



O.S.A.(CAD) No.40 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
02.11.2023	20.11.2023

CORAM

**THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HON'BLE MR.JUSTICE P. DHANABAL**

**O.S.A.(CAD) No.40 of 2022
and CMP.No. 4218 of 2022 and CMP.No. 10183 of 20223**

M/s. Leatherex Tanning Company,
represented by its Managing Partner,
Mr K.Fazel Ghani,
No. 6 (New No. 13).
Kattur Sadayappan Street,
Chennai-600028. Tamil Nadu.

..Appellant

Vs

1. M/s. Green Vistas Property Development (Private) Ltd.,
Rep. By its Managing Director,
Vijay Gule Chha, F3, First Floor,
K.G Eyes Pavithiran Building,
No. 34 & 36, M.G.Road, 7th Avenue,
Besant Nagar, Chennai – 600009.

and Presently residing at
Misty Cove, Lake Road,
Opposite Bryant Park Main Gate,
Kodaikanal – 624101



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2.Hon'ble Mr. Justice Doraiswamy Raju,
Kanakadurga, No. 20, Old No. 39,
Puram Praksh Rao Road,
Balaji Nagar, Royapettah,
Chennai-600014.

..Respondents

Prayer: Appeal filed under Section 13(1) of Commercial Court Act r/w Clause 15 of Letters Patent to set aside the order passed in O.A.No. 650 of 2020, dated 11.03.2021 and to grant an order of interim injunction restraining the 1st respondent or their men or their agents or anybody claiming under them from encumbering or alienating or dealing with the schedule mentioned property.

For Appellant : Mr.G.Murugendran

For Respondent : Ms. Hema Srinivasan – R1

J U D G M E N T

D.KRISHNAKUMAR, J.

Challenging the order passed by the learned Single Judge in O.A.No. 650 of 2020, dated 11.03.2021 filed under Section 9 of the Arbitration and Conciliation Act, the present appeal has been filed.

2. Brief facts:

The 2nd respondent has passed an Award on 28.05.2014. Challenging the said order, the 1st respondent has filed a petition in O.P.No. 591 of 2014



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arbitral proceedings / at time after the making of the Arbitral Award but before it is enforced, a party may approach this Court seeking interim measures, but before it is enforced in accordance with Section 36 of the Act.

4. The learned counsel for the appellant has relied upon the decision of the Hon'ble Supreme Court in ***Sundaram Finance Ltd. Vs NEPC India Ltd., reported in (1999) 2SCC 479.*** The relevant portion is extracted below:

“13. under the 1996 Act, the court can pass interim orders under Section 9. Arbitral proceedings, as we have seen, commence only when the request to refer the dispute is received by the respondent as per Section 21 of the Act. The material words occurring in Section 9 are "before or during the arbitral proceedings". This clearly contemplates two stages when they can pass interim orders, i.e., during the arbitral proceedings or before the arbitral proceedings. There is no reason as to why Section 9 of the 1996 Act should not be literally construed. Meaning has to be given to the word. "before" occurring in the said section. The only interpretation that can be given is that the court can pass interim orders before the commencement of arbitral proceedings. Any other interpretation, like the one given by the High Court, will have the effect of rendering the word "before" in Section 9



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as redundant. This is clearly not permissible. Not only does the language warrant such an interpretation but it was necessary to have such a provision in the interest of justice. But, for such a provision, no party would have a right to apply for interim measure before notice under Section 21 is received by the respondent. It is not unknown when it becomes difficult to serve the respondents. It was, therefore, necessary that provision was made in the Act which could enable a party to get interim relief urgently in order to protect its interest. Reading the section as a whole it appears to us that the court has jurisdiction to entertain an application under Section 9 either before arbitral proceedings or during arbitral proceedings or after the making of the arbitral award but before it is enforced in accordance with Section 36 of the Act.”

5. Thus, according to the appellant, in the light of the aforesaid decision of the Hon'ble Supreme Court, the application filed by the appellant in O.A.No. 650 of 2020 for seeking interim measures is entertainable. Therefore, the order of the learned Single Judge in dismissing the said application is liable to set aside.

6. On the other hand, the learned counsel for the first respondent has placed a judgment passed by the Division Bench of this Court in OSA.No. 53 of 2021, dated 15.02.2021 and submitted that in the said decision, it is



clearly held that the quality of orders that can be passed under Section 9 of the Act are substantially different from the quality of orders that may be passed in course of execution. It is further held that the Act covers all things pertaining to arbitration and operates between the commencement of the arbitral proceedings within the meaning of Section 21 of the Act 1996 and the conclusion of all matters pertaining to the arbitration before Section 36 of the Act and renders the award enforceable. Therefore, the learned Single Judge has rightly dismissed the application filed by the appellant herein and does not warrant any interference by this Court.

