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C.M.A(MD)No.1139 of 202



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.02.2023

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THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A(MD)No.1139 of 2022

and

C.M.P(MD)No.11672 of 2022

The Principal,
St.Mary's Nursery and Primary School,
Vembar, Vilathikulam (KOL),
Tuticorin District-628 906.

... Appellant/ Respondent

Vs

M/s.Shriram Transport Finance Company Limited,
Represented by its Power of Attorney,
Mr.S.Surendran, Branch Office,
1st Floor, Pandian Complex,
Alangulam,
Tirunelveli District.

...Respondent/Petitioner

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 37 (1) of the Arbitration and Conciliation Act to set aside the impugned ex parte interim attachment order dated 15.10.2022 (received on 27.10.2022) passed by the sole Arbitrator, Tirunelveli in I.A.No.1 of 2022 in Arbitration Case No.487 of 2022.

For Appellant	: Mr.Issac Mohanlal Senior Advocate For M/s.Issac Chambers
For Respondent	: Mr.Anand C.Rajesh



JUDGMENT

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The civil miscellaneous appeal is filed against the order of the sole arbitrator in I.A.No.1 of 2022 in Arbitration case No.487 of 2022, dated 15.10.2022 under Section 37(1) of the Arbitration and Conciliation Act, wherein, the order of interim attachment of property was made with further direction to the Sub Registrar, Vilathikulam, Tirunelveli Registration District, Tuticorin District to make necessary endorsement in the encumbrance register in respect of the scheduled mentioned properties.

2. The brief facts are that the appellant is the Principal of St.Mary's Primary and Nursery School, Tuticorin District. The said school is run by St.Mary's Educational Trust which is a registered Trust. It is stated that the appellant school entered into 7 loan cum hypothecation agreements with the respondent company for purchase of school buses. One of the loan agreements dated 25.03.2019 related to purchase of Tata LP 909 School Bus-P-2008, wherein, loan of Rs.7,00,000/- was sanctioned and the period of four years was given for repayment of total amount of Rs.9,33,794/- in 26 monthly instalments. Due to lockdown declared by the Government in pursuance of Covid-19 situation, the school was not in a position to keep up its promise and defaulted in payment of EMI. The respondent company therefore issued a legal notice on 11.08.2022 directing the appellant school to pay a sum of



Rs.18,96,972/-. When the appellant school enquired about the notice, the respondent assured that the same was routine procedure and the payment could be made by the school as soon as the finances improved.

3. While so, on 15.10.2022, the appellant school received the said notice wherein, it was informed that Surendran was appointed as sole arbitrator for the respondent's company and the date of hearing was fixed on 19.11.2022 at 11.00 a.m. The appellant also received an order passed in I.A.No.1 of 2022 in arbitration case Nos.487 of 2022 by the sole arbitrator dated 15.10.2022 intimating the attachment of the appellant school's properties and also the direction issued to the Sub Registrar's Office Vilathikulam, Tirunelveli Registration District, Tuticorin District for making endorsement in the encumbrance registrar in respect of the schedule mentioned properties.

4. Aggrieved by the said order, the appellant school has filed the appeal.

5. The learned counsel appearing for the appellant raised three issues in the appeal. According to the learned counsel, there was a total violation of principles of natural justice in as much as the impugned order dated 15.10.2022 was passed on the same day as the appointment of sole arbitrator.



The learned counsel therefore submitted that the appellant was not aware of the appointment of the sole arbitrator and even the interim order was passed behind his back without an opportunity to contest the same. The learned counsel further submitted that the interim order is passed attaching the properties which are outside the purview of the loan cum hypothecation agreement. The learned counsel relied on the judgment of this Court, dated 06.02.2020 passed in C.R.P.(PD)MD.No.1568 of 2019 in support of his contentions.

