



CMA No. 2001 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2001 of 2022
and
C.M.P. No. 610 of 2023

The South Indian Bank Limited,
Madurai Main Branch,
Represented by its Chief Manager,
No.24, LIC Building, West Marret Street,
Madurai – 625 001.

... Appellant

Versus

1.M/s.Equitas Small Finance Bank Limited,
(Formerly known as Equitas Finance Limited),
Represented by its Deputy Vice President (Legal),
Spencer Plaza, 4th Floor, Phase II,
No.769, Mount Road, Chennai – 600 002.

2.M/s.Shree Sharavana Traders,
Represented by its Partner,
Mr. Singaravel Surlivel,
S/o.Mr. Singaravel,
No. 22, Gate Lock Road,
Old Anuppandi Road, Madurai – 625 009.

3.Mr.Singaravel Surlivel, Partner,
M/s.Shree Sharavana Traders,
No.137/A/4, Kamarajar Salai,
Opp.to Kannan Department Store,
Madurai – 625 009.



CMA No. 2001 / 2022

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4.Mr.Sivasingaravel, Partner,
M/s.Shree Sharavana Traders,
S/o.Mr.Singaravel,
No.137/A/4, Kamarajar Salai,
Opp. To Kannan Department Store,
Madurai – 625 009.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 seeking to set aside the impugned order dated 23.04.2018 in Application No.29/2017 in Arbitration Case No.29/2017 in Arbitration Case No.19/2017.

For Appellant : Mr. M.L. Ganesh.

For Respondents : Mr. A. Dhamodharan for R1.

R2 – R4 given up.

J U D G M E N T

The appeal has been filed by a third party to the arbitration proceedings challenging the interim order of attachment passed by the sole arbitrator.

2.The facts leading to the filing of the appeal are as follows; The first respondent herein filed claim petition before the arbitrator against



CMA No. 2001 / 2022

the respondents 2 to 4 claiming a sum of Rs.50,16,109/-. Admittedly, the said loan was unsecured. Pending arbitration proceedings, the first respondent filed an application to attach the properties viz., land situated at Sub-Registration District of Theppakula Village, Kalikappan, 2nd Beet, Resurvey No.220, U.D.R.S. No. 104, land and building situated at Sub-Registration District of Ababi and Village Iyvarathanallur, bearing T.S. No. 229/2, Door No.137-A/4 and land and building situated at Sub-Registration District of Ababi and Village Iyvarathanalur, bearing T.S. No. 2391/2, belonging to the respondents 2 to 4. The impugned order came to be passed on the said application.

3.The appellant claiming to be the secured creditor of the respondents 2 to 4 have filed this appeal stating that the respondents 2 to 4 had mortgaged some of the attached properties with them on 26.08.2015. Since the respondents 2 to 4 defaulted in payments, the appellant initiated proceedings under the SARFAESI Act and sold the properties to a third party through an auction. The sale certificate was also registered in favour of the third party on 21.12.2018. It is the grievance of the appellant that in view of the attachment order passed by the Arbitrator, there is an entry in the encumbrance certificate which is



CMA No. 2001 / 2022

likely to affect the title of the auction purchaser in whose favour the sale certificate has already been registered.

4.The learned counsel for the first respondent per contra submitted that they were not aware that the properties were subjected to a mortgage and hence their application and the impugned order cannot be said to be bad in law. The respondents 2 to 4 have been given up by the appellant. The learned counsel for the appellant has also made an endorsement to that effect.

5.Though several grounds have been raised to challenge the award passed by the Arbitrator including stating that the first respondent has not disclosed the fact that the property is mortgaged with the appellant bank which is reflected in the Encumbrance Certificate, this Court is of the view that those grounds need not be gone into in the facts and circumstances of the case.

6.The short question involved in the above appeal is whether the attachment order passed by the Arbitrator which is subsequent to the



CMA No. 2001 / 2022

mortgage in favour of the appellant would affect the rights of the auction purchaser who had purchased the properties from the appellant bank.

Order 38 Rule 10 of the Civil Procedure Code reads as follows;

“10. Attachment before judgment not to affect rights of strangers, nor bar decree-holder from applying for sale.

Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree“.

The above provision would make it very clear that the order passed by the Arbitrator attaching the properties would not affect the title / rights of the appellant or its subsequent purchaser in respect of the properties.

7.In such view of the matter, recording the same, this appeal is disposed of. However the observations made would not affect the rights of the first respondent herein to recover the money due to them from the respondents 2 to 4 in the manner known to law. No costs. Consequently, the connected Miscellaneous petition is closed.



CMA No. 2001 / 2022

17.07.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

SUNDER MOHAN, J

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C.M.A. No. 2001 of 2022
and
C.M.P. No. 610 of 2023



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CMA No. 2001 / 2022

Dated: 17.07.2023