The paragraph relied by the learned counsel for 1st respondent is extracted below:

8. However wide the powers conferred on a Court under Section 9 of the Act may be seen to be, such powers may not extend to issuing orders for discovering the assets of an award debtor. Order XXI of the Code, that provides for execution, carries the necessary provisions for such purpose and Section 9 of the Act cannot be enlarged to incorporate the wide authority that an executing Court has to aid the award-holder, who metamorphoses as a decree-holder by the legal fiction contained in Section 36(1) of the Act, to seek or obtain orders of such nature or of arrest or detention of the award-debtor or the sequestration of its assets and properties.



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10. The Act of 1996 covers all things pertaining to arbitration and operates between the commencement of the arbitral proceedings within the meaning of Section 21 of the Act of 1996 and the conclusion of all matters pertaining to the arbitration before Section 36 of the Act kicks in, so to say, and renders the award enforceable.”

7. Undisputedly, interim relief plays a pivotal role in ensuring potency in the arbitration proceeding because it aims to protect the rights and interests of the parties from the commencement of the dispute until the final award is executed. It can be said that interim relief is an integral part of the arbitral proceeding, which ensures justice and prevents the other party from acting unjustifiably. Parties in an arbitral proceeding are entitled to procure an interim remedy from the court under Section 9 of the Arbitration and Conciliation Act, 1996, which , accords the parties the right to procure relief from the courts after the arbitral decision (award) is passed but before its enforcement. This signifies that the act does not preclude any party from moving to the courts for interim relief.



8. Since the entire issue revolves around the applicability of Section 9 and 36 of the Arbitration and Conciliation Act, it is necessary to extract the said sections, which reads as follows:

I. Section 9 in the Arbitration and Conciliation Act, 1996

9. Interim measures, etc. by Court.—A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—

(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:—

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;



(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

II. Section 36 of the Arbitration and Conciliation Act

“36. Enforcement.—

(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.”

(2) Where an application to set aside the arbitral award has been filed in the court under Section 34, the filing of such an application shall not by itself render that award unenforceable, unless the court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

9. In the case on hand, an award has been passed by the 2nd respondent on 28.05.2014 and the petition to set aside the Award in



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O.P.No.591 of 2014 was dismissed on 15.02.2018. As against the said dismissal order, the appeal filed under Order 36 Rule 1 of O.S Rules read with Clause 15 of Letters Patent read with Section 37(1)(a) of the Arbitration and Conciliation Act, 1996 was also dismissed by the Division Bench of this Court by order dated 06.08.2018. Therefore, as per Section 37(1) (a) of the Arbitration and Conciliation Act, the Award dated 28.05.2014 had become enforceable by 06.08.2018. Therefore, considering the language of Section 9 of the Act that once the Award has become enforceable, the provisions of Section 9 of the Act seeking interim measures cannot be invoked and the application filed by the appellant in O.A.No. 650 of 2020 cannot be entertained. The learned Single Judge has rightly considered the provisions under Section 9 of Arbitration and Conciliation Act and Order 36 Rule 1 of O.S Rules read with Section 37(1)(a) of the Arbitration and Conciliation Act, 1996, dismissed the application filed by the appellant herein.

10. Furthermore, in the judgment in OSA. No. 53 of 2021, dated 15.02.2021, relied by the respondent, the Division Bench of this Court thoroughly analyzed the scope of Section 9 of the Arbitration and



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Conciliation Act (extracted above). In the present case, as discussed earlier, the award dated 28.05.2014 passed by the 2nd respondent has already become enforceable on 06.08.2018 (i.e., upon the dismissal of the appeal filed invoking Section 37 (1) (a) of the Act). Therefore, the application brought forth by the appellant, invoking Section 9 of the Arbitration and Conciliation Act, cannot be entertained. The learned Single Judge has rightly dismissed the said application. In light of the above circumstances, the reliance by the appellant on the decision of the Hon'ble Supreme Court in the case of *Sundaram Finance Ltd* does not render any assistance to the appellant's present case.

11. In view of the above, the impugned dismissal order of the learned Single Judge is perfectly valid and does not warrant any interference by this Court. We, therefore, do not find merit in the appellant's arguments and see no grounds for challenging the dismissal order passed by the learned Single Judge. Consequently, the present appeal, contesting the impugned dismissal order, is not well-founded and liable to be rejected.



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12. In the result, the instant appeal filed by the appellant is dismissed, confirming the order passed by the learned Single Judge in O.A. No.650 of 2020, dated 11.03.2021. No costs. Consequently, the connected Miscellaneous Petitions viz., CMP.No. 4218 of 2022 is dismissed and CMP.No. 10183 of 2023 is closed.

[D.K.K.,J.] [P.D.B., J.]

20.11.2023

Index: Yes
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**D.KRISHNAKUMAR, J.
AND
P. DHANABAL, J.**

**Pre-delivery Judgment in
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