

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 10TH DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE M. SUNDAR

Arb.Appln.No. 356 of 2021

and

Arb.Appln.No.3 of 2022

Arb.Appln.No. 3 of 2022 :-

In the matter of Arbitration &
Conciliation Act, 1996

and

In the matter of Disputes between
M/s.Equitas Small Finance Bank
Limited and M/s.Cargowings
Logistics Limited and another Arising
under Loan Agreement dated
11.11.2017 bearing Loan Agreement
No.SLGRCPX0161730.

M/s. Equitas Small Finance Bank Limited
4th Floor, Phase -II, Spencer Plaza,
769, Anna Salai, Chennai,
Tamil Nadu-600002

Represented by its Authorised Signatory
Mr.R.S.Bharath (Emp.No.31681)

... Applicant

-Vs-

1. M/s Cargowings Logistics Limited,
C-54, CMDA Truck Terminal Complex,
GNT Road, Madhavaram,
Chennai – 600110.

... Borrower / Respondent-1

2. Mr.P.V.Subramani,
No. 20/67, Central Street,
1A Sreerosh Rhea Apts,
Kilpauk,
Chennai - 600010.
... Co-Borrower-1/Respondent-2
3. Mrs.Savithri,
No. 20/67, Central Street,
1A Sreerosh Rhea Apts,
Kilpauk, Chennai – 600010.
... Co-Borrower-2/Respondent-3
4. M/s.TCI Supply Chain Solution
TCI House, 69 Industrial Area,
Sector 32, Gurgaon -122001.
... Garnishee/Respondent-4
5. M/s.Maruthi Suzuki India Ltd.,
No. 1 Nelson Mandela Road,
Vasant Kunj, New Delhi - 110070.
... Garnishee/Respondent-5
6. M/s.Glovis India Pvt Ltd.,
F-98, 8th Main Road,
Sipcot Industrial Park,
Kattrampakkam Village,
Sriperambadur,
Kancheepuram – 602117.
... Garnishee/Respondent-6
7. M/s.APL Logistics Vascon Automotive Pvt Ltd.,
Plot No. 19, 4th Street, Sewa Tower,
Near Maruthi Udyog Material Gate,
Udyog Vihar, Phase -4,
Sector 18, Guragon,
Haryana – 122015.
... Garnishee/Respondent-7
8. M/s.Alliance Car Carrier Pvt Ltd.,
Rep by its Director, Mr. Subramani, D2,
Thyagaraja Complex, No. 853,
Poonamallee High Road,
Chennai - 600010.
... Garnishee/Respondent-8

9. M/s. Income Tax Department,
Aayakar Bhawan, No. 121,
MG Road, Nungambakkam,
Chennai – 600034.

...Proposed 9th Respondent

Arbitration Application praying that this Hon'ble Court be pleased to implead the proposed Respondent 9 herein as party Respondents in the above A.No. 356 of 2021.

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Arbitration Application praying that this Hon'ble Court be pleased to pass an order of prohibiting the Garnishees/Respondents 4 to 8 from making payment of Rs.24,19,883.28/- (Rupees Twenty Four Lakhs Nineteen Thousand Eight Hundred and Eighty Three and Paise Twenty Eight Only) or any amount to the respondents 1 to 3 or to their mens,agents, representatives or to any one claiming onbehalf of the respondents 1 to 3 and to restrain the respondents 1 to 3 or their men, agents representatives or any one claiming a sum of Rs.24,19,883.28/- (Rupees Twenty Four Lakhs Nineteen Thousand Eight Hundred and Eighty Three and Paise Twenty Eight Only) or any amount from the Garnishees / Respondents 4 to 8 and further direct Respondents / Garnishees 4 to 8 to deposit any amount to the credit of above application before this Hon ble Court.

