in total contradiction to the terms agreed in the MOU. This letter was issued on 11.02.2013. The 3rd respondent in the meanwhile had filed



necessary Form 32 after a Board Resolution changing his designation from Director to Managing Director.

8. The 3rd respondent had called for a Board Meeting on 12.08.2013, for which notice had been issued on 06.08.2013 to respondents 1 and 2 herein. However, they did not attend the meeting. Not only did they not attend the meeting but they had also sent a reply dated 16.08.2013 putting forth false allegations. The 3rd respondent had attempted to get the respondents 1 and 2 to comply with their obligations. However, they were evading the same under one pretext or the other. Further the 3rd respondent who was the owner of 76 % of the share holding had called for a Board Meeting and pursuant to the Board Resolution dated 02.01.2013 executed a sale deed in favour of the 4th respondent, his wife. The 1st and 2nd respondents herein had lodged a complaint in the name of the 6th respondent company. This opened up the institution of various litigations.

9. The 1st and 2nd respondent had filed C.S.No.255 of 2014 on the file of this Hon'ble Court seeking to declare the Memorandum of Understanding as null and void. They had also filed two suits before the Assistant City Civil Court, Chennai. O.S.No.7022 of 2014 was filed to declare the Board resolution dated 14/12/2012 as null and void and O.S.No.7023 of 2014 to declare the Board resolution dated 02.01.2013 as null and void. Thereafter, the 3rd respondent herein had filed A.No.1099 of 2014 under Section 9 of the Act seeking a direction against the respondents 1 and 2 to furnish security to the tune of Rs.5,50,00,000/-. In the above proceedings, the 4th respondent who was not a party to the Memorandum of Understanding had filed an affidavit dated 12.09.2016 agreeing to be bound by the arbitration proceedings.

10. The learned Judge while recording this affidavit had also recorded the fact that the civil suits filed by the 1st and 2nd respondents herein in O.S.No.7022 and 7023 of 2014 before the Assistant Civil Court, Chennai and C.S.No.255 of 2014 pending before this Court would be withdrawn and the issues raised therein were to be advanced before the arbitrator. The learned Judge had also nominated an arbitrator.

11. Since respondents 1 and 2 had raised certain allegations against the 1st arbitrator he had recused himself from the proceedings. In the light of his recusal, the respondents 1 and 2 had filed O.P.No.809 of 2019 for appointment of an arbitrator to resolve the disputes that had arisen under the MOU. The appellants and other alienees, for the first time had been arrayed as respondents 5 to 8. The



learned Judge taking into account the order dated 12.09.2016 in A.No.1099 of 2014 appointed the present arbitrator as the sole arbitrator. The learned Judge had also held that the arbitrator shall enter reference and adjudicate the dispute that has arisen from out of the MOU between two petitioners as well as respondents 1 and 2 and any party impleaded at the discretion of the arbitral tribunal in accordance with the Arbitration and Conciliation Act.

12.This culminated in the constitution of the present arbitral Tribunal. In the claim petition the 3rd and 4th respondents have sought the following reliefs:

(i) To declare that the MOU dated 07.11.2012 executed between the 1st Claimant and the Respondents 1 - 4 herein is valid and binding on the Respondents 1 - 4 herein;

(ii) To declare that the Board Resolution dated 14.12.2012 uploaded along with Form-32 on 23.01.2013 is valid and binding on the Respondents 1-4 herein;

(iii) To declare that the Board Resolution dated 02.01.2013 uploaded along with Form-32 on 12.02.2013, Form-18 on 12.02.2013 and Form-17 on: 22.02.2013 is valid and binding on the Respondents 1 - 4 herein;

(iv) Directing the Respondents 1 - 3 herein to pay damages to the 1st Claimant to the tune of Rs.10,00,00,000/- (Rupees Ten Crore Only) for failure to perform the obligations and responsibilities under Clauses 12 and 13 of the M.O.U. dated 07.11.2012:

(v) Directing the Respondents 1 - 3 herein to deliver possession of Original Statutory Registers and all records of the 4th Respondent Company to the Claimants;

(vi) Directing the Respondents 1 - 3 herein to deliver possession of Original Share Certificates with endorsement of transfer in favour of the Claimants in accordance with Clause 8 of the MOU dated 07.11.2012;

(vii) Directing the Respondents 1 - 3 herein to execute Share Holder's agreement with the Claimants in the manner prescribed by Clause 10 of the M.O.U. dated 07.11.2012;

(viii) Directing the Respondents 1 - 3 herein to transfer the remaining 24% of the shares of the 4th Respondent Company in favour of the Claimants in accordance with Clause 11 read with Clause 16 of the M.O.U. dated 07.11.2012;



(ix) To declare that the transfer of title and possession of the schedule mentioned property in favour of the 2nd Claimant herein vide sale deeds dated 19.08.2013 bearing Document Nos.11271/13, 11272/13, 11273/13 on the file of Sub-Registrar, Thiruporur in accordance with Clauses 18 and 26 of M.O.U. dated 07.11.2012 is valid and binding on the Respondents;

(x) Directing the Respondents 1 - 3 herein to pay compensation to the 1st Claimant to the tune of Rs.1,00,00,000/- (Rupees One Crore Only) for mental harassment and hardship caused by the respondent by filing successive litigations.

(xi) Directing the Respondents I - 3 herein to pay costs to the Claimants in accordance with Clause 28 of the M.O.U. dated 07.11.2012."

Counter Claim of the 1st and 2nd respondents herein:

13.The 1st and 2nd respondents after entering appearance in the arbitral proceedings has filed a counter claim along with an application to implead the appellants and respondents 7 to 12 in M.A.No.14 of 2020 and also an application in M.A.No.15 of 2020 for injunction. It is relevant to point out that the appellants and the respondents 7 to 12 are neither parties to the MOU nor had they given their consent to be bound by the terms of the MOU. The counter claim has been filed seeking several reliefs and reliefs (f), (g) and (h) which alone relate to the appellants are described herein below:

"(f) Declare the Sale Deed dated 06.05.2015, bearing Doc No. 5946 of 15, on the file of the Thiruporur SRO, executed by the 2nd respondent in favour of 6th respondent herein as null and void; and

(g) Declare the Sale Deed dated 06.05.2015, bearing Doc. N0.5947 of 2015, on the file of the Thiruporur SRO, executed by the 2nd respondent in favour of the 7th respondent herein as null and void; and

(h) Declare the Sale Deed dated 02.09.2015, bearing Doc No. 11415 of 2015, on the file of the Thiruporur SRO, executed by the 2nd respondent in favour of the 7th respondent herein as null and void."

