



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.09.2021

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THE HONOURABLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

W.P(MD).No.17565 of 2021

and

W.M.P(MD).No.14428 of 2021

M/s.Mahara and co.,
Represented by its Managing Partner,
B.S.Senthil Kumar ... Petitioner

Vs.

- 1.The Reserve Bank of India,
Represented by its Grievance Authority,
Fort Glacis, 16, Rajaji Road,
Fort St George,
Chennai, Tamil Nadu 600001.
- 2.Shriram Transport Finance Company Ltd,
Represented by its authorized signatory,
No.29, Nataraja Complex 2nd floor,
Opposite District Court,
Melur Main Road,
KK Nagar,
Melamadai,
Madurai-625 020.

3.P.Natarajan ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing first respondent to take appropriate action against the second respondent for violating the guidelines and consequently forbearing the second respondent from transferring the ownership entry of construction equipments namely 1. Case Model -752 Tandom Vibratory Roller bearing No.JL11-2897, 2. Self Loading Mobile Concrete Mixer bearing No.AF11-1147 and Self Loading Mobile Concrete Mixer bearing No.AF10-1074, from the name of the petitioner to third parties, pending the arbitration proceedings.

For Petitioner : Mr.Niranjan S.Kumar



ORDER

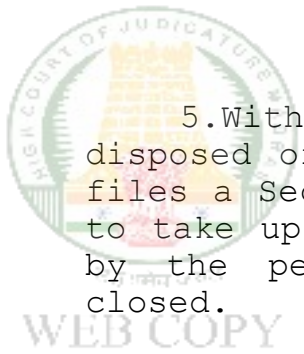
The petitioner seeks a direction to the first respondent to take appropriate action against the second respondent for alleged violation of guidelines and also seeks to prevent the second respondent from transferring construction equipments.

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2.The petitioner had availed of five construction equipment loans under separate agreements from the second respondent. According to the petitioner, the applicable EMI in respect of the above mentioned loans were discharged regularly, without default, until March 2020. During the lock down, the petitioner had applied for a moratorium but the second respondent did not extend such moratorium. Instead, it is stated that the second respondent seized five construction equipments for which the petitioner had paid an aggregate sum of about Rs.28,00,000/-. Out of the five construction equipments, the petitioner states that the second respondent sold two equipments for a low value. Even prior to such sale, it is stated that the second respondent invoked the arbitration agreement in the loan agreements and appointed the third respondent as the sole arbitrator. The petitioner states that he filed an application seeking interim protection from the arbitrator. However, it is stated that the arbitrator has not taken up the said application for hearing. Meanwhile, it is apprehended that the remaining three construction equipments would be sold. The present writ petition is filed in the said facts and circumstances.

3.Although the petitioner ostensibly seeks a direction to the first respondent, it is clear from the affidavit in support of the petition and the documents enclosed therewith that the dispute is primarily between the petitioner and the second respondent. Such dispute arises out of loan agreements entered into by the petitioner with the second respondent. The admitted position is that such loan agreements contain an arbitration clause and, in fact, such arbitration clause was invoked by the second respondent. Pursuant thereto, an arbitral tribunal has been constituted. Therefore, there is no reason to interfere with this dispute in exercise of judicial review under Article 226 of the Constitution of India.

4.The petitioner contends that the arbitral tribunal has not taken up the application for interim protection, but the petitioner is not without remedy in as much as it would be open to the petitioner to approach the jurisdictional civil court under Section 9 of the Arbitration and Conciliation Act, 1996. Ordinarily, a Section 9 application is not entertained once the arbitral tribunal is constituted. However, in view of the fact that the petitioner contends that the Section 17 petition is not being taken up by the arbitral tribunal, it is open to the petitioner to cite such reason and approach the jurisdictional civil court under Section 9 of the Arbitration and Conciliation Act,1996.



5. With the above observations, W.P.(MD).No.17565 of 2021 is disposed of without any order as to costs. In case the petitioner files a Section 9 application, the jurisdictional court is directed to take up the same expeditiously in view of the urgency expressed by the petitioner. Consequently, W.M.P.(MD)No.14428 of 2021 is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sn/sji

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.

+1 CC to M/s.NIRANJAN S.KUMAR, Advocate (SR-30751[F]
dated 30/09/2021)

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