6. The learned counsel for the respondent on the other hand submitted that the appellant had failed to repay the loan amount under the loan cum hypothecation agreement and further failed to adhere to the repayment schedule attaching to the said agreement. The learned counsel therefore submitted that the loan outstanding as on 09.08.2022 was totally Rs.18,96,972/- with respect to the appeal related loan agreement. Considering the huge outstanding amount, the respondent was constrained to obtain the interim award to secure the said loan. The learned counsel therefore prayed that the appeal deserved to be dismissed.

7. I have heard both the counsel and perused the materials on record.



8. It is undisputed that the appellant had borrowed loan from the respondent company under four loan cum hypothecation agreement for purchase of school buses. The appellant was unable to repay the loan due to lockdown is also not disputed. The core issue is whether the impugned order passed by the sole arbitrator is sustainable in law. The sole arbitrator issued a notice on 15.10.2022 to the appellant intimating the appointment of the sole arbitrator and on the very same day, the sole arbitrator passed the impugned order directing the attachment of the schedule properties with a further direction to Sub Registrar Office Vilathikulam, Tirunelveli Registration District, Tuticorin District to make necessary endorsements in the encumbrance register in respect of the schedule mentioned properties.

9. It is seen from the impugned order that absolutely no opportunity was given to the appellant to contest the interim application. It is very strange that in the impugned order, the sole arbitrator directed the appellant to furnish security for a sum of Rs.18,96,972/- towards the outstanding amounts under the loan agreement on 19.11.2022. Even without giving reasonable time to the petitioner to comply with the said order, the sole arbitrator passed an interim award for attachment of the properties. The sole arbitrator having given time till 19.11.2022 to furnish security ought not to have passed the attachment order. In my view it is total violation of the principles of natural justice and



therefore, the impugned order cannot be sustained. One other aspect is that when the school buses were hypothecated with the Bank under the loan agreements, the sole arbitrator had no jurisdiction to attach the immovable properties of the appellant school which were not the subject matter of the loan cum hypothecation agreement. The impugned order cannot be sustained as the arbitrator has exceeded his jurisdiction in directing attachment of properties which were not subject of the loan agreement and further directing Sub Registrar Office, Vilathikulam, Tirunelveli Registration District, Tuticorin District to make necessary endorsements in the encumbrance register in respect of the schedule properties.

10. In this regard, the judgment of this Court in C.R.P(PD)MD.No.1568 of 2019 is note worthy.

“10.----On the date of filing, though a notice was ordered to be sent to the petitioner to furnish security, no opportunity was given to the petitioner to furnish security. The order of attachment was made on the same date itself. Property was not hypothecated with the respondent. In any event the Arbitrator has no power to attach the property.”

The said case squarely applies to the facts of the case.

11. One more vital point to be noted is that along with the notice of arbitration, the sole arbitrator has issued the attachment order. Section 17 of the Arbitration Act reads as follows:



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“17. Interim measures ordered by arbitral tribunal.—(1) A party may, during the arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36, apply to the arbitral tribunal—

(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:—

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subjectmatter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient, and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.

(2) Subject to any orders passed in an appeal under section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and



shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court.”

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12. From the reading of the said Section, it is clear that the arbitrator is given power to pass interim orders during the pendency of the proceedings, whereas, in the present case, arbitrator has passed an interim order even before the initiation of the arbitration proceedings. Along with the notice of the appointment of arbitrator, interim award was passed, which is a clear violation of provisions of the Act and therefore, the impugned order is unsustainable on this ground also.

13. I am therefore of the view that the interim order passed by the sole arbitrator, dated 15.10.2022 is unsustainable and the same is set aside. The appeal is therefore allowed. The sole arbitrator is directed to give appropriate notice and opportunity to the appellant and after considering the same on merits and pass orders. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

20.02.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To

1. Mr.S.Surendran,
The Power of Attorney,
M/s.Shriram Transport Finance Company Limited,
Branch Office,
1st Floor, Pandian Complex,
Alangulam, Tirunelveli District.

2. The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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N.MALA, J

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