14.They had also sought for alternative prayers which are detailed herein below:

"(i) Grant a Judgment and Decree for an amount of



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Rs.26,25,00,000/- (Rupees Twenty Six Crores Twenty Five Lakhs only) which is due and payable from the 1st and 2nd Respondent in favour of the counter claimants along with interest @ 18% per annum from 11.02.2013 till actual date of realization.

(ii) Grant a Judgment and Decree for an amount of Rs.1,50,26,286/- (Rupees One Crore Fifty Lakhs Twenty Six Thousand Two Hundred and Eighty Six only) along with interest at the rate of 18% from 11.02.2013 till date of realization, which is to be paid by the 1st and 2nd respondents to the counter claimants;

(iii) Grant a Judgment and Decree directing the Respondents 1 & 2 to compensate the 1st counter claimant for the loss of salaried income from February, 2013, till date of realization, calculated at the rate of Rs.3,00,000/- per month totaling 2.52 crores along with interest @ 18% per annum till the date of realization;

(iv) Grant a Judgment and Decree directing the Respondents 1 & 2 to compensate the counter claimants for the loss of profit suffered amounting to Rs.76 crores along with interest @ 18% per annum till the date of realization;

(v) Grant a Judgment and Decree directing the Respondents 1 & 2 to pay damages to the counter claimants, to the tune of Rs.1 Crore along with interest @ 18% per annum till the date of realization.

The alternative relief was claimed only against respondents 3 and 4 herein.

15.The Counter claim is based on the following allegations. The 1st and 2nd respondents would contend that the MOU has been fraudulently executed and the document which was still at the negotiation stage has been passed off as the concluded contract. The 1st and 2nd respondents would contend that the Board Meetings are non-est as none of them had taken place and that apart the various e-mail correspondence said to have been executed between the respondents 1 and 2 and the respondents 3 and 4 are manipulated.

16.They would further contend that the 6th respondent which was engaged in a specialised research work is now reduced to the state of a real estate business. The appellants and respondents 7 to 12 are sought to be made parties by the respondents 1 & 2. For this purpose they have filed M.A.No.14 of 2020. The respondents 1 and 2 herein had also moved an application for an ad interim injunction in



M.A.No.15 of 2020.

17.The 1st and 2nd respondents after reiterating the entire grievances against respondents 3 and 4 would seek to implead the appellants and respondents 7 to 12 by stating that they had filed O.A.No.908 of 2016 for an interim order restraining respondents therein from alienating or encumbering the property. They would further submit that respondents 5 to 12 therein (which includes the appellants herein) would trace title only to the 2nd respondent and the disputes are intrinsically linked with the disputes between the respondents 1 to 4 herein.

18.They would further contend that any order passed against the respondents 1 to 4 would adversely impact the appellants and the respondents 7 to 12 and therefore for the aforesaid reasons they would seek to have the appellants and others impleaded. The respondents 1 and 2 would submit that prima facie case is in their favour and therefore the order of injunction should be granted in their favour.

Counter of the appellants to these applications:

19.The appellants have filed their common counter. At the outset they would contend that the application for impleading them is bad in law and deserves to be dismissed.

20.The appellants would seek to have the applications dismissed for the following reasons:

(i) They are not parties to the MOU and therefore would not fall within the definition of "party", as defined in Section 2 (h) of the Act.

(ii) The seller of the appellants i.e., the 4th respondent had bound herself to the arbitration agreement vide a consent affidavit dated 12.09.2016, which affidavit has not been signed by the appellants herein.

(iii) The subject matter of the arbitral dispute is outside the scope of the arbitral agreement contained in the MOU and is non arbitrable.

(iv) The Tribunal does not have the power to implead non-parties to the proceedings.

Order of the learned Arbitrator:

21.The parties had made their submissions before the learned arbitrator who by his order dated 31.08.2020



proceeded to allow both the applications.

22.The learned arbitrator has been persuaded into allowing the applications on the following grounds:

(a) The purchaser is a necessary party and if he is not impleaded, the decision would not bind him.

(b) The decision in Sukanya Holding will not apply to the instant case since there is no suit pending in which parties and non parties were impleaded.

(c) The arbitrator has not exercised the power of the Civil Court nor invoked the powers under Order I Rule 10 and Section 151 of the CPC but was however dealing with the right of parties in the arbitration and in the likelihood of the adjudication that shall bind the parties, persons who have acquired interest subsequent to the arbitral agreement are bound to be impleaded to make the adjudication and award meaningful.

(d)The parties to Civil suit would be put in utter travesty with the arbitral tribunal being wound up and civil suits resurrected at the whim of the subsequent purchasers.

23.The learned Arbitrator has not only impleaded the parties but have also granted the order of injunction by a non-speaking order which reads as follows:

"I have already observed that the decision in one is bound to impact the other. If the purchasers and subsequent encumbrancers who have interest in the subject matter are necessary parties, a fortiorari, the consideration that weighed with the High Court in granting injunction will subsist even now. The relief of injunction is granted to preserve the status quo and prevent unnecessary involvement of third-party interest that can hamper effective adjudication."

It is challenging the above orders that the appellants are before this Court.

