



C.R.P(MD)No.980 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.06.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.980 of 2023

and

C.M.P(MD)No.4477 of 2023

1.Manimegalai

2.Punniyamoorthi

...Revision Petitioners/
Petitioners/Judgment Debtors

Vs.

M/s.Sundaram BNP
Paribas Home Finance Limited,
46, Whites Road,
Chennai-600 014
Represented by Head legal

...Respondent/Respondent/
Petitioner

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the order of the learned II Additional District and Sessions Judge, Thanjavur passed in E.A.No.4 of 2023 in E.P.No.197 of 2019 in A.C.P.No.88 of 2018 dated 10.02.2023.

For Petitioners : Mr.N.Balakrishnan

For Respondent : Mr.M.Jerin Mathew



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ORDER

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The present Civil Revision Petition has been filed against the order passed by the learned II Additional District and Sessions Judge, Thanjavur in E.A.No.4 of 2023 in E.P.No.197 of 2019 in A.C.P.No.88 of 2018 dated 10.02.2023.

2. The petitioners herein are the judgment debtors in arbitration proceedings before the sole arbitrator initiated by the respondent. An award came to be passed by the sole arbitrator on 22.01.2019, whereby, it was confirmed that the petitioner was liable to pay a sum of Rs.43,94,639/- to the respondent together with an interest of 18% per annum from 26.05.2018 till the date of realisation. The relevant portion of the award reads as under:

"14. In the result there shall be an award of Rs.43,94,639/- (Rupees Forty Three Lakhs Ninety Four Thousand Six Hundred and Thirty Nine only) in favour of the claimant, Sundaram BNP Paribas Home Finance Limited payable by the respondents together with interest @ 18% per annum from 26.05.2018 till the realization of the amount in full.

Hence, the issues No.2 and and 3 are answered accordingly.

15. The costs of Arbitration is quantified at Rs.5,000/- (Arbitrator's fee Rs.4,000/- and Administration Expenses Rs.1,000/-). The claimant shall pay the same immediately to the



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Arbitrator and shall recover therefor from the respondents in addition to the amounts awarded as above."

3. The respondent thus filed E.P.No.197 of 2019 to execute the award passed by the learned Arbitrator in Arbitration Case No.KER/SHFL/88 of 2018, dated 22.01.2019. In Execution Petition, the respondent has pressed for the following relief:-

"The petitioner / claimant prays that this Hon'ble court may be pleased to order to realise the amount set out in column 8 (Rs. 47,24,172) of this application together with future interest and cost of taking out this application by issue of notice to the respondents under Order XXI Rule 37 of C.P.C. and to detain them in civil prison and to pay the same to the petitioner and thus render justice."

(extracted as such)

4. In the aforesaid proceedings, the petitioners had remained *ex parte* and therefore, later filed E.A.No.4 of 2023 for condoning the delay in setting aside the award. The Court has passed the impugned order, dated 10.02.2023. The relevant portion of the impugned order reads as under:

"4) Both side arguments and records considered. The execution petition was filed by the respondent/decreed holder for arresting the petitioner/2nd respondent. When the execution petition is pending at the stage of cross of



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P.W.1, the petitioners were not ready to cross examine him and left them set exparte. Now they filed this petition to set aside the exparte order with reason of the 1st petitioner was suffering from jaundice but that reason was also not proved by any piece of documents and no reason was stated for the absence of the 2nd petitioner. Therefore, this court views that the reason stated by the petitioners is not convincing one. But, in the interest of justice, this court inclines to give one opportunity to the petitioners to conduct the case. Hence, it is ordered that this petition will be allowed on deposit of 10% of the E.P. amount i.e. Rs.4,73,500/-into the court on or before 10.4.2023. Call on 11.4.2023"

5. The learned counsel for the respondent submits that there is no scope for interference as admittedly Rs.47,24,172/- is due from the respondent. The petitioners have been asked to pay only a sum of Rs. 4,73,500/- i.e., 10% of the E.P. amount on or before 10.04.2023. It is submitted that despite the same, the petitioners are not paid the aforesaid amount till date. Therefore, the petitioners did not deserve any mercy.

6. The learned counsel for the petitioner by way of rejoinder submits that the petitioners are having asserts which are worth only about Rs.30,00,000/- to Rs.35,00,000/-. Even if they are sold in the Court auction, it will not be sufficient to cover the award amount. It is submitted that the first petitioner is aged about 65 years old and the second petitioner is the sole bread winner. E.P. has been filed to arrest



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the second petitioner.

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7. I have considered the arguments advanced by the learned counsel for the petitioners and the learned counsel for the respondent.

8. There is no scope for interference in the present Civil Revision Petition. To balance the interest of the petitioners and the respondent, the petitioners shall pay/deposit a sum of Rs.4,73,500/- within a period of 12 weeks from the date of receipt of copy of this order. Subject to such compliance, all further proceedings shall be kept in abeyance for the present. It is made clear that if the petitioner fails to pay 10% of the award amount as ordered by the Execution Court on 10.02.2023, the order passed by this Court shall stand vacated.

9. The present Civil Revision Petition stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

06.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The learned II Additional District
and Sessions Judge,
Thanjavur
2. The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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