



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.07.2021

Pronounced on : 16.08.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

WEB COPY

C.R.P. (MD) .No.589 of 2021

1.Chandrakala

2.Rameshbabu

: Petitioners 1 & 2 / Respondents 1 & 2

Vs.

Sundaram Finance Limited,
rep. by its Senior Manager,
21, Pattullos Road,
Chennai - 600 002.

: Respondent / claimant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to direct the learned Commercial Court / District Court, Tiruchirappalli take on file the execution petition of Arbitration Case. No.SSM / SF / 265/ 2019 filed as F.No.E.P.161 of 2021 - CNR No.TNTP010004412021 on 18.01.2021 and to dispose of the same, under Section 36 read under Section 31 - A under Arbitration and Conciliation read with Civil Procedure Code as modified by the Commercial Court Act, 2015 in its application to the commercial disputes.

For petitioners : Mr. S. Jayavel

For respondent : Mr.S. Pon Senthil Kumaran

O R D E R

The revision has been filed seeking direction to the Commercial Court / Principal District Court, Thiruchirappalli, to take the execution petition of Arbitration case. No. SSM / SF / 265/ 2019 filed as F.No.E.P.161 of 2021 - CNR No.TNTP010004412021 on 18.01.2021, on file and dispose of the same in accordance with law.

2. The revision petitioners are the respondents in the arbitration case No.SSN/SF/265/2019 filed by the respondent / claimant for recovery of money due by the revision petitioners. It is not in dispute that the sole arbitrator has passed the award, dated 28.08.2020 against the revision petitioners directing them to pay Rs.2,97,904/- with interest at 18% per annum from 30.08.2019 till realisation and costs jointly or severally to the respondent / claimant.

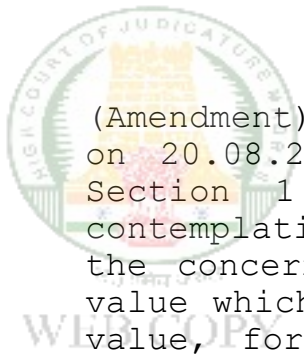


3. It is further evident from the records that the revision petitioners have filed an arbitration execution petition before the Principal District Court, Thiruchirappalli, seeking permission to deposit the award amount with interest and costs as directed by the arbitrator and for raising of attachment of the petition mentioned properties and that the learned Principal District Judge has returned the petition raising query as to how the petition is maintainable, since the order of attachment was passed in the arbitration proceedings. The revision petitioners have represented the petition stating that Section 10 of the Commercial Courts Act confers the exclusive jurisdiction only on the Commercial Court, that the Arbitrator is competent to pass the interim order of attachment, that the award under Section 36 of the Arbitration and Conciliation Act is to be executed as if the same is a the decree passed by the Civil Court, that Order 21 Rule 1 CPC permits the Judgment debtor to pay decretal amount and get the ancillary reliefs such as removal of attachment and that therefore, the execution petition filed is maintainable. It is further evident that the learned Principal District Judge, not satisfied with the explanation, has again passed an order, now impugned, returning the execution petition stating that the Court has not passed attachment under Order 21 Rule 54 CPC and as such how the petition is maintainable.

4. As rightly contended by the learned counsel for the petitioners, the District Court under the mis-conception, that since the pre-trial order of attachment, which was passed by the arbitrator, was effected through the Principal Subordinate Judge, Thiruchirappalli, the District Court has no jurisdiction to entertain the present Execution Petition and to pass orders for raising of the attachment.

5. It is pertinent to mention that the impugned award was passed under the Arbitration and Conciliation Act and the award passed by the Arbitrator under the said Act is to be treated as if it were a decree passed by the civil Court. It is also not in dispute that the District Courts alone are having jurisdiction to try the proceedings including the proceedings under Section 34 of the said Act. But at the same time, it cannot be said that the District Court alone is having power or jurisdiction for executing the awards passed in the said Act.

6. The High Court of Delhi in the Judgment reported in **2010 (4) RAJ 602 (Rahisuddin Vs. Gambit Leasing & Finance Pvt. Ltd.,)** has held that all the execution petitions against the arbitrator award are to be filed subject to the pecuniary jurisdiction. If that is the criteria, then the Principal Subordinate Judge alone will be having jurisdiction to entertain the above execution petition. But the Commercial Courts, Commercial Appellate Division of High Courts



(Amendment) Act, 2018, which received the assent of the President on 20.08.2018, came into force on 03.05.2018 and whereunder sub Section 1(A) has been inserted to Section 3 of the Act, contemplating that the State Government may, after consultation with the concerned High Court, by notification, specify such pecuniary value which shall not be less than three Lakh rupees or such higher value, for whole or part of the state, as it may be considered necessary.

7. Admittedly, the State of Tamil Nadu has not issued any notification but the Act itself is clear that the pecuniary value shall not be less than Rs.3,00,000/- and not more than the pecuniary jurisdiction excisable by the District Courts. It is pertinent to note that, as of now, the Principal District Court, Thiruchirappali is the only notified Commercial Court.

8. Considering the above, this Court has no other hesitation to hold that the Principal District Court, Thiruchirappali alone is having power and jurisdiction to entertain the execution petition and the impugned order of return is not good in law and the same is liable to be set aside.

9. In the result, the Civil Revision Petition is allowed and the revision petitioners are directed to represent the execution petition and on such representation, the learned Principal District Judge, Thiruchirappalli, is directed to take the petition on file if it is otherwise in order and proceed in accordance with law. No costs.

10. Registry is directed to return the original Execution Petition filed along with the revision, enabling them to represent before the Principal District Court, Thiruchirappali, after taking copies of the same.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

trp

To

1.The Princiapl District Judge, Tiruchirapalli.

2.The Commercial Court / District Court, Tiruchirappalli.

Copy to

The Section Officer,VR Section,

Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.PON SENTHIL KUMARAN, Advocate (SR-26554[F]dated 16/08/2021)

C.R.P. (MD).No.589 of 2021

16.08.2021

RK (27.08.2021) 3P 6C

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