Submissions:

24.Mr.V.Lakshmi Narayanan, learned counsel appearing on behalf of Ms.Harshini Jyothiraman counsel for the appellant would make the following submissions on behalf of the appellants. The learned counsel would submit that the appellants are in no way connected with the MOU and cannot be



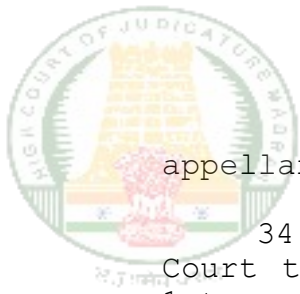
29.The necessary forms for filing before the Registrar of Companies had also been executed by respondents 1 and 2 and the 5th respondent. The 3rd respondent had made serious allegation of fraud against the respondents 1 and 2 by contending that their only attempt was to cheat the 3rd respondent.

30.The 3rd respondent had sought for a direction to the respondents 1 and 2 to furnish security since the companies property had already been sold to the 4th respondent.

31.Thereafter, respondents 1 and 2 had filed C.S.No.255 of 2014 on the file of this Court for declaring the MOU as null and void. They, in turn, had made serious allegations of fraud against the 3rd respondent herein and the 6th respondent company was shown as the 3rd defendant. They had, in the said suit stated that since the contract itself was void, the arbitration agreement would cease to exist and that the acts of fraud have been committed by the 3rd respondent herein who is the 1st defendant in the suit, with the sole intention of taking control of the company.

32.The learned counsel would submit that despite knowing the fact that schedule property had already been alienated in favour of the 4th respondent herein, the respondents 1 and 2 had not sought to have the sale deed declared as null and void. Thereafter, the 1st and 2nd respondents have filed two suits on the file of the XVII Assistant Civil Court, Chennai in O.S.Nos.7022 and 7023 of 2014. The relief sought for in O.S.No.7022 of 2014 was only to declare the Board Resolution dated 14.12.2012 and uploaded along with Form 32 on 23.01.2013 as null and void. Likewise, in O.S.No.7023 of 2014 the respondents 1 and 2 would seek to have the Board Resolution dated 02.01.2013 upload along with Form 32 on 12.02.2013, Form 18 on 12.02.2013 and Form 17 on 22.02.2013 is contrary to law and null and void. Even in these suits the respondents 1 and 2 have not sought for a prayer to declare the sale deed in favour of the 4th respondent herein as null and void.

33.The learned counsel would submit that on 06.05.2015 and 02.09.2015, the 4th respondent herein had sold the properties to the appellants before this Court. After she had executed a Sale and Mortgage Deeds as the case was in favour of the appellants and respondents 7 to 12 and divested herself of all her rights over the property, the 4th respondent has filed an affidavit in A.No.1099 of 2014 agreeing to be bound by the arbitration clause found in the MOU. Even in this affidavit there is not a whisper about the sale or mortgage that had been effected in favour of the



appellants herein and the other respondents viz., 7 to 12.

34.The learned counsel would draw the attention of this Court to the application in O.A.No.908 of 2016 filed by the 1st respondent against the respondents 3, 4, 7 and 8 and the appellants herein, the Controller of Certificate Authorities for an injunction restraining them from alienating or encumbering the suit schedule properties. This application was withdrawn on the ground that arbitration proceedings has been initiated and was pending.

35.It is the contention of the appellants that they are bonafide purchasers for value. The appellants had verified the 4th respondent's title to the property and had also obtained a Legal Opinion dated 06.04.2015, stating that the 4th respondent had a clear and marketable title to the property. This convinced them into buying the property.

36.The learned counsel would submit that the appellants who are third parties to the MOU cannot be impleaded in the proceedings which on the face of the very pleadings would show that till the filing of the counter claim in the year 2020 the respondents 1 and 2 have not sought for a declaration to have the sale executed in favour of the 4th respondent in the year 2013 from whom the appellants have purchased the properties, as null and void.

37.Therefore, he would seek to have the order passed by the learned Arbitrator set aside. The learned counsel would also plead collusion between respondents 1 to 4. He would submit that very filing of the affidavit of the 4th respondent after she has sold the property to the appellants smacks of fraud particularly when she was not the owner of the property at the time when she had executed an affidavit. The learned counsel would also submit that the affidavit filed in support of the two applications is totally bereft of any details. The learned counsel would rely on various Judgments listed herein below in support of this arguments.

Parties to Arbitration:

i.Sukanya Holdings Pvt Ltd v. Jayesh H Pandya & Anr - 2003 SCC 531]

ii. V.G.Santhosam vs. Shanthi Gnanasekaran - 2020 SCC Online Mad 560

iii.Shanthi Gnanasekaran vs. V.G. Santhosam & Ors - SLP No. 9234-9237 of 2020



iv.Deutsche Post Bank Home Finance Limited vs. Taduri Sridhar and Anr - 2011 11 SCC 375

v.Yogi Aggarwal vs. Inspiration Clothes - 2009 1 SCC 372

Maintainability of counter claim

vi.Gastech Process Engineering India Pvt Ltd vs. Saipem - 2009 SCC Online Del 1476

Limitation

vii.Thankavel Chettiar vs. Kuppu Bai - AIR 1964 Mad 185

Constructive Notice

viii.Nellai Rolling Mills P Ltd vs. South India Central Benefit Fund P Ltd - 1986 1 MLJ 370

ix.Official Liquidator, Marasubha & Co. Pvt Ltd vs. Commissioner of Police. Madras & Ors - 1968 38 CC 884

Third party to Arbitration

x.Brahmaputra Realtors P Ltd vs. GG Transport P Ltd & Ors - 2013 6 Gau LR 14

xi.Reckitt Benckiser (India) Pvt Ltd vs. Reynders Label Printing India Pvt Ltd & Anr - 2019 7 SCC 62

xii.Shoney Sanil vs. Coastal Foundations P Ltd & Ors - 2006 SCC Online Ker 38

xiii.SN Prasad vs. Monnet Finance Limited & Ors - 2011 1 SCC 320

xiv.M Rajendra Naidu vs. Sterling Holiday Resorts India Ltd & Ors - 2008 144 CC 243 (Mad)

xv.GG Transport P Ltd vs. Bhupendra Sing Ananda - 2017 5 Gau LR 39

Party autonomy

xvi.Centrotrade Minerals & Metal Inc vs. Hindustan Copper Ltd - 2017 2 SCC 228

xvii. J Jayakrishnan vs Registrar of Companies & 2 others - W.P. Nos 33692 to 33694 of 2013 and 3103 of 2014 dated 15.09.2014



xviii. T Ramesh vs. J Jayakrishnan & others -
W.A.Nos.1574 / 2014, 1686, 1687 & 1688 of 2015 dated
04.01.2018.

