



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.4513 of 2019

&

C.M.P.No.25503 of 2019

1.E.Thanikachalam

2.E.Thanikachalam

...Appellant

Vs

1.M/s.Shriram Transport Finance Company Ltd.,
Represented by its authorised representative Mr.S.Varadhan
Having their office at No.17, 1st Floor, Nehru Nagar,
Madhavaram Rountana, Opp., to Vijay Park Hotel,
Ponnammanmedu, Madhavaram, Chennai - 600 110.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 37 (2) (b) of the Arbitration and Conciliation Act, 1996, against the arbitral award dated 20.09.2019 passed in Arbitration I.A.No.1 of 2019 in Arbitration Case No.775 of 2019 by the 2nd respondent.

For Appellant 1	:	No Appearance
For Appellant 2	:	Mr.N.Ganesh
For Respondent	:	* Mr.L.Rajendran

JUDGEMENT

The respondents in an arbitral proceedings are the appellants before this Court challenging the order dated 20.09.2019 passed by the Arbitral Tribunal, Chennai under Section 17 of the Arbitration and Conciliation Act, 1996, herein after called the Act, in and by which the appellants were directed to furnish security to the tune of Rs.5,70,880/- and in default to attach the property. Since the appellants had not complied with the conditional order dated 20.09.2019, the Tribunal had passed the order of attachment of the immovable property described in the schedule to the property. This order is the subject matter of challenge before this Court.



2. The appellants both share the same name and initial with their fathers' name being Ekambaram and Elumalai respectively. The appeal has been challenged on the ground that no opportunity had been given to the appellants to present their case and that the order has been passed without intimation to them, further, copies of the documents had also not been provided to them. This appears to be the sum and substance of the grounds of appeal.

3. Initially both the appellants have jointly filed the appeal through counsel. Thereafter, a memo dated 16.12.2020 was filed on 17.12.2020 by the learned counsel for the appellants which reads as follows:

"1.It is submitted that, I was appearing for the appellants in the above Civil Miscellaneous Appeal. On 29.10.2020 the entire case papers were returned to the 1st appellant/borrower.

2.It is submitted that, the matter came up for hearing on this 16th day of December 2020. As per directions of this Hon'ble Court I am filing this memo to request this Hon'ble Court that the names of the counsels for appellants may be expunged from the records of the above civil miscellaneous appeal.

For the aforementioned reasons, it is therefore prayed that this Hon'ble Court may be pleased to record this memo and may remove the names of the counsels of the appellant in the upcoming hearings and thus render justice."

4. The note sheet would show that this appeal had been admitted on 02.12.2019 and no stay of further proceedings had been granted. Thereafter, it appears that on 17.03.2020 an interim order was passed by this Court. When the matter had come up on 10.11.2020, the learned counsel for the respondent / finance company had represented that as against the very same impugned order, an application had been moved before the District Court, Thiruvallur. The learned counsel was directed to produce the documents and the matter was directed to be listed on 20.11.2020.

5. On 20.11.2020, the learned counsel for the appellants had submitted that he had given a change of vakalat and a memo would be filed to that effect and the matter was directed to be posted on 25.11.2020 for filing a memo. When the matter came up on 27.11.2020, this Court had noted that the learned counsel for the appellant had not filed a memo as directed by order dated 20.11.2020. The learned counsel for the respondent was present and he had filed a typed set of papers, wherein, it was seen



that the very same award has been challenged before the District Court, Thiruvallur in O.P.No.7 of 2019.

6. Since the learned counsel for appellants had stated that he had given a change of vakalat, the Registry was directed to serve notice directly on the appellants. It was only on 17.12.2020, a memo dated 16.12.2020 had been filed wherein, for the first time the appellants' counsel would submit that he had returned the entire papers on 29.10.2020 to the 1st appellant and notice was directed to be taken to the appellants returnable by 11.01.2021. After all this, the matter has been listed only today.

7. When the matter is called the learned counsel for the 2nd appellant has come to the Court stating that he does not have the case bundle since the entire bundle was with the 1st appellant and he was making representation from memory. Even the representation that was being made does not bring out the true facts. It is rather unfortunate that the learned counsel who has filed a vakalat for his client does not even possess his office papers and makes his submission before this Court that the entire bundle has been handed over to the 1st appellant despite the fact that he continues to hold vakalat for the 2nd appellant.

8. Be that as it may, considering the fact that the impugned order is also the subject matter of challenge before the District Court, Thiruvallur in O.P.No.7 of 2019, this appeal is dismissed. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar
dated:01.06.2022

// True Copy //

*** Corrected as per order of
this Court dated 24.06.2022
in CMA.No.4513 of 2019**

**S/d
Assistant Registrar
dated:05.07.2022**

Sub-Assistant Registrar

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To

The Arbitral Tribunal
Chennai

+1cc to Mr.L. Rajendran, Advocate, S.R.No.39038

*** To be
substituted
the order
already
despatched on
07.06.2022**

C.M.A.No.4513 of 2019

SS (CO)
SP (02/06/2022)
UMA (05/07/2022)