



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (NPD) (MD) No.1359 of 2021

and

C.M.P.(MD) No.7768 of 2021

Dr.G.Kummararaj

.. Petitioner/3rd Respondent/
3rd Judgment Debtor

-vs-

M/s.Shriram City Union Finance Ltd.,
Rep., by its Senior Manager (Legal),
Mr.P.Govindaraj,
No.5M, Ramachandrapuram,
Thennur, Trichy-620 017.

.. Respondent/Petitioner/
Decree Holder

Prayer :- Petition filed under Section 115 of Civil Procedure Code to call for the records relating to the impugned order dated 27.08.2021 made in E.P.No.108 of 2021 on the file of the 1st Additional District Judge, Trichy in Arbitration Case No.13/2015 on the file of the Sole Arbitrator Thiru.Suresh Kumar, Trichy and set aside the same.

For Petitioner : Mr.Jananth Ahmed
For Respondent : No appearance

ORDER

The judgment debtor in E.P.No.108 of 2021 in Arbitration Case No.13 of 2015 on the file of the I Additional District and Sessions Judge (PCR), Tiruchirappalli is the revision petitioner before this Court.

2.The petitioner herein had suffered an ex-parte arbitration award in Arbitration Case No.13 of 2015, dated 09.04.2015 in and by which, he was directed to pay a sum of Rs.4,56,162/- together with interest at 18% per annum from the date of the claim petition till the date of its realization. The amounts were due towards a trade loan availed of by the petitioner from the respondent herein. Although the trade loan of Rs.5,00,000/- was agreed to be repaid in 36 instalments by the revision petitioner, without a demand and without default, the revision petitioner had failed to pay the instalments as agreed upon. After paying a sum of Rs.2,50,258/-, no further payments had been paid and therefore, after issuing



necessary notice and taking into account the arbitration clause contained in the agreement, the respondent/finance company had initiated arbitral proceedings. The revision petitioner, on whom summons had been issued, failed to appear for the hearing. Therefore, the ex-parte award came to be passed. The petitioner, thereafter, had filed a petition in Arbitration O.P.No.127 of 2021 under Section 34 of the Arbitration and Conciliation Act, 1996 on the file of the Principal District Judge, Tiruchirappalli for setting aside the arbitral award. It appears that the petitioner has also filed a petition for staying the award in I.A.No.1 of 2021. However, no order of stay has been obtained by him.

3.Meanwhile, in the execution proceedings initiated by the respondent, once again respondents 1 and 2 in the arbitration case remained ex-parte and it was only the third respondent/judgment debtor, who is the petitioner herein who had filed a counter stating that he was only a guarantor and that he had not received any notice of the arbitration and neither was he served with the arbitral award.

4.The learned I Additional District and Sessions Judge (PCR), Tiruchirappalli on perusing the records held that since the award has not been stayed, the executing court was bound to execute the award and the respondents in the arbitration case, who had the means to discharge the amount, had not done so. The learned I Additional District and Sessions Judge was inclined to allow the execution petition directing respondents 1 and 3 to deposit the amount of Rs.9,29,545.42 within a period of 15 days failing which, an attachment of the movables will be ordered. It is this order that is the subject matter of challenge in this revision.

5.Perusal of the records would indicate that although notice had been issued to the respondents in the arbitration case, they had not appeared before the Sole Arbitrator and an arbitral award came to be passed on 09.04.2015. The petitioner/3rd respondent alone has filed an application to set aside the arbitration award and the same has been numbered only in the year 2021. Although an application for stay has been filed, no stay has been obtained by him. The petitioner has also not taken steps to prosecute the Section 34 application at the earliest. As rightly held by the learned I Additional District and Sessions Judge, Tiruchirappalli, the execution court is bound to execute the decree and cannot go behind the same. Unless and until the petitioner obtains a stay of further proceedings, the executing court is bound to proceed with the execution petition. The execution petition has been filed only in the year 2021, though an award had been passed in the year 2015. Therefore, the petitioner herein and respondents 2 and 3 in the arbitration case were given ample time to satisfy the decree or to set aside the ex-parte arbitral award. They have not availed of the said opportunity and the only attempt appears to be to prolong the proceedings. In these circumstances, I do not find any reason



to interfere with the order passed by the learned I Additional District and Sessions Judge, Tiruchirappalli. Consequently, the Civil Revision Petition stands dismissed. No costs. Connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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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

The I Additional District and Sessions Judge (PCR),
Tiruchirappalli.

+1 CC to M/s.B. JANATH AHMED, Advocate (SR-35257[F] dated 19/11/2021)

C.R.P. (PD) (MD) No.1359 of 2021

Dated: 18.11.2021

USK (31.12.2021) 3P 3C