These Arbitration Applications connected along with Arb.A.Nos. 352 to 355 and 360 & 361, 362 to 364 of 2021 and Arb.A.Nos. 1, 2, 4 to 10 of 2022 coming on this day before this Court for hearing in the presence of Ms.A.S.Neela Narayani, Advocate for the applicant in both the applications and Ms.B.Sharmila, Advocate for the respondents 1 to 3 in both the applications and Mr.K.Boopalan, advocate for the 4th respondent in both the applications and Mr.T.Ravikumar, learned Senior Standing Counsel for the

Income Tax Department appearing for the 9th respondent in Arb.A.No. 3 of 2022 and the order dated 20/01/2022 made in Arb.A.No. 352 to 356 and 360 to 364 of 2021 and Arb.A.Nos. 1 to 10 of 2022 and the learned counsel for the applicant having submitted that the matter has been settled out of Court and she has instructions from the applicant to withdraw all the captioned 20 applications to that effect she had made an endorsement on the application stating that “The matter has been settled between the parties. Hence the applicant may be permitted to withdraw the application” and

It is ordered as follows:-

That the Arb.A.No. 356 of 2021 and Arb.A.No.3 of 2022 be and is hereby disposed of as withdrawn.

2. That a certificate under Section 69-A of The Tamil Nadu Court Fees and Suits Valuation Act, 1955 do issue in Arb.A.No.356 of 2021 out of and under the seal of this Court in favour of M/s. Equitas Small Finance Bank Limited., rep.by its Authorised Signatory, Mr.R.S.Bharath, the applicant herein, authorising them to receive from the Pay and Accounts Office, High Court, Chennai a sum of Rs.72,596/- (Rupees Seventy Two Thousand Five Hundred and Ninety Six only) being the entire Court fee paid on the application by the applicant in Arb.A.No. 356 of 2021.

3. That the prohibitory order granted in pursuance of the order dated 06/01/2022 made in Arb.A.No. 356 of 2021 restraining the respondents 4 to 8 / Garnishees therein, from making payment of Rs.24,19,883.28 (Rupees Twenty Four Lakhs Nineteen Thousand Eight Hundred and Eighty Three and Twenty Eight paise only) to the borrowers shall now cease to operate.

4. That there shall be no order as to costs.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 10TH DAY OF MARCH 2022.

Sd/-

ASSISTANT REGISTRAR (Comm Cases)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

ED
24.03.2022

Arb.Appln.No. 356 of 2021
and
Arb.Appln.No. 3 of 2022

ORDER

DATED : 10.03.2022

THE HON'BLE MR. JUSTICE
M. SUNDAR

FOR APPROVAL : 30.03.2022

APPROVED ON : 31.03.2022

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These Arbitration Applications coming on this day before this court for hearing, **The Court made the following order:-**

This common order will govern the captioned 20 applications.

2. Arb. Application Nos.352 to 356 and 360 to 364 of 2021 (10 applications) are applications under Section 9 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for

the sake of convenience and clarity] {'primary applications' for convenience}. Arb. Application Nos. 1 to 10 of 2022 (10 applications) are implead applications with prayers to implead Income Tax Department.

3. Mr.T.Ravikumar, learned senior standing counsel for the Income Tax Department is before this Court as learned Revenue counsel has been served in implead applications.

4. Ms.B.Sharmila, learned counsel is before this Court on behalf of respondents 1 to 3 in primary applications. Mr.K.Boopalan, learned counsel is before this Court on behalf of fourth respondent (one of the garnishees) in all applications. The presence of this counsel is recorded only to capture, what unfurled in the hearing as Ms.A.S.Neela Narayani, learned counsel on record for applicant in all the captioned 20 applications submits that the matter has been settled out of Court and she has instructions from the applicant to withdraw all the captioned 20 applications. Learned counsel on record for applicant has made identical endorsements in the case files in all the captioned 20 applications and one such endorsement (for a sample) made in A.No.1 of 2022 is as follows:

'The matter has been settled between the parties. Hence

the Applicant may be permitted to withdraw the Application.'