38.Per contra, Mr.Nithyaesh Natraj, learned counsel appearing for respondents 1 and 2 would submit that the entire arguments addressed by the appellants is on the merits of the dispute and not on the impugned order. He would submit that the question of limitation cannot be raised as the 1st and 2nd respondents have questioned the illegal acts of the 3rd respondent right from the year 2014 by initiating various proceedings. Therefore, the question of limitation cannot be raised qua the 3rd respondent. He would also submit that the physical shares continue to remain in the possession of the 1st respondent and therefore the MOU has not been given effect to.

39.He would further submit that no Board Resolution has been passed authorising the sale in favour of the 4th respondent and therefore, the sale deed is null and void and consequently, the sale in favour of the appellants and others. He would also raise the issue of maintainability stating that the order is not an interim measure therefore an appeal under Section 37 is not maintainable. He would therefore submit that no case has been made out for challenging the order of impleadment. He would submit that a quietus can be given to the entire issue by impleading the appellants herein and the other alienees and that no prejudice would be caused to them since issues in their favour have already been cast. He would therefore seek to have the appeal dismissed.

40.The learned counsel has relied on the following decision in support of his arguments:

(i) 2008 (1) Mh.L.J - Delta Distillerries Ltd Vs. Show Wallace and Co. Ltd and others.

(ii) 2013 (1) SCC 641 - Choloro Controls India Pvt. Ltd Vs. Severn Trent Water Purification Inc. and others.

(iii) 2018 (16) SCC 413 - Cheran Properties Limited Vs. Kasturi and Sons Limited & others.

(iv) 2018 (15) SCC 678 - Ameet Lalch and Shah Vs. Rishab Enterprises & others.

Discussion:

41.This Court is now called upon to examine the validity of the order of the learned arbitrator in impleading persons



who are not parties to the MOU, which is the subject matter of arbitral proceedings.

42. Admittedly, the appellants herein, respondents 4, 5, 8 to 12 are not signatories to the MOU. However, the 4th respondent on her own volition has agreed to be bound by the arbitral clause by filing an affidavit dated 12.09.2016 in the proceedings initiated under Section 9 of the Act by the 3rd respondent against the respondents 1 and 2 herein (A.No.1099 of 2014).

43. Before deciding on the correctness of the order under challenge, it would make useful reading to analyze the grounds on which the learned arbitrator has deemed it necessary to implead the appellants herein and the other respondents.

(i) Where the sale is impeached on the ground that the vendor has no right to sell, the purchaser is always a necessary party and if not impleaded the decision will not bind the purchasers. Therefore, according to the learned arbitrator where there is a clause authorising the transfer of property, a dispute emanating from such transfer cannot be made effective by the arbitrator without the purchaser being brought to the forum since they have no right independent of their vendor. The decision in Sukanya Holdings Private Limited would not be applicable to the case on hand.

(ii) The decision in V.G.Santhosam is distinguishable on facts. The arbitrator has not exercised the power under Order 1 Rule 10 and Section 151 of the CPC, but had been dealing with rights of parties in an arbitration and likelihood of adjudication that would bind the parties and persons who have acquired interest subsequent to the arbitral agreement.

(iii) Consigning the issue to the Civil Court would be of no use when the purchasers who are interested only in a portion of the property are the ones interested in relegating the matter to the Civil Court whereas the principal parties are not. The High Court has directed the withdrawal of the Civil Suits filed while appointing the arbitrator in A.No.1099 of 2014 and therefore the Civil suits cannot be resurrected at the fancy of the purchasers."



44. Before deciding on the correctness of the order under challenge, it would be necessary to briefly shift focus to the transaction between the 3rd respondent and respondents 1 and 2 herein which had culminated in the execution of the MOU. It is this MOU which confers jurisdiction on the learned arbitrator to arbitrate the dispute between the parties. The MOU dated 07.11.2012 was entered into between the parties to reduce into writing the obligations cast upon respondents 1 and 2 in consideration of the 3rd respondent paying a sum of Rs.4,65,00,000/- to discharge the dues of respondents 1 and 2 to the Bank. The respondents 1 and 2 had agreed to do the following:

"i) They would dematerialize the shares of the 6th respondent herein within a month from the date of the agreement and transfer 76% shares in favour of the 3rd respondent herein.

(ii) The balance 24% of the shares was to be pledged by respondents 1, 2 and 5 in favour of the 3rd respondent.

(iii) On the release / redemption of the schedule mentioned properties on the payment of the entire money to the Federal Bank, the respondents 1 and 2 would transfer the title and possession of the property in favour of the 3rd respondent.

(iv) The respondents 1, 2 and 5 would render their know-how for running the business to the 3rd respondent herein and if the 6th respondent company achieves a profit over and above Rs.10,00,00,000/- with their active assistance, then, the respondents 1, 2 and 5 shall be entitled to transfer of ownership of the two buildings already in existence and the land on which it stands in their favour or in the favour of their nominee.

(v) The 3rd respondent was authorised under the MOU to receive the original documents of the property and the keys to the building there upon from the Federal Bank on the payment of the entire dues of the Bank.

vi) It was also agreed that any dispute, difference and or claims arising out of this MOU would be resolved by arbitration by a single arbitrator who was to be appointed by the 3rd respondent herein and the parties would be bound



by the arbitral award."

45.The records would reveal that after the 3rd respondent had paid a sum of Rs.4,65,00,000/- he was informed by the 1st and 2nd respondents that since the highest bid received by the Bank in the auction sale was a sum of Rs.5,50,00,000/-, the Bank would agree to a one time settlement only for the said sum. Therefore, having pumped in a sum of over Rs.4,65,00,000/- the 3rd respondent had no other option except to agree to pay the sum of Rs.5,50,00,000/-.

