

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2021

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.2770 of 2018
and
C.M.P.No.21044 of 2018

1.Kuppusamy Muniaiah
2.Indhra Kuppusamy

...Appellants

-V-

M/s.Kotak Mahindra Bank Limited,
I Floor, Ceebris Centre,
39, Monteith Road,
Egmore,
Chennai - 600 008.

...Respondent

Prayer: Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 read with Order 43 Rule 1 of the Code of Civil Procedure praying to set aside the order in I.A.No.36 of 2018 in KMB/AE/36/2018 passed by the sole Arbitrator Deepa Vasumithran at Chennai, dated 16.11.2018 under Section 17 of the Act.

For Appellants : Mr.V.Manohar
For Respondent : Mr.M.Arunachalam

JUDGMENT

This Civil Miscellaneous Appeal is filed challenging the orders passed under Section 17 of the Arbitration and Conciliation Act, 1996 by the learned Arbitrator.

2.The arbitral proceedings has been initiated in respect of a Loan Agreement entered into between the respondent Bank and the appellants herein. The appellants had borrowed a sum of Rs.20 lakhs towards personal loan which was repayable in monthly installment of Rs.1,01,667/- spread over 24 months. Since the appellants had defaulted in payment of the monthly installments, the respondent Bank had recalled the loan vide their letter dated 10.08.2018 and had reserved their right to initiate arbitral proceedings or civil or criminal proceedings. Thereafter, it appears that the respondent had appointed a sole Arbitrator. By a letter dated 27.08.2018, the Arbitrator had

entered reference and posted the case on 06.09.2018. The sole Arbitrator had also given the disclosure under the VI Schedule of the Act. In the above letter, the Arbitrator had informed about that the listing of the case on 06.09.2019 this appears to be an adjourned date.

3.The appellants had moved an application under Section 17 of the Act for an injunction, restraining the respondents from dispossessing of the property described in the schedule to the properties. The schedule of properties related to related to the basic household articles. Admittedly, these articles do not found in the subject matter of the Loan Agreement. The learned Arbitrator by her order dated 16.11.2018 has granted interim injunction, restraining the appellants from alienating the properties and had also appointed a Receiver to take possession of the same. Challenging the above order, the appellants are before this Court.

4.Heard the learned counsels appearing on either side and perused the papers.

5.As stated above, the property which has been described in the schedule do not form the subject matter of the Agreement. Section 17 of the Act reads as follows:

"17. Interim measures ordered by arbitral tribunal.

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute.

(2) The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under sub-section (1).

6.The Act clearly empowers the arbitral tribunal to grant interim measures in respect of the subject matter of the arbitration Agreement. The property which is the subject matter of the impugned order is not the subject matter of the arbitration agreement and are only the basic household articles. The order of the learned Arbitrator is a non speaking order and clearly exposes the non application of mind on the part of the Arbitrator.

In these circumstances, this Civil Miscellaneous Appeal is allowed. The order in I.A.No.36 of 2018 in KMB/AE/36/2018 passed by the sole Arbitrator Deepa Vasumithran at Chennai, dated 16.11.2018 is set aside. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mps

To

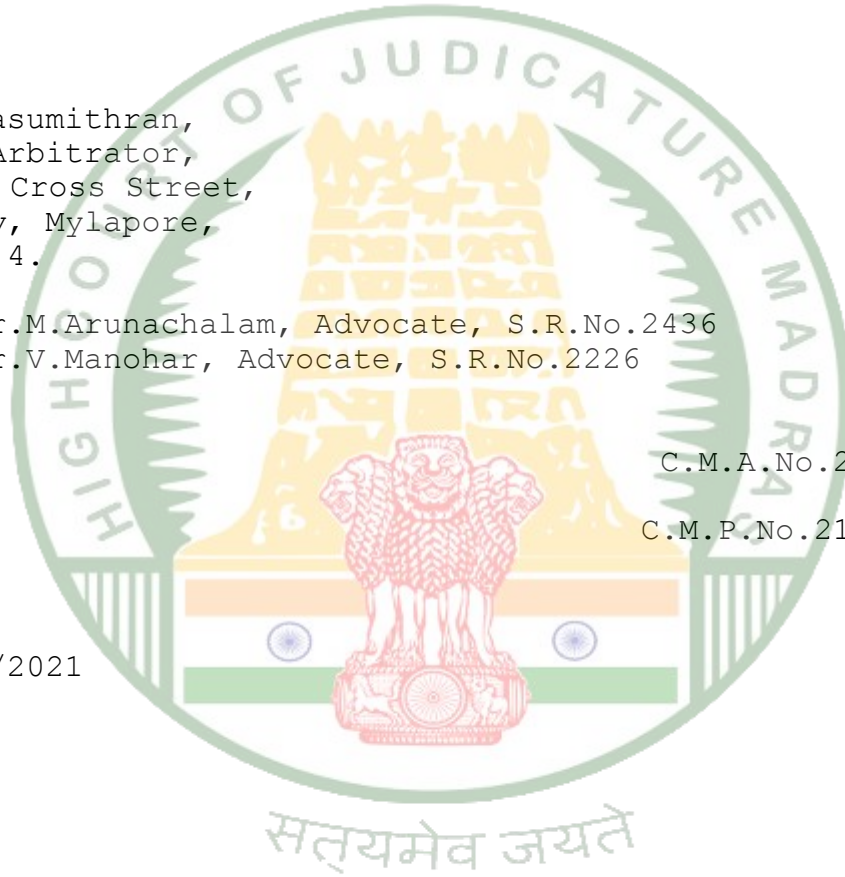
1.Deepa Vasumithran,
Advocate/Arbitrator,
No.12, 6th Cross Street,
CIT Colony, Mylapore,
Chennai - 4.

+1cc to Mr.M.Arunachalam, Advocate, S.R.No.2436

+1cc to Mr.V.Manohar, Advocate, S.R.No.2226

C.M.A.No.2770 of 2018
and
C.M.P.No.21044 of 2018

SR II (CO)
KKV/26/02/2021



WEB COPY