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C.R.P.(PD).No.3224 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2024

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THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.3224 of 2024
and C.M.P.No.17233 of 2024

1.M.Vijay Kumar
2.M.Gomathi
3.M.Divya

... Petitioners

(Since the 2nd respondent had died, his legal heirs
have been added as parties in this EP)

-Versus-

M/s Sundaram Finance Limited,
Rep by its Deputy Manager (Legal)
Mr.A.Murali

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order made in E.P.No.143 of 2022 in Arbitration Case No.SSP/SF/369 of 2018 (C.N.R.No.TNTR38-000992-2022) on the file of the Subordinate Court, Thiruvottiyur, dated 10.04.2024.

For the Petitioners : Ms.C.Sandhya

ORDER

This Civil Revision Petition arises at the instance of the Judgment Debtors. The predecessor in title of the Judgment Debtors viz., one



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Mr.M.Murugan had stood as the guarantor for a loan transaction between the decree holder and one M.Vijaya Kumar. Since there was default in payments, the decree holder left with no other option than to invoke Section 22 (a) of the loan agreement, drew the matter to arbitration. During the course of arbitration, notice was served on the Judgment Debtors/respondents.

2. They did not enter appearance and therefore, the Arbitrator was constrained to proceed in their absence. The Arbitrator finally passed an award on 17.01.2019. Being a decree in terms of the Arbitration and Conciliation Act (hereinafter referred to as 'the Act'), the Decree Holder filed E.P.No.143 of 2022 for attachment and sale of the properties, which belongs to the deceased guarantor. In the said Execution Petition, his legal representatives, viz., wife, son and daughter were arrayed as respondents. On service of notice, the respondents filed a counter pleading that the decree is incapable of execution as the award is contrary to the amended Section 12 (5) of the Act. They would also plead that the Execution Petition had been filed against a dead person and hence the said petition is incapable of execution. The Trial Judge would have none of this, ordered attachment of the properties, against which the present Civil Revision Petition.



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3. Heard, Ms.Sandhya for the Civil Revision Petitioners.

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4. Ms.Sandhya, would urge multiple points before me. The first point, she would state is that, in terms of Section 12 (5) of the Act, the Arbitrator had not disclosed his lack of interest in the proceedings or as to how many proceedings he is handling with the claimants in terms of the 5th and 6th schedule of the Arbitration and Conciliation act. Her second point would be that the issue of non-arbitrability can be gone into at the time of execution as decided by the three Judges Bench of the Supreme Court in ***Vidya Drolia and Ors. Vs. Durga Trading Corporation*** ((2021) 2 SCC 1). She would then submit that the property cannot be attached by virtue of the fact, the said property is already under mortgage with M/s Sundaram Finance, a sister concern of the respondent and finally, she would plead that in terms of Section 2 (1) (e) of the Act, the Court for the purpose of the Act, is the principal Court of original jurisdiction or the High Court. She would plead that the Sub Court is not the Principal Court of original jurisdiction and hence, does not have jurisdiction to entertain the execution petition. On these points she would plead that the revision be admitted and an interim order be granted.

5. I have carefully considered the arguments of Ms.Sandhya. In so far as



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the first point is concerned, the Arbitration and Conciliation Act was amended by Act 33 of 2019, incorporating certain conditions and the manner in which the Arbitrator should act. There are two stages in which the objections can be raised by the respondent. One before the Arbitrator himself by stating that he has not given the affidavit or disclosure as to the necessary terms of Section 12 or by a petition under Section 34 of the Act.

6. It is accepted by Ms.Sandhya, that the objections were not taken by the Judgment Debtor neither before the Arbitrator, nor they filed an application under Section 34 of the Act, before the Principal District Court, Tiruvallur. The executing Court cannot go behind the award, which is a decree. Whether the arbitration proceedings were carried in accordance with the Act or not can be agitated before the appropriate forum at the appropriate time. Having left that opportunity go by it is not open to the Judgment Debtor to raise the plea before the executing court.

7. With respect to the second point reliance has been placed on ***Vidya Drolia's case*** (cited supra), the Supreme Court dealt with the issue as regards the non availability of an arbitration clause in a lease agreement and whether this issue can be gone into at a later stage. The Court made it very clear that the



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issue of non arbitrability or the dispute itself incapable of being referred to an arbitration can be gone into before the (1) Arbitrator (2) a Court under Section 34 of the Act or (3) at the time of enforceability.

8. I fail to understand, how the said Judgment can come to the rescue of Ms.Sindhya, for the simple reason, even at the time of entering into the loan transaction between Mr.Murugan and Sundaram Finance, a specific clause has been incorporated in the agreement under Clause 22 (a). When a clause for arbitration exists, the scope of submissions of Ms.Sandhya that the dispute is non-arbitrable does not arise for consideration.

9. The third submission of Ms.Sandhya, is that since there is a loan taken from Sundaram Finance, an execution petition at the instance of Sundaram Finance is not maintainable, is a very interesting issue. The fact that there is already a loan existing over the property shows that the subsequent attachment will only be subject to the said loan. In case, the property is brought for sale and sold, the purchaser will take the property, subject to the mortgage of loan pre-existing over the property. That does not mean, the decree holder cannot execute the validly obtained award.



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10. The last submission that Section 2 (1) (e) is a red herring argument.

Section 2 (1)(e) applies in situation where an application is filed either under Section 9 or under Section 34 of the Act. It does not deal with execution proceedings, because, based on the award, which is a decree, the provisions of Civil Procedure Code applies. In terms of the provisions of CPC, the Court in which the execution petition is filed would have to have a pecuniary jurisdiction to deal with the issue. In the facts of the present case, as the property is within the jurisdiction of the Subordinate Court, Tiruvottiyur, that Court has been preferred by the Decree holder for the purpose of moving an application for attachment and consequential sale. Since all these points fail, I cannot come to the rescue of Ms.Sandhya.

11. Accordingly, this Civil Revision Petition stands dismissed. No costs.

Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

Speaking / Non Speaking Order



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To
The Subordinate Judge, Thiruvottiyur.



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V.LAKSHMINARAYANAN, J.,

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