46.It appears that 76 % of the share certificates were transferred in favour of the 3rd respondent. However, the original share certificates with the endorsement continued to remain in the hands of the 1st and 2nd respondents. By e-mail dated 11.02.2013, the 2nd respondent had sent a mail to the Bank asking them to release the original documents and keys in favour of the 1st respondent. Further after the entire payment due to the Bank had been cleared, the respondents 1 and 2 started acting in a manner contrary to the agreed terms under the MOU.

47.As provided in the MOU the 3rd respondent, as the Managing Director of the 6th respondent, had sold the property to the 4th respondent pursuant to a Board Resolution dated 02.01.2013. Immediately, the 1st and 2nd respondents lodged a criminal complaint against the 3rd respondent. Thereafter both parties lodged complaints against each other. It is at this juncture that A.No.1099 of 2014 came to be filed by the 1st claimant under Section 9 of the Act seeking a direction to the 1st and 2nd respondents to furnish security to the tune of Rs.5,50,00,000/-. The 1st and 2nd respondent had also filed C.S.No.255 of 2014 on the file of this Court to declare the MOU dated 07.11.2012 as null and void. Simultaneously, the respondents 1 and 2 had filed O.S.No.7022 of 2014 to declare the Board Resolution dated 14.12.2012 as null and void and O.S.No.7023 of 2014 to declare the Board Resolution dated 02.01.2013 as null and void. In none of these proceedings was the sale in favour of the 4th respondent called into question. Despite their being no claim against her, it appears that the 4th respondent herein had filed an affidavit seeking to bind herself to the arbitration clause.

48.At the request of both the counsels, I had called for the records in A.No.1099 of 2014 when I reserved orders in this matter. The records in A.No.1099 of 2014 was also thereafter produced for my scrutiny. The affidavit which is the document through which the 4th respondent had bound herself to arbitration is an affidavit styled as "Affidavit



of all Parties". However, the same has been signed only by the respondents 3 and 4 and respondents 1 and 2 have not signed the said affidavit. The said affidavit would read as follows:

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"2. Since the scope of the arbitration has been enlarged in view of the fact that certain transactions has taken place involving the fourth party [wife of the third party] as well, the fourth party by virtue of the present affidavit, unequivocally accepts to submit and subject herself to arbitration as a separate and independent party, although she is not a party to the MOU dated 07.11.2012. Nothing in this affidavit shall be construed as the fourth party agreeing to the terms of the MOU dated 07.11.2012, who shall for all such purposes remain an independent third party. Therefore, by virtue of the present affidavit, all the parties hereto accept and covenant that they shall subject themselves to Arbitration. The signing of the present affidavit by the fourth party shall be deemed sufficient compliance with the provisions of the Arbitration and Conciliation Act, 1996 as amended from time to time.

..4.The first and second party agree and convert that they shall withdraw with immediate effect the suits, namely, O.S.Nos.7022 and 7023 of 2014 pending before the Assistant City Civil Judge, Chennai and C.S.No.255 of 2014 pending before this Hon'ble Court."

49.This affidavit has not been signed by the respondents 1 and 2 and therefore it cannot be said that the respondents 1 and 2 had on the said date, agreed to withdraw the said O.S.Nos.7022 and 7023 of 2014 as well as C.S.No.255 of 2014 filed by them to declare the MOU as null and void. It is also to be taken note of that in her affidavit the 4th respondent has in very clear terms stated that her signing of the affidavit cannot be construed that she agrees to the terms of the MOU and that she would remain an independent third party. Thereafter, this Court has passed the following order in A.No.1099 of 2014 which would read as follows:

"5.Accordingly, as agreed, the application is disposed of with the following directions:

(i). Mr.Justice, S.Rajeswaran, former judge of this Court, is appointed as an Arbitrator.



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(ii). The learned Arbitrator will dispose of the captioned application by treating it as an application under Section 17 of the 1996 Act.

(iii) Ms. Kamaktchi Jayakrishnan will be arrayed as party to the arbitration proceedings, as per the consent given in that behalf, vide affidavit dated 12.09.2016.

(iv) Learned Arbitrator will fix his own fee.

(v) The burden of fee and expenses shall be borne equally by the parties.

(vi). The parties and their counsels, will appear before the arbitrator on 08.10.2016 at 3.00 P.M.

(vii). In case, for any reason, the aforementioned date is not convenient to the learned Arbitrator, he will have the liberty to fix another date, which is proximate to the date given above.

(viii) The civil suits filed by the respondents i.e. O.S.No.7022 and 7023 of 2014 (pending before the Assistant City Civil Judge, Chennai) and C.S.No.255 of 2014 (pending before this Court) would be withdrawn and the issue raised therein will be advanced before the learned Arbitrator."

50. Therefore, this Court had permitted these civil suits to be withdrawn and the disputes raised therein was permitted to be raised before the sole arbitrator. At this juncture, it is necessary to examine the issues that has been raised in these three suits.

(i) C.S.No.255 of 2014:

This suit has been filed by the respondents 1 and 2 against the 3rd and 5th respondents to declare the MOU as null and void. In the said suit, the respondents 1 and 2 at paragraph 29 has made a mention about a sale deed that was executed by the 3rd respondent in favour of the 4th respondent. However, the respondents 1 and 2 have not sought for any relief to declare this sale deed as null and void. In fact, the respondents 1 and 2 have categorically stated that the 3rd respondent had indulged in several acts of fraud with devious intention of taking over the company and therefore the same had to be tried by the Civil Court as it



will not be possible to adjudicate the validity of the contract before the arbitral Tribunal. Further, since the contract itself is a void contract the arbitral agreement ceased to exist. This suit is verified by the 1st and 2nd respondents on 10th March 2014.

(ii) O.S.No.7022 of 2014:

This suit verified by the plaintiffs on 10th November 2014, is filed to declare the Board Resolution passed by the parties on 14.12.2012 and which is uploaded along with Form 32 on 23.01.2013 as contrary to law and therefore null and void. In this suit the respondents 1 and 2 had questioned the transfer of the shares in favour of the 3rd respondent vide Board Resolution dated 14.12.2012 on the ground that under the MOU, the transfer of shares was to be effected only after the Bank loan was cleared and according to the 1st and 2nd respondents the Bank loan was cleared only on 11.02.2013. Therefore they would contend that the Board Resolution on 14.12.2012 passed before the loan was cleared was a nullity. Even in this suit the sale executed by the 3rd respondent in favour of the 4th respondent has not been called in question.

