IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.02.2023

PRONOUNCED ON : 24.07.2023

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.1611 of 2022
and CMP No.11960 of 2022

Mr.V.Gudipalli Sai .. Appellant/3rd Party/Applicant

Vs.

1. M/s.Sundaram Finance Limited,
Rep. By its Senior Manager Legal,
21, Patullos Road,
Chennai – 600 002. ... 1st Respondent/Claimant/Respondent

2. M/s.Sunshine Infra Engineers India Pvt Ltd.,
Rep. By its Managing Director,
D-No:5-42-32A, 2nd Floor 6/13,
Brodipet, Dist Guntur-522 002, Andhra Pradesh

Also At:
M/s.Sunshine Infra Engineers India Pvt Ltd.,
Rep. By its Managing Director,
Flat No.:503, Ramba Apartments,
7/2, Chandramouli Nagar,
Guntur- 522 002, Andhra Pradesh.

3. Mr.Gudipalli Venkata Subba Rao,
S/o.Mr.G.Venkata Narayanan,
Flat No.503, Ramba Apartments,

7/2. Chandramouli Nagar,
Guntur-522 002, Andhra Pradesh

Also at:
Mr.Gudipalli Venkata Subba Rao,
S/o.Mr.G.Venkata Narayanan,
D-No.:5-42-32A, 2nd Floor 6/13,
Brodipet, Dist. Guntur – 522 002, Andhra Pradesh

4. Mr.G.Lalitha Kumari,
W/o.Mr.G.Venkata Subba Roa,
Flat No.503, Ramba Apartments,
7/2. Chandramouli Nagar,
Guntur-522 002, Andhra Pradesh

5. Mr.Makkena Suresh,
S/o.Mr.Venkata Kotaiah,
D.No.28-71, Vinuxonda,
Dist Guntur- 522 647, Andhra Pradesh.

Also At:
Mr.Makkena Suresh,
S/o.Mr.Venkata Kotaiah
D-No.:5-42-32A, 2nd Floor 6/13,
Brodipet, Dist. Guntur – 522 002, Andhra Pradesh

6. Mr.Ravi Siva Reddy
S/o.Mr.Ravi Venkata Reddy
D.No.2-161, Ward No.2, Markarpur,
Prakasam – 523 315

Also At:
Mr.Ravi Siva Reddy
S/o.Mr.Ravi Venkata Reddy,
D-No.:5-42-32A, 2nd Floor 6/13,
Brodipet, Dist. Guntur – 522 002, Andhra Pradesh

... Respondents/Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 37 of the Arbitratio and Conciliation Act, 1996, against the order dated 03.02.2022 made in I.A.No.87/2019 in Arbitration Case No.VKT/SF/08/2019 and Contract No.M004000740 before the Sole Arbitrator V.K.Thirunavukkarasu, Chennai.

For Appellant : Mr.M.Sriram

For Respondents : Mr.R.Uma Shankar (for R1)
for M/s.Sri & Shankar Asso.
Mr.A.Tamilvanan (for R3 & R4)
No appearance (for R2, R5 & R6)

JUDGMENT

This Civil Miscellaneous Appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 to set aside the order made in I.A.No.87 of 2019, whereby, the Sole Arbitrator has refused to raise the attachment before judgment passed by him.

2. The short facts that are necessary for determination of this Civil Miscellaneous Appeal, is as under.

(a) The Arbitral proceedings were initiated between the 1st respondent and respondents 2 to 6 in proceedings in Arbitration Case

No.VKT/SF/08/2019 before the Sole Arbitrator V.K.Thirunavukkarasu, Chennai. The learned Arbitrator passed an order of attachment before Judgment and Schedule '3' refers to the property.

(b) Since an entry/encumbrance had been created, the appellant filed an application in I.A.No.87 of 2019 in Arbitration Case No.VKT/SF/08/2019 before the learned Arbitrator substantiating his claim with his title document on 14.10.2010. After enquiry, the learned Arbitrator has refused to raise the attachment order in so far as schedule '3' relating to his property and hence, the Civil Miscellaneous Appeal.

