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Civil Miscellaneous Appeal No.1232 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1232 of 2024

M.Kanagarajan

... Appellant

Vs.

Sundaram Finance Limited
Rep. By its Manager (legal)
21, Pattullos Road,
Chennai 600 002

... Respondent

Civil Miscellaneous Appeal filed under Section 37 of the Arbitration and Conciliation Act 1996, to set aside the interim order dated 14.06.2023 passed in interim Application No.1/2023 on the file of the Sole Arbitrator Mr.M.V.Elakkumanan, Advocate, Arbitration claim petition No.MBE/MCCI/407/2023.

For Appellant : Mr.T.V.Suresh Kumar

For Respondent : Mr.M.Arunachalam



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JUDGMENT

The appellant has questioned the interim protection order passed by the sole Arbitrator dated 14.06.2023, pending adjudication of the main dispute between the parties.

2. Heard Mr.T.V.Suresh Kumar, learned counsel for the appellant and Mr.M.Arunachalam, learned counsel for respondent.

3. The respondent had initiated arbitration proceedings before the sole arbitrator for recovery of monies due and payable by the appellant. Pending the proceedings, a petition came to be filed under Section 17 of the Arbitration and Conciliation Act, 1996 (For brevity herein after referred to as the Act). In this petition, the respondent sought for seizure and delivery of the hypothecated assets and to take custody of the same with the help of Advocate commissioner and if necessary with police aid and to sell the hypothecated assets to adjust the sale proceeds towards the amount due and payable by the appellant.

4. The sole Arbitrator on considering the facts and



circumstances of the case and after taking note of Article 14.2 of the agreement passed an interim order on 14.06.2023 by appointing an Advocate Commissioner to take custody of the hypothecated assets and to hand over the possession of the same to the respondent.

5. The learned counsel for the appellant submitted that the sole arbitrator had acted in a hasty manner even without issuing notice to the appellant and the interim order has caused grave prejudice to the appellant, since the entire activity will come to a stand still if the machineries are taken away and entrusted to the respondent. It was further submitted that the sole arbitrator has virtually granted the final relief to the respondent whereby the respondent also took efforts to bring the machineries for sale even before the dispute was adjudicated by the sole arbitrator.

6. The learned counsel for respondent submitted that the right of the respondent to repossess the hypothecated assets is traceable to the agreement entered into by the appellant and whenever there is a failure on the part of the appellant in repaying back the amount, the respondent had



the right to take possession of the assets. It was contended that this right that was given under the agreement was enforced by way of an interim measure since the appellant was attempting to take away these assets and thereby, deprive the respondent. The learned counsel submitted that the Advocate Commissioner was able to take symbolic possession of the assets since they are embedded in the earth. That apart, the respondent did not attempt to sell the assets since the adjudication is are pending before the sole arbitrator.

7. In the considered view of this Court, the arbitration tribunal has been vested with sufficient powers under Section 17 of the Act to pass interim orders and to grant interim protection considering the facts of each case. The sole arbitrator had taken into consideration Article 14.2 of the agreement which specifically enabled the respondent to take possession of the assets as and when there is default on the part of the appellant. This petition was filed by the respondent only to secure the assets that were hypothecated failing which the respondent apprehended that the appellant may take away the assets. The Advocate Commissioner has already gone to the property and has noted down the assets that are



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available and symbolic possession was taken since the machineries are embedded to earth.

8. The Machineries / assets that have been hypothecated to the respondent cannot be easily carried away and already symbolic possession has been taken. Therefore, there shall be a direction to the appellant not to encumber / alienate or remove any parts from the machineries /assets that have been hypothecated to the respondent. That apart, officials of the respondent company shall also be permitted to have access to the factory premises of the appellant to ensure that the assets are kept safely in the premises. This interim protection will sufficiently take care of the interest of the respondent. The learned counsel for the appellant also undertook that the appellant will comply with the direction issued by this Court.

9. There is no question of bringing the assets for sale at this stage since adjudication is pending before the arbitrator and it is now at the stage of trial.



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10. The above direction will sufficiently take care of the interest of both the parties and this Civil miscellaneous appeal is disposed of in the above terms. No costs.

20.06.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To,
Sole Arbitrator Mr.M.V.Elakkumanan, Advocate, Arbitration

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