(iii) O.S.No.7023 of 2014:

This suit also verified on 10.11.2014 has been filed by the respondents 1 and 2 against the 3rd, 4th and 6th respondents and one Mr.V.Mahesh for a declaration that the Board Resolution dated 02.01.2013 uploaded along with Form 32 on 12.02.2013, Form 18 on 12.02.2013 and Form 17 on 22.02.2013 is contrary to law and therefore null and void.

51.The Board Resolution dated 02.01.2013 is the one under which it was resolved that the 3rd respondent would become the Managing Director of the 6th respondent company and the Registered office of the 6th respondent company had been changed. The conduct of this meeting has been called into question on the ground that the 1st respondent who is shown as being present in the meeting was however not present and digital signatures have been misused.

52.Therefore, from a perusal of the above, it is clearly evident that the issues involved in these three suits are the MOU, the Board Resolutions dated 14.12.2012 and 02.01.2013. In none of these suits the sale in favour of the 4th respondent has been called in question. Therefore, going by order in A.No.1099 of 2014, the parties have been permitted to raise only these issues before the learned arbitrator. The Jurisdiction of the arbitrator is also restricted to the MOU and the issues involved in these suits.



53. Therefore, the observation of the learned arbitrator that the dispute emanating from the transfer of property cannot be made effective by the arbitrator without the purchaser being brought to the forum is to say the least erroneous and a case of overreach. Further, another factor which has been overlooked by the learned arbitrator is that on the date on which the 4th respondent had submitted herself to arbitration, she had divested herself of all interest in the schedule property as she had transferred the interest in favour of the appellants and respondents 7 to 12. These transferees / alienees have not given their consent to submit themselves to arbitration. Further the 4th respondent in her affidavit dated 12.09.2016 has clearly stated that she is not bound by the terms of the MOU.

54. In fact, in the affidavit dated 12.09.2016, the 4th respondent has suppressed the sale in favour of the appellants and mortgage in favour of the others. Infact, the respondents 1 and 2 despite being aware of the sale in favour of the 4th respondent even in the year 2014 has not chosen to question the sale and it is only 6 years thereafter by way of the counter claim in these proceeding that this issue is raised for the first time. This is an issue which does not come within the subject matter of the suit C.S.No.255 of 2014, O.S.No.7022 of 2014 and O.S.NO.7023 of 2014 and is an entirely new plea that has been taken up. Therefore the observation of the learned arbitrator that this Court had directed the withdrawal of the above suits to be tried by the learned arbitrator is restricted only to the issues covered under these suits and the parties to those suits. The order of the learned Judge in A.No.1099 of 2014 cannot be enlarged by the learned Arbitrator.

55. Even in the order passed in O.P.No.809 of 2019 under which the present learned arbitrator has been appointed, the learned Judge has observed that the arbitral tribunal would enter upon reference and adjudicate the arbitral disputes that has arisen from and out of the MOU between the petitioners and respondents 1 and 2 and against the parties impleaded at the discretion of the Arbitral Tribunal in accordance with the Arbitration and Conciliation Act.

56. Therefore, a reading of these two orders which appears to be the basis upon which these applications have been moved restricts the dispute only to those arising from and out of the MOU and the issues arising under the three suits. The sale of the property has not been questioned all these years and is not an issue in the suits.



57.The learned arbitrator has distinguished the Judgment in Sukanya Holdings on the ground that there cannot be a piecemeal proceedings in two fora and that the proposed parties also did not want such a piecemeal litigation. This observation of the learned arbitrator appears contrary to the pleadings on hand. The proposed parties have questioned the impleadment on the ground that they are not parties to the MOU or the Board Resolution and further their impleadment is barred by limitation. The observation of the learned arbitrator that the request of the purchasers to wind up arbitral proceedings and resurrect the subject suits is utter travesty is rather erroneous.

58.The appellants have not sought to have the arbitral proceedings between respondents 1 to 4 to be wound up. Their contention is that they are not parties to the MOU and therefore they cannot be impleaded in an arbitration proceedings which is only based upon the contract between the parties. Even if the civil suits are resurrected, the proposed parties cannot be impleaded on the pleadings contained in the suits that have been withdrawn. Therefore, a vital right of the proposed parties are sought to be set at naught by compelling them to participate in the arbitral proceedings instituted on the basis of the MOU to which they are not parties.

59.A reading of the Act would indicate that the framers of the Act have not contemplated the impleadment of third parties. This is clearly evident from the fact that jurisdiction is conferred on an Arbitral Tribunal under this Act only by agreement of parties and not by operation of law. Section 2 (h) of the Act defines a "Party" as follows:

"(h) "party" means a party to an arbitration agreement."

60.One of the main objectives with which the Act was enacted in the year 1996 is "to ensure that the arbitral tribunal remains within the limits of its jurisdiction". The Jurisdiction of the arbitral Tribunal is clearly within the contours of the agreement between the parties. The Act has also defined an arbitration agreement as that which is referred to in Section 7 therein. Section 7 would read as follows:

"7 Arbitration agreement. –

(1).In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect



of a defined legal relationship, whether contractual or not.

(2).An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3).An arbitration agreement shall be in writing.

(4)/An arbitration agreement is in writing if it is contained in

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(4) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract."

61.By Act 3 of 2016 Section 8 (1) has been amended to read as follows:

"(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration."

62. Therefore, an analysis of these Sections would highlight the fact that it is the intention of the law makers to restrict the jurisdiction of an arbitral Tribunal to the four corners of the agreement and to persons who are parties to the agreement. The amendment to Section 8 (1) by the amending Act 3 of 2016 has expanded this to include "a person claiming under a party to the arbitration agreement". Even such a third party should be one who is claiming under a "party to the agreement".