5. Learned counsel reiterates the endorsement in the case file.

6. Learned counsel requests for refund of court fee in the primary applications viz., Arb. Application Nos.352 to 356 and 360 to 364 of 2021.

7. Section 69-A of 'The Tamil Nadu Court-Fees and Suits Valuation Act, 1955 (Tamil Nadu Act XIV of 1955)' [hereinafter 'TN Court Fees Act' for convenience and clarity] reads as follows:

'Section 69-A. Refund on settlement of disputes under Section 89 of Code of Civil Procedure-(1)Where the Court refers the parties to the suit to anyone of the modes of settlement of dispute referred to in Section 89 of the Code of Civil Procedure, 1908 (Central Act V of 1908), the plaintiff shall be entitled to a certificate from the Court authorizing him to receive back the full amount of the fee paid in respect of such plaint if the dispute referred by the Court is settled.'

8. The above takes us to Section 89 of 'The Code of Civil Procedure, 1908' (Central Act V of 1908) [hereinafter 'CPC' for the sake of brevity], which reads as follows:

'89.Settlement of disputes outside the Court:-

(1)Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the court may reformulate the terms of a possible settlement and refer the same for -

(a) arbitration;

(b) conciliation;

(c) judicial settlement including settlement through Lok Adalat; or

(d) mediation.

(2)Where a dispute has been referred -

(a) or arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of the Act;

(b) to Lok Adalat, the court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section(1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c)for judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of

1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d)for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.'

9. The Honourable Supreme Court in ***High Court of Madras v. M.C. Subramaniam*** (2021 SCC OnLine SC 109) has made it clear that a litigant will be entitled to refund of court fee even if the settlement is arrived at without resorting to one of the modes of settlement adumbrated under Section 89 of CPC. This principle is articulated in paragraphs 26 and 27 of M.C.Subramaniam case law and the same read as follows:

'26.Thus, even though a strict construction of the terms of Section 89 CPC and Section 69-A of the 1955 Act may not encompass such private negotiations and settlements between the parties, we emphasise that the participants in such settlements will be entitled to the same benefits as those who have been referred to explore alternate dispute settlement methods under Section 89 CPC. Indeed, we find it puzzling that the petitioner should be so vehemently opposed to granting such benefit. Though the Registry/State Government will be losing a one-time court fee in the short term, they will be saved the expense and opportunity cost of managing an

endless cycle of litigation in the long term. It is therefore in their own interest to allow Respondent 1's claim.

27. Thus, in our view, the High Court was correct in holding that Section 89 CPC and Section 69-A of the 1955 Act be interpreted liberally. In view of this broad purposive construction, we affirm the High Court's conclusion, and hold that Section 89 CPC shall cover, and the benefit of Section 69-A of the 1955 Act shall also extend to all methods of out-of-court dispute settlement between parties that the Court subsequently finds to have been legally arrived at. This would, thus, cover the present controversy, wherein a private settlement was arrived at, and a memo to withdraw the appeal was filed before the High Court. In such a case as well, the appellant i.e. Respondent 1 herein would be entitled to refund of court fee.'

10. In the light of the aforementioned obtaining position, the request for refund of court fee is acceded to in the primary applications i.e, Arb. Application Nos.352 to 356 and 360 to 364 of 2021.

11. In the light of the narrative thus far, captioned applications are disposed of as withdrawn, with a directive to the Registry to refund court fee in Arb. Application Nos.352 to 356 and 360 to 364 of 2021 to applicant

(subject to standard deductions, if any) by way of an instrument drawn in favour of applicant bank and by following prescribed procedures in this regard. For specificity, it is clarified that there shall be no refund of court fee in Arb. Application Nos.1 to 10 of 2022.

12. Though obvious, it is made clear that the interim prohibitory order made by Honourable Predecessor Judge on 06.01.2022 will now cease to operate.

13. Captioned matters are disposed of in the aforementioned manner with the aforementioned directives and observations. There shall be no order as to costs.

Sd./- M.S.J.,
10/03/2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

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