



C.R.P.No.1313 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 07.03.2023

Delivered On : 24.03.2023

CORAM :

THE HON'BLE **MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

C.R.P.No.1313 of 2021

M/s.John Deere Financial India Private Ltd.,

Having its Registered Office:

Tower XIV, Cyber City, Magapatta City,

Hadapsar, Pune – 411 013,

And Area office at GKS Annexe,

Old No.3 & New No.20,

Pycrofts Garden Road,

Chennai – 600 006.

: Petitioner/Award Holder/Claimant

-VS-

1.Sasikumar

2.Sabari

3.Hemamalini

: Respondents/Award Debtors/Respondents

PRAYER: Civil Revision Petition had been filed under Section 115 of the Civil Procedure Code, praying to set aside the fair and decretal order dated 19.02.2021 made in E.P.No.172 of 2019 in ACP No.13366/43/2017 on the file of the learned Principal District Judge, Cuddalore District and allow the above Civil Revision Petition.

For Petitioner : Mr.G.Ashokapathy
for M/s.Pass Associates

For Respondents : Mrs.AL.Ganthimathi
Senior Counsel



C.R.P.No.1313 of 2021

ORDER

WEB COPY This Civil Revision Petition had been filed seeking to set aside the fair and decretal order dated 19.02.2021 made in E.P.No.172 of 2019 in ACP No.13366/43/2017 on the file of the learned Principal District Judge, Cuddalore District.

2.The Petitioner herein is a Non-Banking Finance Company engaged in the business of financing Tractors, Harvesters and other John Deere Equipments manufactured in India. The first Respondent had purchased the vehicle – John Deere Sugarcane Harvester CH330. He had executed a demand promissory note by way of collateral security and also the vehicle was hypothecated in favour of the Petitioner herein/Claimant. The Petitioner is the Decree-Holder. The first Respondent herein had purchased harvester vehicle on the loan extended by the Petitioner herein. As per the contract between the Petitioner and the first Respondent regarding purchase of the Harvester machine when there is default in payment or any dispute between the Petitioner and the first Respondent, the Petitioner as lender and the first Respondent as borrower, the subject matter of the dispute is to be



C.R.P.No.1313 of 2021

referred to arbitration. Accordingly, the first Respondent as borrower failed to repay the loan as per the terms of the loan agreement. Therefore, the Petitioner herein invoked the Arbitration clause. The sole Arbitrator had sent notice to the Respondent/borrower and conducted arbitration proceedings in which the Respondent did not appear and award was passed on 12.06.2017. After passing of the award, as per Section 34 of the Arbitration Act, the Respondent herein preferred Original Petition on the original side of this High Court in O.P.No.893 of 2017 seeking to set aside the award passed by the learned Arbitrator in Arbitration Case ACP(JDF) No.13366/43/17, dated 12.06.2017. After hearing the learned Counsel appearing for the Petitioners in O.P.No.893 of 2017 and the Respondent in OP/Decree Holder in the arbitration award, the learned Judge of this Court had dismissed the O.P.No.893 of 2017 as per the order dated 14.12.2017 which reads as under:

“5. For setting aside the award, a person has to file a petition under Section 34 of the Arbitration and Conciliation Act, 1996, especially when the grounds are available for the above said purpose. Therefore, onus is on the petitioners to satisfy the contention raised. The existence of the agreement inter se parties has not been disputed. Pursuant to the agreement, petitioners 1 and 2 were in fact purchased the machinery. The fact that the notices have been sent to the last known address of the petitioners are also not in dispute. As rightly submitted by the learned counsel for the



C.R.P.No.1313 of 2021

respondent, a “refusal” or an endorsement indicating “unclaimed” has to be construed as proper service. In such view of the matter, this Court does not find that the procedure adopted by the learned Arbitrator cannot be found to be not in accordance with law. Added to that, the award was also served on the petitioners on the very same address. Therefore, this Court is of the view that the petitioners wilfully not appeared before the learned Arbitrator. The learned Arbitrator was not supposed to wait for the petitioners to come. It is not, as if, an ex-parte award was passed immediately. The learned Arbitrator passed an award on 12.06.2017. The initiation was on 21.04.2017. Therefore, this Court is of the view that no ground is made out to exercise the power under Section 34 of the Arbitration and Conciliation Act, 1996. The decision relied upon by the learned counsel appearing for the petitioners also has no application. In the said decision, the Apex Court has given a finding on the non service, which is not the case before us.

6. However, this Court finds some force in the submission of the learned counsel for the petitioners insofar as the interest awarded is concerned. The learned Arbitrator awarded interest at 18%. Normally, the Courts would award interest either at 9% or 12% as the case may be. In such view of the matter, this Court is inclined to modify the rate of interest from 18% to 12% per annum. With the above modification, the original petition stands dismissed. No costs.”

3.Subsequent to the dismissal of the above Original Petition filed by the Respondents herein, the Petitioner herein/Decree holder in pursuance of the award passed by the Sole Arbitrator had filed EP No.172 of 2019 in ACP[JDF] No.13366/43/17 seeking attachment and sale of the Sugarcane Harvester for the recovery of Rs.1,13,69,047/-. The Respondents herein as Judgment Debtors filed counter and resisted the Execution Proceedings.



