



Arb.O.P (Com.Div.) No.576 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.576 of 2022

M/s.Shriram City Union Finance Limited,
Represented by its,
Authorised representative
No.123, Angappa Naicken Street,
Chennai 600 001.

... Petitioner

Vs.

1.Siva
2.S.Nandhini

... Respondent

Arbitration Original Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to adjudicate the disputes between the petitioner and the respondent in terms of the Arbitration agreement dated 19.01.2013 and to direct the respondent to pay costs.

For petitioners : Mr.K.V.Ananthakrushnan

For Respondent : Mr.K.Mukund Rao



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ORDER

This Arbitration Original Petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, (hereinafter called as “the Act”) to appoint an Arbitrator to adjudicate the disputes between the petitioner and the respondent in terms of the Arbitration agreement dated 19.01.2013 and to direct the respondent to pay costs.

2. The learned counsel for the petitioner would submit that the petitioner had lent money by virtue of the loan agreement dated 19.01.2013 for a sum of Rs.15,00,000/- with interest at the rate of 28.44% per annum to the respondent. Apart from the loan agreement, the respondent had also executed a Demand Promissory Note dated 19.01.2013 to the petitioner. However, the respondents had failed to return the said amount as agreed by him in terms of the loan agreement. Hence, the petitioner invoked Clause 17 of the said loan agreement and referred the dispute to the arbitration. The Clause 17 of the said loan agreement reads as follows:



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“Clause 17:- Arbitration and Disputes settlement

a) All disputes differences and/or claims arising out of this agreement whether during its subsistence or thereafter, shall be settled by Arbitrator in accordance with the provisions of the Arbitration and Conciliation Act 1996 or any other statutory modification earlier or re-enactment for the time being in force and shall be conducted by a Sole Arbitrator to be appointed by the Lender under the provisions of the Arbitration and Conciliation Act 1996. The applicable law shall be Indian Laws. In the event of incapacity or resignation or death of the Sole Arbitrator so appointed the Lender shall be entitled to appoint another Arbitrator in the place of the earlier Arbitrator and the proceedings shall continue from the stage at which the predecessor had left.

b) The award given such an Arbitrator shall be final and binding on parties to this agreement. The costs of the arbitration shall be borne with by the party/parties in accordance with award passed by the Arbitrator.

c) The Venue of the arbitration shall be as specified in schedule (1) hereto and the proceedings shall be conducted in accordance with the award passed by the arbitrator.”



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3. After initiating the arbitration proceedings in ACP.No.101 of 2014, the award was passed by the learned Arbitrator on 29.12.2014.

The same was challenged by the respondents herein in O.P.No.53 of 2022 before this Court. The said award was set aside by this Court vide order dated 08.09.2021 granting liberty to the petitioner to initiate a fresh arbitration proceedings. Accordingly, the petitioner had issued a notice to the respondents under Section 21 of the Act on 11.04.2022 appointed a sole Arbitrator and a claim statement was also filed before him on 10.05.2022. The learned Arbitrator had also issued a notice to the respondents with regard to the hearing on 13.05.2022. The first respondent filed a memo before the learned Arbitrator on 27.05.2022 stating that since the appointment of Arbitrator was made unilaterally, the said appointment is non-est in law and the same is against the law laid down by the Hon'ble Apex Court in ***Perkins Eastman Architects DPC Vs. HSCC (India) Ltd.***, reported in ***2019 SCC OnLine SC 1517***.

4. Under these circumstances, on 13.06.2022, the Arbitrator conducted the arbitration proceedings and at that point of time, the



petitioner expressed his intention to file a petition under Section 11 of the Act before the High Court of Judicature at Madras and requests the Tribunal to adjourn the case for a month and thereafter, the petitioner filed the present petition for appropriate orders. Further, the petitioner submitted that since the present dispute is arising out of the said loan agreement, in terms of Clause 17 of the said loan agreement, the present dispute is arbitrable. Therefore, he requested this Court to appoint a neutral Arbitrator.

5. Per contra, the learned counsel for the respondent strongly opposed for the appointment of the Arbitrator. He would further submitted that the present issue cannot be arbitrable on the ground that both the properties of the first and second respondents have been attached by virtue of the attachment order passed by the appropriate officer in the proceedings pending before the Special Court, TNPID, Chennai in the matter of M/s.Jalagandeswara Auto Finance. He would also submit that the said M/s.Jalagandeswara Auto Finance is a financial establishment, which was conducted by the first respondent for the past



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18 years. He conducted monthly chits, under which more depositors had deposited their money.

6. Under these circumstances, based on the complaints received from the depositors, the Competent Authority invoking Section 3 of the Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997 (hereinafter called as “TNPID Act”), attached the properties of the first and second respondents vide G.O.Ms.No.912, Home (Police XIX) Department, dated 08.12.2017. All the properties have been attached by the Competent Authority including the properties, which are mortgaged with the petitioner. Further, he would submit that behind the back, the petitioner is trying to enforce the mortgage by bringing the mortgaged properties into sale.

7. Further he referred Section 2(3) of the TNPID Act with regard to the definition of Financial Establishment, Section 3 of the TNPID Act relating to the attachment of the properties on default of return of the depositors and Section 6 of TNPID Act with regard to the constitution of



the Special Court. By referring the aforesaid provisions of TNPID Act, he would submit that the present dispute cannot be referred to arbitration. Further he would contend that in the proceedings before the TNPID Court, the petitioner has been shown as 8th respondent. Therefore, he would submit that the said present petition is not sustainable and the same is liable to be rejected.

