



C.R.P.No.1016 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

C.R.P.No.1016 of 2019
and C.M.P.No.6722 of 2019

M/s.Shriram Transport Finance Co. Ltd.,
Rep. by its authorized signatory
S.Varadhan
1st Floor, Jonath Aaracade,
No.43, Old Police Station Street,
Saravana Theatre Road,
Gobichettipalayam,
Erode – 638 476

... Petitioner

Vs.

1.M.Rathinasamy

2.K.Govindarajan @ Govindaraj

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair order and decreetal order dated 07.07.2018 passed in I.A.No.225 of 2018 in A.O.P.No.8 of 2015 on the file of the III Additional District and Sessions Court, Erode at Gobichettipalayam.



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For Petitioner : Ms.V.Pushpa

For Respondents : Mr.P.Saravana Sowmiyan for R1
Ms.Deepa Uday for R2

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order passed in I.A.No.225 of 2018 in AOP No.8 of 2015 by the IIIrd Additional District and Sessions Court, Erode at Gopichettipalayam, dated 07.07.2018.

2.The short facts of the case are as under:

The petitioner extended vehicle loan in favor of one K.Govindarajan (R2) through a Loan-cum-Hypothecation Agreement dated 10.11.2012. The borrower committed default and hence, arbitration proceedings were initiated by the petitioner. Ultimately, an Award came to be passed by the Arbitrator on 28.04.2016. As per the Award, the said K.Govindarajan and the surety viz., Mr.S.Suresh were directed to jointly and severally pay a sum of Rs.6,85,599/-



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with interest at the rate of 18% per annum from 10.10.2015 till the actual payment of the amount.

3.The Award was not complied with by the 2nd respondent and hence, the petitioner filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (herein after called as “Act”) directing the 2nd respondent and the surety to furnish security for the Award amount failing which to attach the petition mentioned property.

4.The 2nd respondent executed a registered Sale Deed, dated 14.07.2016 in favor of M.Rathinasamy (R1) and the petition mentioned property was conveyed in favor of the said Rathinasamy. The petitioner was not aware of the Sale Deed that was executed by the 2nd respondent and the petitioner proceeded further to prosecute the petition filed under Section 9 of the Act. Ultimately, the order of attachment came to be passed by the Court below on 29.11.2017. When this order was passed, the 2nd respondent did not even inform the Court that the petition mentioned property had already been



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conveyed in favour of the 1st respondent, Rathinasamy.

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5.The 1st respondent filed I.A.No.225 of 2018 seeking for raising the order of attachment on the ground that he is an innocent bonafide purchaser and that he was not put on notice before the order of attachment was passed by the Court below. This petition was contested by the petitioner by filing a counter affidavit. Even in the counter affidavit, the petitioner took a specific stand that the so-called Sale Deed executed in favour of the 1st respondent was a collusive transaction and the Sale Deed is sham and nominal and there is absolutely no bonafides in the 2nd respondent executing the Sale Deed in favour of the 1st respondent after knowing fully well that there is an Award passed in favour of petitioner and the petitioner has already taken steps to attach the petition mentioned property.

6.The Court below on considering the rival contentions, passed the fair and decretal order dated 07.07.2018, allowing the application filed by the 1st respondent and the attachment order was raised. Aggrieved by the same, the



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present Civil Revision Petition has been filed before this Court.

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7.Heard Ms.V.Pushpa, learned counsel appearing on behalf of the petitioner and Mr.P.Saravana Sowmiyan, learned counsel appearing on behalf of the 1st respondent Ms.Deepa Uday, learned counsel appearing on behalf of the 2nd respondent.

8.On going through the records, this Court finds that the 2nd respondent has proceeded to sell the petition mentioned property in favour of the 1st respondent only after the petitioner had already initiated proceedings under Section 9 of the Act for attachment of the petition mentioned property. Conveniently, the 2nd respondent did not even inform before the Court below about the so-called sale and the petitioner was kept in dark. The petitioner was prosecuting the petition filed under Section 9 of the Act even without knowing that the 2nd respondent has already conveyed the property in favour of the 1st respondent.



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9.The petitioner had specifically raised the ground of fraud and that the entire transaction is sham and nominal and there were absolutely no bonafides on the part of the respondent. The Court below did not even consider this issue and order of attachment was straight away raised only on the ground that the 1st respondent was not put on notice. In the considered view of this Court, the Court below ought not to have considered the application filed by the 1st respondent in such a summary fashion. It was the duty of the Court to have ascertained as to whether the sale transaction was a bonafide one and whether the 1st respondent was a bonafide purchaser for value. If such a sale is permitted after the petitioner had filed a petition under Section 9 of the Act for attachment of the property based on an Award, the petitioner will never be able to recover the money and enjoy the fruits of the Award. This is more so, since this transaction had taken place, within a period of three months from the date of the Award.

10.In the light of the above discussion, this Court has absolutely no hesitation to interfere with the fair and decreetal order passed by the Court



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below in I.A.No.225 of 2018, dated 07.07.2018 and the same is hereby set aside. The matter is remanded back to the file of the IIIrd Additional District and Sessions Court, Erode and the Court below is directed to consider the rival claim made by the parties and if required to record evidence and thereafter, come to a conclusion on the claim made by the 1st respondent in I.A.No.225 of 2018. Till final orders are passed in I.A.No.225 of 2018, the order of attachment over the petition property shall remain and it will be subject to the final result in the I.A.

11.In the result, this Civil Revision Petition stands allowed with the above direction. No Costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes ./ No
Index : Yes ./ No
Speaking Order / Non Speaking Order
Neutral Citation Case : Yes ./ No
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N. ANAND VENKATESH, J.

SSR

To

The III Additional District and Sessions Court,
Erode at Gobichettipalayam.

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