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C.M.A.No.2263 of 2021

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 29.04.2024

CORAM

THE HONOURABLE **MR. JUSTICE ABDUL QUDDHOSE**

C.M.A.No.2263 of 2021
and
C.M.P.No.12539 of 2021

1.Raja Ram
2.Lakshmi Prabha

.. Appellants

Vs

1.M/s.Shriram Transport Finance Company Ltd.,
Rep. By its G.P.A. Holder Mr.S.Vardhan,
No.AP-88, G-Block,
10th main road, Anna Nagar,
Chennai – 40.

2.P.Rosaiah,
Sole Arbitrator,
District Judge (Retd.)

.. Respondents

Prayer: This Appeal is filed under Section 43 of the Appellate Side Rules read with Section 37(2)(b) of Arbitration and Conciliation Act, 1996, against the ex-parte interim order dated 13.01.2020 passed by the learned Sole Arbitrator under Section 17 of the Arbitration and Conciliation Act, 1996.



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For Appellant

: Mr.D.Ferdinand
for M/s.BFS Legal

For R1

: Peer Mohamed

JUDGMENT

This appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (in short “the Act”) challenging the order of attachment passed by the Arbitral Tribunal under Section 17 of the Act.

2. In the arbitration, the appellants herein are the respondents and the first respondent herein is the claimant.

3. The appellants had availed loan from the first respondent for the purchase of a vehicle and they had agreed to repay the loan in installments as per the loan contract.

4. According to the first respondent, the appellants had committed default in the repayment of the loan. There is an arbitration clause contained in the loan contract. The first respondent had initiated arbitration in accordance with the arbitration clause. During the pendency of the arbitration, the first respondent filed an application under



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Section 17 of the Act before the Arbitral Tribunal seeking for attachment of the property owned by the appellants. Under the impugned order, the Arbitral Tribunal had ordered attachment of the property owned by the appellants, which is challenged in this appeal.

5. According to the appellants, the first respondent had sold the repossessed vehicle for a throwaway price, though the vehicle would have fetched a much higher value. According to the appellants, the first respondent had not acted in terms of the contract and in violation of the same, they have initiated arbitration. The same is disputed by the first respondent both before the Arbitral Tribunal and before this Court.

6. Admittedly, the appellants did not repay the loan on time to the first respondent/claimant. There was default on their part to repay the loan. Exercising their right to repossess the vehicle available to the first respondent under the loan contract, the first respondent had repossessed the vehicle from the appellants and had sold the same and had appropriated the sale proceeds towards their outstanding dues.

7. The appellants contend that despite the appellants' willingness to



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come forward with a prospective buyer to buy the repossessed vehicle for a much higher price, the first respondent/claimant had sold the vehicle for a throwaway price, which is illegal and contrary to the terms and conditions of the loan contract.

8. To secure their interest, the first respondent/claimant had filed an application under Section 17 of the Act seeking for attachment of the property owned by the appellants for securing the shortfall amount still due and payable by the appellants to the first respondent. The Arbitral Tribunal, under the impugned order, had ordered attachment of the property owned by the appellants under Section 17 of the Act. The Arbitral Tribunal had exercised its discretion to grant an order of attachment, since, according to the Arbitral Tribunal, the appellants are defaulters under the loan contract.

9. Under Section 17 of the Act, the Tribunal is empowered to protect and secure the interest of the claimant in the arbitration. When it is an admitted fact that the appellants had defaulted in the repayment of the loan to the first respondent, this Court does not find fault with the Arbitral Tribunal to pass the impugned order under Section 17 of the Act.



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Section 17 of the Act grants wide powers to the Arbitral Tribunal to pass orders, which includes the order impugned in this appeal. Though the appellants may have various defences to defend their claim before the Tribunal, the impugned order cannot be interfered with by this Court in view of the admitted fact that the appellants are defaulters in the repayment of the loan to the first respondent/claimant and the Arbitral Tribunal had exercised its discretion based on the available evidence.

10. This Court had earlier granted an order of interim stay of the impugned order in the year 2021. The arbitration has been stalled because of the said stay order. There cannot be stay of the arbitration. The arbitration is meant for early resolution of the dispute between the parties. Since the Arbitral Tribunal has exercised its discretionary power to grant an order of attachment as prayed for by the first respondent in the application filed under Section 17 of the Act in a proper manner, this Court cannot interfere with the said order. This Court does not find any merit in this appeal. However, the Arbitral Tribunal will have to necessarily consider all the defences raised by the appellants in the main arbitration case including the defence that the vehicle was sold for a throwaway price, despite the appellants having produced a better offer



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through a prospective buyer in accordance with law.

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11. For the foregoing reasons, there is no merit in this appeal and accordingly, the Civil Miscellaneous Appeal is dismissed. However, it is made clear that the Arbitral Tribunal shall consider all the defences raised by the appellants including the defence that the repossessed vehicle was sold for a throwaway price, in accordance with law. No Costs. Consequently, C.M.P.No.12539 of 2021 is closed.

29.04.2024

Index: yes/no
Neutral citation: yes/no
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To

P.Rosaiah,
Sole Arbitrator,



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District Judge (Retd.)

No.4, Lady Desika Road,

Mookambika Complex,

Mylapore, Chennai – 4.

ABDUL QUDDHOSE,J.

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