3. Heard the learned counsel for the appellant, learned counsel for 1st respondent/Sundaram Finance Limited and learned counsel for respondents 3 and 4 and perused the documents.

4. After perusal of the documents filed in the typed set of papers by both the parties and hearing the rival submissions made, I find that the claimant/1st respondent herein initiated the arbitration proceedings to adjudicate the claim under the loan agreement dated 26.09.2017, entered

into by the 2nd respondent herein. It is apt to point out that the Loan agreement on behalf of the 2nd respondent was signed and executed by its Managing Director (i.e.) the 4th respondent/mother of the appellant herein. The other two directors of the 2nd respondent Company i.e., the 5th and 6th respondents along with the 3rd and 4th respondents joined in the above transactions as the guarantors, guaranteeing the due performance of the obligations under the above loan agreement by the borrower i.e., the 2nd respondent.

5. Under the said loan agreement, a sum of Rs.19,62,400/- is repayable in 33 instalments. Though the 2nd respondent undertook to pay the amount in 33 monthly instalments, after paying the amount due under the 3rd instalment, committed default from the 4th instalment which fell due on 17.03.2018. A sum of Rs.3,93,862/- was due and payable by respondents 2 to 6. Invoking the arbitration clause enunciated under the loan agreement and the Deed of Guarantee, Sundaram Finance Limited/1st respondent initiated arbitration proceedings to adjudicate the claim under the said agreement. In the said arbitration proceedings, the learned Arbitrator, after affording sufficient opportunities to the respondents 3 to 6

passed an order of attachment of the immovable properties of the 4th respondent on 02.11.2019. Pursuant to the order, the properties of the 4th respondent were attached and the attachment is in force as on this date.

6. It is the specific case of the appellant/petitioner that the transfer is not fraudulent in nature and he is not a party to the loan agreement between the 1st respondent-Sundaram Finance Limited and respondents 2 to 6 and further contended that there is no privity of contract between the appellant and the Sundaram Finance Limited/1st respondent herein. The appellant has not been arrayed as a party to the Arbitration Proceedings and hence, he is not aware of the same and no notice was sent to him before passing of the award.

7. As stated supra, the loan agreement is between the 1st respondent/Sundaram Finance Limited and the 2nd respondent company wherein the 4th respondent is the guarantor. In the said loan agreement a sum of Rs.19,62,400/- is repayable in 33 instalments and the 2nd respondent undertook to pay the amount in 33 monthly instalments, however, committed default after the 3rd instalment and a sum of Rs.3,93,862/- was

due and hence, by invoking the Arbitral clause contemplated under the loan agreement and Deed of Guarantee, Sundram Finance Limited, the 1st respondent herein had initiated Arbitration Proceedings to adjudicate the claim under the agreement.

8. It appears that the Arbitrator has passed an award on 31.12.2019 directing the respondents 2 to 6 to pay a sum of Rs.3,93,862/- together with interest and costs. Pending Arbitration Proceedings, the Arbitrator has passed an order of attachment before judgment on 02.11.2020 which is reflected in the respective Sub Registrar's Office.

9. The specific case of the appellant is that his mother, the 1st respondent herein had settled the property by way of gift deed on 30.05.2018, which is registered as Document No.4900 before the Sub Registrar's Office, Guntur and hence, without impleading him as a party in the Arbitration Proceedings as well as in the attachment before judgment proceedings, an order has been passed, which is *per se* illegal.

10. The specific case of the 1st respondent is that the alleged title is hit by Doctrine of Fraudulent transfer through which no title is conveyed to the appellant.

11. The loan amount, the loan agreement, payment made upto to 3rd instalment, default amount and the award amount as stated supra are not in dispute.

12. The short point that arises for consideration is whether the Gift Deed executed by the mother in favour of her son viz., the appellant on 30.05.2018 is true and genuine or fraudulent transfer.

