



Civil Miscellaneous Appeal No.1441 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1441 of 2024

1. Raghavendra Shankar Gondi
S/o.Mr.Shankar S Gondi,
No.596, Prema Nagar, Kirwatti,
Uttar Kannada – 581 412

2. Ranjana Shankar Gondi
W/o.Mr.Shankar S Gondi
No.596, Prema nagar, Kirwatti,
Uttar Kannada – 581 412

... Appellants

Vs.

1. M/s.Sundaram Finance Limited
No.21, Patullos Road,
Chennai 600 002
2. State Bank of India,
Karwar Hubballi Road,
Yellapur Distrit, Uttara Kannada,
Karnataka – 581 412
3. Canara Bank,
Gram Panchayat Building,
Main Road, Kirwarri Town,
Karnataka – 581 412

... Respondents

Civil Miscellaneous Appeal filed under Section 37(2)(b) of the Arbitration and Conciliation Act 1996 to set-aside the interim passed in interim Application No.1 of 2023 in Arbitration case



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No.KSG/SF/852/2022 on the file of the Sole Arbitrator
Mr.K.S.Gowthaman.

For Appellants : M/s.Alice Chitra.Y

For Respondents : Mr.M.Arunachalam for 1st respondent

JUDGMENT

The appellants are aggrieved by the interim order passed by the Arbitration Tribunal in I.A.No.1 of 2023 dated 29.05.2024 and hence, the present appeal has been filed under Section 37(2) (b) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as the “Act”*).

2. Heard M/s.Alice Chitra.Y, learned counsel for appellant and Mr.M.Arunachalam, learned counsel for 1st respondent.

3. The 1st respondent, who is the claimant has initiated arbitration proceedings for recovery of money from the appellants. The case of the claimant is that the appellants have availed loan facilities



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under an agreement dated 30.11.2018. After receiving the loan amount, the payments were not made regularly as per the terms of the agreement. The 2nd appellant stood as a guarantor for the said loan. Since default was committed, notices were exchanged and ultimately, the dispute was initiated before the Arbitrator. Pending the adjudication, an interim application was filed for issuing prohibitory orders restraining the Garnishee from making any payment to the appellants to the extent of amount that is repayable by the appellants to the 1st respondent.

4. The arbitrator taking into consideration the material placed before the Tribunal passed an interim order directing the bank not to disburse any amount up to a limit of 27,27,739.73/-, to the 1st appellant or to any one claiming under him and to remit the amount to the claimant directly and further restraining the claimant from withdrawing any amount up to a limit of 27,27,739.73/-.

5. The appellants have filed this appeal mainly on the ground that the interim order that has been passed by the learned Arbitrator virtually amounts to passing the decree in favour of the 1st respondent and



permitting the 1st respondent to take away the entire amount that is available in the credit of the bank account of the 1st appellant.

6. In the considered view of this Court, the interim order that is passed under Section 17 of the Act is more in the nature of an interim measure to ensure that the claimant is not left high and dry after an award is passed in their favour and that some security is available to enable the claimant to ultimately see the colour of the coin. However, this does not mean that the interim measure will virtually tantamount to granting the final relief to the claimant. That goes beyond the object of Section 17 of the Act.

7. The apprehension of the 1st respondent / claimant is that if the amount that lies in the bank is permitted to be operated by the appellants, they may take away the entire amount and the claimant will not have any security to ultimately recover the amount from the appellants. In such a scenario, the interim measure ought to have been to restrain the appellants from withdrawing the amount until some security is given atleast for the admitted liability. However, the arbitrator has not



only restrained the bank from disbursing the amount to the 1st appellant but also has directed the bank to remit the amount to the 1st respondent / claimant. Such interim order virtually takes away the right of defence for the appellants and it also tantamount to passing a final order without even affording an opportunity to the appellants.

8. In the light of the above discussion, this Court is inclined to modify the interim order passed by the Arbitrator in I.A.No.1 of 2023 dated 29.05.2024. Accordingly, there shall be a direction to the Garnishee namely State Bank of India Karwar Hubballi Road, Yellapur District, Uttara Kannada, Karnataka – 581 359, the SB Account No.30420838483 and Canara Bank, Gram Panchayat Building, Main Road, Kirwatti Town, Karnataka SB Account No.0340140000077 and 03402200007837, not to disburse any amount up to a limit of Rs.27,27,739.73 to the 1st appellant or to any one claiming under him. The garnishee shall also not remit the amount to the 1st respondent / claimant till final adjudication happens before the Arbitrator. It is also left open to the appellants to file an application before the Arbitrator seeking for lifting the garnishee order by raising all the grounds. On such filing of application, the 1st respondent /



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claimant shall be provided an opportunity and an order shall be passed by the learned Arbitrator, within a period of four weeks from the date of filing of the application by the appellants to lift the garnishee order.

9. The above order will sufficiently balance the rights of both the parties. This Court intentionally did not go into the merits of the case since it may have a bearing in the proceedings that are pending before the learned Arbitrator.

10. This Civil Miscellaneous appeal is disposed of in the above terms. No costs.

27.06.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

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Note : Issue order copy on 01.07.2024.

N.ANAND VENKATESH.,J



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To,
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Sole Arbitrator,
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