



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1463 of 2024
and CMP Nos.12806 & 12809 of 2024

1.Sekhar Daliboina

2.Sekhar Daliboina
27-3-214 Road No.2
Employees Colony Srinagar
Karnavani Palem Gajuwaka
Near Lions Club
Visakhapattinam – 530 026.

... Appellant

.vs.

M/s.Cholamandalam Investment & Finance
Company Limited (CFSL)
Represented by its Authorized Signatory
C54 & 55, Super B-4,
Thiru Vi-Ka. Industrial Estate,
Guindy, Chennai – 600 032.

..Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996, to set aside the order dated 14.05.2024 passed by learned Sole Arbitrator Sh.A.Manivasakan, Chennai in the case titled “M/s.Cholamandalam Investment & Finance Company Limited (CFSL) v.s V.Sekhar Daliboina, ARC/CSEL/BL/2497”.

For Appellants : Mr.K.Prabhakaran
For Respondent : Mr.M.Ajmal Azzath



JUDGMENT

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This appeal was filed under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 (herein after called as “Act”) against the interim order passed by the learned Arbitrator dated 14.05.2024, directing the Receiver to lock and seal the premises.

2.The brief facts of the case is that the appellants have availed financial facilities from the respondent. According to the respondent, the loan is repayable in sixty equitable monthly instalments with interest at the rate of 14% p.a. The further case of the respondent is that the appellant failed to repay back the dues. A demand notice was also sent to the appellant seeking for repayment of the dues and the same did not evoke any response. Hence, the loan was recalled and arbitration proceedings were initiated by the respondent.

3.Pending the arbitration proceedings, the respondent filed an application under Section 17 of the Act before the learned Arbitrator seeking for appointment of a Receiver to lock and seal the warehouse of the appellants where the appellants had stored the bio-diesel products and finished goods. The learned Arbitrator on considering the application, appointed a Receiver and directed lock and seal of the schedule property. Aggrieved by this order, the present appeal has been filed before



this Court.

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4. When the matter came up for hearing on 27.06.2024, this Court passed the following order:

Notice to respondents, returnable by 12.07.2024. Private notice is also permitted.

2. The main ground that was raised by the learned counsel for the appellant was that the appellant did not even receive a notice under Section 21 of the Arbitration and Conciliation Act, 1996 and that the interim order passed by the Arbitrator speaks about a godown/warehouse where the bio-diesel products/finished materials are preserved and whereas, what has now been locked and sealed is a Diagnostic Center. The interim order has been passed by the Arbitrator in a hasty manner and hence, there shall be an order of interim stay till 12.07.2024. In the meantime, the Diagnostic Center shall be de-sealed.

3. Post this case on 12.07.2024

5. It was brought to the notice of this Court that during the pendency of this appeal, the interim direction issued by this Court was also complied with and the lock and seal that was put up in the diagnostic centre was removed.



6. Heard Mr.K.Prabhakaran, learned counsel appearing on behalf of the appellants and Mr.M.Ajmal Azzath, learned counsel appearing on behalf of the respondent.

7. The main ground that was urged by the learned counsel for the appellants is that the arbitration proceedings were initiated by the respondent even without issuing a notice under Section 21 of the Act. In reply to this submission, the learned counsel for the respondent submitted that the loan recall notice was issued on 19.01.2024 and in that notice, the respondent had called upon the appellants to settle the entire amount failing which, the respondent will proceed further to refer the dispute to the sole Arbitrator as per the Loan Agreement dated 30.07.2022. The learned counsel further submitted that the reference letter dated 21.02.2024 that was sent to the appellants was also returned. Therefore, it was contended that the respondent had followed the procedure and had taken steps to issue notice under Section 21 before the arbitration proceedings were initiated.

8. In the considered view of this Court, the subject matter of challenge before this Court pertains to the interim order that was passed by the Arbitrator appointing a Receiver and directing him to lock and seal the premises. The non-application of mind on the part of the Arbitrator is quite apparent, since the



avermnt in the application is that the goods are available in the warehouse and what has been sealed is a diagnostic centre. In any case, after the interim order was passed, the lock and seal has been removed.

9.This Court is inclined to interfere with the interim order passed by the learned Arbitrator dated 14.05.2024 and the same is hereby set aside.

10.The learned counsel for the appellants submitted that the appellants have been set ex-parte by the Arbitrator and the petition filed by the appellants to set aside the ex-parte order has not been entertained due to the pendency of this appeal. The learned counsel further submitted that the appellants did not have any of the documents including the Loan Agreement and all those documents have now been filed by way of typed set papers in the present appeal. The learned counsel also wanted to question the maintainability of the proceedings that have been initiated before the Arbitrator.

11.In the light of the order passed in this appeal interfering with the interim order passed by the Arbitrator, there shall be a direction to the Arbitrator to entertain the petition filed by the appellants to set aside the order setting the



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N. ANAND VENKATESH., J

ssr

appellant ex-parte. Upon such order being passed, it is left open to the appellants to contest the case on merits or if the appellants want to raise the issue of maintainability, the same can be done before the Arbitrator. The Arbitrator can deal with the same on its own merits and in accordance with law after affording opportunity to both sides.

12.In the result, this civil miscellaneous appeal stands allowed with the above directions. No Costs. Consequently, connected miscellaneous petitions are closed.

25.07.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ssr

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