



Arb.Appln.No.491 of 2023

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WEB CO **C.SARAVANAN, J.**

Despite notice being served on all the respondents and name being printed in the cause list, today, there is no representation on behalf of the respondents.

2. This application has been filed by the applicant/Award Holder for the following relief:

“to issue a prohibitory order prohibiting the Garnishee from making any payment to the first respondent and prohibit the first respondent from receiving any funds from the Garnishee and direct the Garnishee to deposit a sum of Rs.1,13,69,047/- (Rupees One Crore Thirteen Lakhs and Sixty Nine Thousand and Forty Seven Only) or such other sum lying in their hands to the credit of the above application pending the enforcement of the award.”

3. The facts on record indicates that the applicant had advanced a loan to the respondents on 30.10.2014. However, the respondents have failed to pay the EMIs and therefore on 30.06.2016, the applicant had recalled the loan by issuance of a loan re-call notice on the respondents.



Arb.Appln.No.491 of 2023

Thereafter, the applicant has also invoked the arbitration Clause in the loan agreement dated 30.10.2014 which has culminated in an Award of the arbitrator dated 12.06.2017.

4. The respondent Nos.1, 2 and 3 herein (Award debtors) had filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 in O.P.No.893 of 2017 which was dismissed by this Court vide its order dated 14.12.2017. This Court while at the same time reduced the interest at 12% P.A on the amount which remains unpaid under the Award dated 12.06.2017.

5. The applicant had thereafter filed E.P.No.172 of 2019 before the Principal District Court, Cuddalore. The said application was filed under Order 21 Rule 43, 66 of CPC. The hypothecated harvester bearing Engine No.PE6068L932999 and Chasis No.1T8C330HLEW121937 (Approx value is Rs.50,00,000/- (Rupees Fifty Lakhs) by way of Public auction for the realization of decree



Arb.Appln.No.491 of 2023

amount of Rs.1,13,69,047.61/- with interest. The application was dismissed by the executing the Court by its order dated 19.02.2021 with the following observations:-

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.

6. The aforesaid order of the Execution Court has now been set aside by this Court by an order dated 24.03.2023 in CRP.No.1313 of 2021. Despite the applicant securing an favourable Award on 12.06.2017, the applicant is unable to enjoy the goods of the Award as the hypothecated harvester remains untraceable.

7. Considering the above, Court is inclined to allow this application filed by the applicant by issuing a prohibitory order



Arb.Appln.No.491 of 2023

prohibiting the Garnishee/fourth respondent herein for making any payment to the first respondent for a sum of Rs.1,13,69,047/- (Rupees One Crore Thirteen Lakhs and Sixty Nine Thousand and Forty Seven only). The applicant is at liberty to file a fresh Execution Petition for execution of the Award.

8. This Application stands closed.

31.10.2023

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Arb.Appln.No.491 of 2023

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Arb.Appln.No.491 of 2023

31.10.2023