



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (MD) No.1022 of 2021

T.Sukumari .. Petitioner/Respondent/Respondent

-vs-

M/s.HBD Financial Services Ltd.,
Process House 2nd Floor,
Law Garden Road, Narayanapura,
Ahmedabad-380009, Gujarat,

Through its duly Constituted Attorney/

Authorized Signatory, Mr.Madhukumar.R

.. Respondent/Petitioner/Claimant

Prayer :- Petition filed under Section 115 of Code of Civil Procedure to set aside the order dated 10.06.2021 passed in E.P.No.134 of 2018 in Ar.O.P.No.336/9/2017 on the file of the Principal District Judge of Kanyakumari at Nagercoil.

For Petitioner : Mr.T.Lajapathi Roy

For Respondent : No appearance

ORDER

The petitioner is before this Court challenging the order in E.P.No.134 of 2018, dated 10.06.2021 on the file of the Principal District Judge of Kanyakumari at Nagercoil whereby, the attachment of the property of the judgment debtor has been ordered.

2.The facts in brief, which have to be considered by this Court for arriving at a decision, are narrated hereinbelow:-

2.1.The respondent-Finance Company had initiated arbitral proceedings against the revision petitioner and two others viz., Srimun & Co. and Ravichandran.C for non payment of dues. Since the loan agreement contained an arbitration clause, the respondent-company had invoked the arbitration clause and



appointed an Arbitrator. The Arbitrator, who had entered appearance, had issued notice to the petitioner, Srimun & Co. and Ravichandran.C, who had not appeared before the Sole Arbitrator. Consequently, they were set ex-parte and ultimately, an award was passed directing the petitioner, Srimun & Co. and Ravichandran.C to pay a sum of Rs.26,03,536/- as on 17.07.2017 with interest at the rate of 18% per annum from 17.07.2021 and an injunction not to alienate in any manner the property mortgaged by them to the respondent/claimant.

2.2.Since no payment had been made by the petitioner and the other borrowers, the respondent herein had filed E.P.No.134 of 2018 on the file of the Principal District Judge, Nagercoil for a direction to the petitioner to deposit the award amount failing which, order sale of the scheduled mentioned property.

2.3.The petitioner herein, who had entered appearance, had filed counter statement denying the contents of the Execution Proceedings. The petitioner had challenged the very award in her counter to the Execution Proceedings and had also stated that the property, that is, proposed to be sold, is the residential house of the petitioner, which cannot be brought to sale. She would, therefore, seek to have the Execution Petition dismissed.

2.4.After hearing both the parties, the learned District Judge of Kanyakumari allowed the Execution Petition and directed attachment of the properties.

3.Mr.T.Lajapathi Roy, learned counsel appearing on behalf of the petitioner would submit that the property, which is sought to be attached, is the dwelling house, which cannot be attached and he had also challenged the jurisdiction of the Arbitral Tribunal in passing the order, since the dispute, according to the petitioner, was not arbitrable. It is seen that the award has not been challenged by the other two borrowers in the Arbitration Original Petition. Further, the petitioner has not provided any proof to substantiate her claims and neither has she come forward to discharge the debt. The petitioner is seeking to agitate the award passed by the Arbitrator in the Execution Proceedings without taking out an application to set aside the ex-parte order. It is an axiomatic principle of law that the Executing Court cannot go behind the decree. Therefore, the contentions of the petitioner questioning the correctness of the award is without basis and this Court do not find any reason to dis-agree with the order passed by the District Judge of Kanyakumari at Nagercoil.



4. In the result, the Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

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// True Copy //

/ /2021

Sub Assistant Registrar (CS)

Abr

Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

Principal District Judge of Kanyakumari at Nagercoil.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-33981[F] dated 10/11/2021)

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