C.R.P.No.1313 of 2021

After due enquiry, the learned Principal District Judge, Cuddalore by order

dated 19.02.2021 dismissed E.P.No.172 of 2019 in ACP[JDF]

No.13366/43/17 by observing as follows:

“8. Heard on both sides. Perused the case records. The contention of the 1st respondent/1st Judgment debtor is that the sugarcane harvester machine was purchased by this respondent only on the assurance given by the manufacturer namely John Deere that the machine could be registered with Regional Transport Department and it could be moved from place to place by road. When the machine was taken to the Transport office the Registering authority had refused to register the vehicle on the ground that they had no instructions for registration of the vehicle and necessary permission was not granted by the concerned department. So this respondent could not move the machine from one place to another and he had to engage a truck for transporting the machine. Further there was no service personnel to attend the repairs. In addition to that spares were not available. This respondent explained in detail the difficulties faced by him in using the machine. The manufacturer agreed to settle the genuine complaints reported by this respondent. Even before the arbitration proceedings, the manufacturer agreed to settle the dispute. After the E.P. was filed, this respondent and the manufacturer had 2 or 3 meetings and the Manager & Zonal Head Mr.Satish Nair had agreed to convey the grievances of the petitioner to the manufacturer and the same has not objected by the petitioner. Though the petitioner obtained decree, the petitioner has not produced any oral or documentary evidences by denying the contention of the 1st respondent. Under these circumstances, the petition mentioned movable properties could not be attached for entire decree amount. Hence on considering the facts and circumstances of the case, the petitioner is not entitled to get the relief in the petition as prayed for and this court is of the opinion that the execution petition has to be dismissed. Thus this point is answered.”

4.It is the contention of the learned Counsel for the Petitioner that



C.R.P.No.1313 of 2021

after the Respondents had exhausted the remedy available to them under Section 34 of the Arbitration Act, the contention of the learned Counsel for the Respondents having been rejected by the Hon'ble High Court and its original side whether the Executing Court has the power to go into the merits of the arbitration award, is the point to be answered.

5.It is an acceptable principle that Execution Court cannot go beyond the decree. Whereas the learned Principal District Judge, Cuddalore had discussed in the order and travelled beyond the acceptable principle and negated the decree which amounts to exercising discretion beyond the powers of the High Court as expressed in the Original Petition. Therefore, the order of the learned Principal District Judge, Cuddalore, is a perverse order and the same is to be set aside by invoking the powers of this Court under Section 115 of the Civil Procedure Code.

6.The learned Senior Counsel Mrs.AL.Ganthimathi appearing for the Respondents submitted that as the Petitioners officials had failed to carry out the repairs to the Harvester Machine, the Harvester Machine could not



C.R.P.No.1313 of 2021

be put to use by the Respondents. Hence, the order passed by the learned Principal District Judge, Cuddalore, in E.P.No.172 of 2019 in ACP No.13366/43/2017 is a well reasoned order which does not warrant any interference invoking the powers of this Court under Section 115 of the Civil Procedure Code. The learned Senior Counsel appearing for the Respondents placed reliance on the order of the learned Principal District Judge as above. Therefore, she sought to dismiss this Civil Revision Petition as not maintainable under Section 115 of Civil Procedure Code.

7.Point for consideration:

Whether the Executing Court can travel beyond the decree and negative the award already passed by the Arbitrator and confirmed by the Original Side of this Hon'ble High Court?

8.In the light of the order passed by the Original Side of this Hon'ble High Court in O.P.No.893 of 2017, the learned Principal District Judge, Cuddalore in dismissing the E.P No.172 of 2019 in ACP No.13366/43/17, dated 12.06.2017 is against the accepted principles of the Executing Court travelling beyond the decree. Thereore, the dismissal of E.P No.172 of



C.R.P.No.1313 of 2021

2019 in ACP No.13366/43/17, dated 12.06.2017 is found perverse and is to be set aside. The point for consideration is answered in favour of the Revision Petitioners and against the Respondents. The Executing Court cannot travel beyond the decree.

In the result, this **Civil Revision Petition is allowed**. The order passed by the learned Principal District Judge, Cuddalore in E.P No.172 of 2019 in ACP No.13366/43/17, dated 12.06.2017 is set aside. The E.P No.172 of 2019 in ACP No.13366/43/17, dated 12.06.2017 is allowed and the relief prayed is granted. The learned Principal District Judge, Cuddalore is directed to proceed further in accordance with law. No costs.

24.03.2023

SRM

Index : Yes / No

Internet : Yes / No

Speaking Order / Non-Speaking Order



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C.R.P.No.1313 of 2021

To

- 1.The Principal District Judge,
Cuddalore.
- 2.The Section Officer,
V.R. Section,
High Court, Madras.



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C.R.P.No.1313 of 2021

SATHI KUMAR SUKUMARA KURUP., J.

SRM

**Order made in
C.R.P.No.1313 of 2021**

24.03.2023