63. The Law Commission in its 246th Report had recommended an amendment to the definition "Party" under Section 2(h) of the Act to bring it in conformity with the language of Sections 45 and 54 of the Act where it has been provided that even a person claiming through or under a party to an Arbitration Agreement can approach a judicial authority. However, the Legislature has not deemed it fit to introduce this amendment to Section 2(h) and has only incorporated the same in Section 8(1) of the Act. Therefore, the definition of the word party continues to mean only a party to the Arbitration Agreement.

64. Further in the instant case, as already mentioned supra, the 4th respondent is not a party to the MOU. Therefore, the newly introduced provisions of Section 8(1) of the Act would also not apply to the instant case.

65. The Hon'ble Supreme Court in the Judgment in Chloro Control has held that where different agreements are intrinsically intertwined their non-signatories can also be brought within the umbrella of the arbitral proceedings. The Honourable Supreme Court had held that each of the agreement should be linked to the main agreement and the ancillary agreements cannot be performed independent of each other and the main agreement.

66. In the instant case the learned arbitrator has directed the impleadment on the ground that the appellants and the others are claiming under the 4th respondent. The 4th respondent herself is not a party to the MOU but has sought to bind herself to the arbitration proceedings with a caveat vide her affidavit dated 12.09.2016 in A.No.1099 of 2014 that she is not agreeing to the terms of the MOU. On the date when the 4th respondent had filed the affidavit she was neither the owner of the property nor a signatory to the MOU. Therefore, her consent to bind herself to the Arbitration proceedings will not be binding on the appellants and the others.

67. In the Judgement reported in 2020 SCC Online Mad 560 - V.G.Santhosam and others Vs. Shanthi Gnanasekaran and others, the learned Judge has observed that the jurisdiction of the arbitrator is confined to the agreement between the parties and the learned arbitrator cannot exercise wide powers that are available to the Court. The learned Judge has also upheld the filing of an appeal under Section 37 of the Act against an interim order of impleadment which was not found faulty by the Hon'ble Supreme Court. Therefore, the issue of maintainability raised by the respondents 1 and 2 is answered by the above.



68. It is also to be noted that the learned arbitrator has also misconstrued the orders of this Court in A.No.1099 of 2014 and O.P.No.809 of 2019. In A.No.1099 of 2014, in these proceedings the learned Judge has made it very clear that the respondents 1 and 2 shall withdraw the suits filed by them and thereafter the arbitral tribunal shall consider the issues raised in these suits. In the order passed in O.P.No.809 of 2019, the learned Judge has stated that the question of impleadment shall be exercised by the arbitrator in accordance with the provisions of the Arbitration and Conciliation Act. Therefore, on a conspectus of the above it is clear that the learned Arbitrator has exceeded his jurisdiction in allowing the applications.

69. Another factor which has to be considered is that in the instant application for impleading the applicants are filed by the respondents 1 and 2 under the heading "Petition for impleadment" to implead the proposed parties as proper necessary and important parties to the present proceedings. It is not clear if the respondents 1 and 2 seek to implead the applicants and others as respondents in the main claim or the counter claim.

70. If the application is filed to implead these persons as parties to the claim petition then the same has to be filed by the respondents 3 and 4 / claimants. If the applicants and others are sought to be impleaded in the counter claim then the same exceeds the scope of the arbitration agreement as well as the arbitrable dispute. In the affidavit filed in support of the impleadment petition respondents 1 and 2 have stated that the appellants and the others get their title from the transaction between them and the 4th respondent herein and both are not parties to the MOU. It is to be remembered that the 4th respondent had bound herself to the arbitral proceedings through an affidavit dated 12.09.2016 filed in A.No.1099 of 2014 on which date she was neither the owner of the property nor in possession of the same. Infact, respondents 1 and 2 have themselves stated as follows in para 35 of the affidavit filed in support of the impleadment petition:

"35. It is now a settled law that this Hon'ble Tribunal has powers under the Arbitration and Conciliation Act, 1996 to implead the parties who are not a signatory to the agreement provided there is a live and reasonable nexus between the subject matter of arbitration and the person who is sought to be proceeded against in the arbitration. In the instant case, the same exists and the present implead petition is maintainable."



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71. The next point for consideration is whether the counter claim for declaring the sale deeds executed in favour of the appellants is maintainable against the appellants who are non-signatories to the MOU. Section 23 (2-A) of the Act clearly provides that a counter claim or set off should fall within the scope of the Arbitration agreement. Admittedly, the sale in favour of the appellants was made by the 4th respondent who is not a party to the MOU. Further, the sale in favour of the 2nd respondent has not been called in question in the suits C.S.No.255 of 2014, O.S.No.7022 & 7023 of 2014 filed by the respondents 1 and 2 against the respondents 3, 4, 5 and 6. The order of this Court in A.No.1099 of 2014, which was the order under which the 1st arbitrator had been appointed, had referred only the issues raised in the above suits to be tried by the arbitrator. Therefore, viewed from this angle also the counter claim for declaring the sale deeds in favour of the appellants are null and void is beyond the scope of the arbitration agreement and the reference.

72. The learned arbitrator has by allowing the petition for impleadment over stepped his jurisdiction which is restricted to the four corners of the arbitral agreement and the reference. The learned arbitrator has attempted to exercise the wide rights vested in the Civil Court under the provisions of Order I Rule 10 of the Code of Civil Procedure, which right is not vested in him though he would observe otherwise. The learned arbitrator has failed to appreciate that the remedy of respondents 1 and 2 against the appellants and others is only by filing a suit.