13. The loan agreement is dated 26.09.2017. The settlor under the settlement deed i.e. the 4th respondent herein is the Guarantor, guaranteeing the due performance of the obligations under the loan agreement dated 26.09.2017 and from the 4th instalment, the loan account was defaulted i.e. on 17.03.2018. The Settlement Deed (Gift Deed) was executed on 30.05.2018 by the mother, the 4th respondent herein in favour of her son i.e.

the appellant herein. Thereafter, in the arbitration proceedings, the learned Arbitrator, passed an order of attachment of the immovable properties of the 4th respondent on 02.11.2019 and an award was passed on 31.12.2019 directing the respondents 2 to 6 to pay a sum of Rs.3,93,862/- together with interest and costs.

14. In ***T.Komati Vs. M/s.Sundaram Finance Limited, No.21, Pattulos Road, Chennai,*** [Appln.Nos.1034 & 1035 of 2019 decided on 28.02.2019] wherein My Brother Justice R.Subramanian has held that at para 15 and 16 as follows: para 53....

> "15. In the case on hand, I am of the opinion that the question of fraudulent intention or the question of the purchaser being a bonafide purchaser for value without notice do not arise at all. The very object of Section 53 of the Transfer of Property Act, is to protect a bonafide purchaser for value without notice of the fact that the transferor is indebted.
>
> 16....By attaching the property in question despite the fact that the same had been alienated the creditor has expressed his intention to avoid the transfer. Once the creditor expresses his or its intention to avoid the transfer, it is for the purchaser or the transferee show that, he or she is a bonafide purchaser or transferor for a value without notice of the claim. In the case on hand, the transfer being a gratuitous transfer, I do not think such a defence is open to the transferee."

15. Section 53 in The Transfer of Property Act, 1882, reads as follows:

> 53. Fraudulent transfer.—
>
> (1) Every transfer of immoveable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed. Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration. Nothing in this sub-section shall affect any law for the time being in force relating to insolvency. A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor shall be instituted on behalf of, or for the benefit of, all the creditors.
>
> (2) Every transfer of immoveable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee. For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.

16. (a) From the chronological order of dates and events extracted supra, after default committed by the 2nd respondent company, wherein the 4th respondent Settlor (who had also executed the Deed of Guarantee), smelling the fact that the recovery proceedings will be initiated in respect of

the property that was offered as a Guarantee for the loan amount (subject matter of the Arbitration Proceedings), she has chosen to settle the property in favour of her son on 30.05.2018 and hence, I find that it is only a fraudulent transfer. In other words, the transfer is a gratuitous transfer.

(b) In such a case, the decision of the this Court as stated supra that Once the creditor expresses his or its intention to avoid the transfer, it is for the purchaser or the transferee to show that, he or she is a bonafide purchaser or transferor for a value without notice of the claim.

17. In the case on hand, as the transfer being a gratuitous transfer, I do not think that such a defence is open to the transferee and hence, I find that the 4th respondent Lalitha Kumari (mother of the appellant) having coming to know that on 17.03.2018, default has been committed and her property which was given as a guarantee will be prosecuted against, and in order to save the property from the legal proceedings by the Sundaram Finance Limited/1st respondent to recover the amount due under the loan agreement, has created a document of Settlement Deed in favour of her son viz., the appellant herein to save the property and hence, the similar finding

arrived at by the learned Arbitrator does not require any interference at this appellate stage.

18. The finding of the Arbitrator that the attachment order passed by the tribunal is valid and binding upon the appellant is hereby confirmed. It is hereby made clear that after the order of attachment stated above (subject matter of the CMA), the Arbitration Proceedings has come to the conclusion and an award has been passed towards a sum of Rs.3,93,862/-. Accordingly, this order of attachment is valid only to the extent indicated in the Arbitration Award and nothing more.

19. With these observations, this Civil Miscellaneous Appeal is dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

24.07.2023

Index : Yes/No
Speaking/Non-Speaking Order
Neutral Citation : Yes/No.
ars

RMT.TEEKAA RAMAN,J.,

ars

Pre-delivery Judgment in CMA No.1611 of 2022

24.07.2023