8. In reply, the learned counsel for the petitioner would submit that the present loan transaction is between the petitioner and the first respondent. The second respondent is the guarantor. The first respondent has carried on the business in the name and style of M/s.Jalagandeswara Auto Finance, as sole Proprietorship concern, and he was unable to repay the deposits received by him. Therefore, based on the complaint of the depositors, the proceedings were pending before the Special Court in TNPID, Chennai. The Competent Authority had also attached the properties of the respondents including the properties, which are mortgaged with the petitioner. Therefore, he would submit that since the said properties were attached and the attachment order was passed by the



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Competent Authority, the petitioner was shown as the 8th respondent in the TNPID proceedings. The petitioner was impleaded in the said proceedings only in terms of Section 7(2) of TNPID Act. Therefore, the learned counsel for the petitioner would submit that there is no impediment for this Court to appoint a neutral Arbitrator in terms of Section 11(5) of the Act.

9. Heard the learned counsel for the petitioner and the respondent and also perused the materials available on records.

10. In the present case, initially, the petitioner appointed the Arbitrator and the Arbitrator had also passed an award in ACP.No.101 of 2014 and the said award was challenged by the respondent in O.P.No.53 of 2020. This Court vide order dated 08.09.2021, set aside the award passed by the learned Arbitrator in ACP.No.101 of 2014 by granting liberty to the petitioner to initiate a fresh arbitration. Thereafter, a notice under Section 21 of the Act was issued to the respondents on 11.04.2021 and the arbitration proceedings were commenced. The respondents had



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also participated and filed a memo on 27.05.2022 wherein they had stated that since the nomination of Arbitrator is against the law laid down by the Hon'ble Apex Court in aforesaid **Perkins** case, the appointment of Arbitrator is non-est in law. Therefore, at the proceedings conducted by the Arbitral Tribunal on 13.06.2022, the petitioner submitted that he would file a petition under Section 11 of the Act before the High Court of Judicature at Madras for the appointment of neutral Arbitrator. Accordingly, the present petition came to be filed for the appointment of a neutral Arbitrator.

11. Under these circumstances, the respondent made a strong opposition by stating that M/s.Jalagandeswara Auto Finance was managed by the first respondent and the first respondent collected the deposits. However, he was unable to repay the amount. Hence, based on the complaints given by the depositors, a proceedings was pending before the TNPID Court, wherein the petitioner was shown as the 8th respondent.



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12. The TNPID Act would apply only if there is any default in making the payment to the depositors. Based on the complaint, the proceedings can be initiated before the Special Court. Upon complaint registered by the Competent Authority, the Competent Authority is also empowered to attach the properties by virtue of the Government Order. This is what happened in the case of M/s.Jalagandeswara Auto Finance, which was represented by the sole Propreitor Mr.Siva, who is the first respondent herein.

13. This Court also read Section 3 of TNPID Act, which talks about the attachment of the properties, to ensure the payment of the depositors out of realisation of the properties, which were purchased out of deposits by the accused and if no sufficient amount is available, it is also empowered to attach the personal properties of the Proprietor, Director and Partners of the respective concern. The Section 6 of TNPID Act talks about the power of Special Court to prosecute the defaulted parties. The TNPID Act deals only with regard to protecting the depositors' interest and it only gives priority to the depositors. Further



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the TNPID Act talks about the power to attach all the properties, which were purchased out of funds of the depositors and to attach personal properties of the Proprietor, Director, Partner, etc., in the event of any insufficient amount. However, if any third party transaction is made by the first respondent, apart from the provision for attachment and sale of properties under Section 3 of TNPID Act, there is no provision prohibiting the petitioner to agitate and adjudicate their claims before the appropriate forum. Further, the claim of the petitioner is independent one. It is nothing to do with the Jalagandeswara Auto Finance. The first respondent had entered into agreement with the petitioner in his individual capacity. Therefore, I do not find any force in the contention made by the learned counsel appearing for the respondent.

14. Even as far as the mortgaged property is concerned, the interest of the petitioner can be proved before the Special Court. Therefore, I am of the considered view that the Special Court will not have power to adjudicate the independent claim of the petitioner, since the said claim is no way connected with the M/s.Jalagandeswara Auto



Finance. Hence, the claim of the petitioner has to be adjudicated independently. Therefore, this Court feels that since the present dispute is arising out of loan agreement dated 19.01.2013, in terms of Clause 17 of the agreement, the present dispute can be arbitrable and therefore, I am inclined to appoint an Arbitrator.

15. Accordingly, this Court feels it appropriate to pass the following order:

i) Mr.B.S.Jhothiraman, Advocate, at No.2, V.P.Colony, 3rd Cross Street, Ayanavaram, Chennai 600 023, Mobile No:9940512839 is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order.

iii) The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally. In



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the event of non-appearance of the respondent, the petitioner shall bear the entire remuneration and other expenses and thereafter, the applicant can recover the same directly from the respondent.

16. This Arbitration Original Petition is ordered accordingly, leaving the parties to bear their own costs. Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator. No costs.

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Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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KRISHNAN RAMASAMY.J.,
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