73. In the Judgment in V.G.Santhosam and others Vs. Shanthi Gnanasekaran and others - 2020 SCC Online Mad 560, the learned Judge has observed that the jurisdiction of the Arbitration is confined to the agreement between the parties and the learned arbitrator cannot exercise wide powers that are available to the Court. The learned Judge has observed as follows in paragraph nos.99, 100 & 102:

"99. The spirit of the order passed by the Arbitrator with reference to the [Arbitration Act](#) is to be considered by this Court. The above findings would reveal that the Arbitrator has made an initiation to decide the legal rights of the parties, including the rights of the first respondent. The Arbitrator in express terms held that the impleadment of party, provisions contained in the Code of Civil Procedure through Order 1, Rule 10 gives a wide power to a Court and in our context, the same must apply to an Arbitral

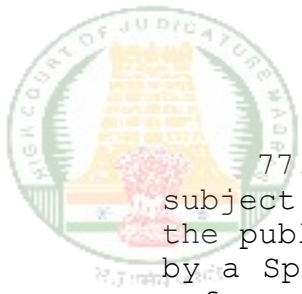


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Tribunal. Such a conclusion arrived by the Arbitral Tribunal is undoubtedly an exercise of inherent power, which is impermissible in law. The power which is not contemplated under the [Arbitration Act](#), cannot be exercised by the Arbitral Tribunal. The power being statutory in character, the inherent power is not vested. While-so, the Arbitrator cannot invoke the provisions of the Code of Civil Procedure for the purpose of impleading a third person into the arbitral proceedings and he is bound to be strict with reference to the contracted Arbitration Agreement as well as the parties to the Arbitration Agreement and the adjudication must be within the parameters of the disputes raised between the parties to the Arbitration Agreement.

100. The decision of the Hon'ble Supreme Court of India in the case of Chloro Controls India (P) Ltd, cited supra, has got a restricted implication, as in the opening paragraph itself, the Apex Court, clarified the scope of widening of arbitral proceedings. The Supreme court in unambiguous terms held that a third party cannot be impleaded as a party to the arbitral proceedings. Only on exceptional circumstances, where there is multiple, multi-party agreements with intrinsically interlinked causes of action, more so, where performance of ancillary agreements is substantially dependent upon effective execution of the principal agreement. Thus, there must be a link between the Principal Arbitration Agreement and an ancillary agreement if any. The circumstances mostly would arise in business transactions between the Multinational Companies in international arbitration proceedings under [Section 45](#) of the Arbitration act. Thus, such exceptional circumstances is a rare occasion as far as the domestic Arbitration Agreements are concerned. But however, the parties, who are filing such an application must establish such intrinsically interlinked causes of action for the purpose of participating in the arbitral adjudication.

102. In the order impugned, the Arbitrator arrived a conclusion that the impleadment of the first respondent will help to secure a comprehensive adjudication of the extent to which the heirs of the parents, who were partners during



77.The Hon'ble Supreme Court had observed that if the subject matter of the suit was capable of adjudication before the public forum or where the relief claimed could be granted by a Special Court or Tribunal then the parties shall not be referred to arbitration. The learned Judges had observed that a right in rem is a right exercisable against the world at large whereas a right in personam is an interest restricted to specific individuals. Actions in personam related to actions determining the rights and interests of parties amongst themselves in respect of the subject matter of the case. However, rights in rem refers to actions determining the title to the property and the rights of persons not only amongst themselves but also against persons who may claim an interest to the same. This judgment continues to be the authority on arbitrability of the subject matter of dispute.

78.In fact, a perusal of the prayers mentioned in (e), (j), (k) and (l) of the counter claim which is extracted below would clearly show that the same falls squarely within the non arbitrable disputes described in Booz Allen supra.

"(e)Declare the Mortgage Deed dated 16.10.2014, bearing Doc.No.14785 of 2014, on the file of the Thiruporur SRO, executed by the 2nd respondent in favour of the 10th respondent herein as null and void,

(j)Declare the Deposit of Title Deeds dated 27.06.2016, bearing Doc.No.7502 of 2016 on the file of the Thiruporur SRO, entered into between the 2nd respondent and the 9th respondent herein as null and void,

(k)Declare the Mortgage Deed dated 27.06.2016, bearing Doc.No.7484 of 2016 on the file of the Thiruporour SRO, entered into between the 10th respondent and the 2nd respondent as null and void and

(l)Declare the Mortgage Deed dated 26.04.2017, bearing Doc.No.3978 of 2017 on the file of the Thiruporour SRO, entered into between the 5th respondent and the 11th respondent as null and void"

79.To summarize the discussion, the order of the learned Arbitrator is erroneous primarily for the following reasons;

- (a) The referral of the suits C.S.No.255 of 2014 and O.S.Nos.7022 and 7023 of 2014 was only with respect to



the issues involved therein and the sale in favour of neither the 4th respondent nor the appellants are in issue.

- (b) The 4th respondent is not a signatory to the Memorandum of Understanding.
- (c) When the 4th respondent had given her consent to be bound by the arbitral proceedings she was no longer the owner of the property.
- (d) Despite being aware of the sale in favour of the 4th respondent in the year 2014, the respondents 1 and 2 have not prayed to declare this sale as null and void and seeks to do it 6 years later by filing the counter claim.
- (e) The counter claim filed is contrary to the provisions of Section 23 (2-A) of the Act.
- (f) The appellants are neither parties to the MOU nor have they given their consent to be a party to the arbitral proceedings.
- (g) The Arbitral Tribunal has exceeded the reference.
- (h) The relief sought for declaring the Sale Deeds and the Mortgage Deeds as null and void are non arbitrable vide 2011 (5) SCC 532 [Booz-Allen & Hamilton Inc vs Sbi Home Finance Limited and others] .

80. In fine, the order of the learned arbitrator inpleading the appellants as parties is set aside and consequently the order of injunction passed in the order M.A.No.15 of 2020 against the appellants is also set aside. The CMAs are allowed. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To
The Hon'ble Mr. Justice K. Kannan Sole Arbitrator
(Former Judge, Punjab and Haryana High Court),
(Former Chairman, Railway Claims Tribunal, Delhi)
No.311, Lakshmi Colony,
North Crescent Road,
T. Nagar, Chennai - 17.



+2CC to M/s.Harshini Jhothiraman, Advocate SR No.5218

+1CC to M/s.Nithyaesh & Vaibhav Advocate SR No.5415

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C.M.A.Nos.1582 & 1584 of 2020 &
C.M.P.Nos.11651 & 11656 of 2020

PPA (CO)
PR (16/07/2021)