BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.03.2024

Delivered on : 04.06.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)Nos.387, 388, 389 and 390 of 2019

Sundaram Finance Ltd.,
Rep.by its Manager (Legal),
21, Patullos road,
Chennai – 600 002. : Revision Petitioner/Petitioner/
Decree holder
(in all revisions)

Vs.

1.D.Anil Kumar : Respondent/Respondent/
Judgment Debtor.
(in all revisions)

2.Lalitha (gnanamma) : Respondent/Respondent/
Judgment Debtor
(in C.R.P.(MD)Nos.387 and 388/2019)

2.R.Gopakumar : Respondent/Respondent/
Judgment Debtor
(in C.R.P.(MD)Nos.389 and 390/2019)

COMMON PRAYER: These Civil Revision Petitions filed under Section 115 of C.P.C., to set aside the fair and decreetal order, dated 08.11.2018 passed in E.P.Nos.86, 87, 88 and 89 of 2018 on the file of the learned Principal District Judge, Kanyakumari District at Nagercoil.

(in all revisions)

For Petitioner : Mr.S.Pon Senthil Kumaran,

For Respondents : Mrs.R.Vijayalakshmi,
for Mr.M.Francis Xavier, for R1.

: No Appearance, for R2.

COMMON ORDER

These Civil Revision Petitions are directed against the separate orders passed in E.P.Nos. 86 to 89 of 2018, dated 08.11.2018 on the file of the learned Principal District Judge, Kanyakumari District at Nagercoil.

2. Since the issues involved in all the revisions are one and the same, this Court deems it fit to pass common order.

3. The respondents in all the revision petitions have borrowed loans to purchase vehicles and entered into loan transactions with the petitioner finance company. The respondents-borrowers have executed hypothecation agreements as well as arbitration agreements to refer the matters for arbitration.

4. It is not in dispute that the borrowers have committed default and hence, their vehicles were seized and sold by the finance company and amounts were appropriated towards their loan amount and for remaining amount, arbitrations were held at Chennai and since the respondents/borrowers remained ex-parte, arbitration awards came to be passed on 19.12.2014. The petitioner finance company, being the decree holder has then laid the execution petitions in E.P.Nos.86 to 89 of 2018 for executing the awards, dated 19.12.2014 before the learned Principal District Judge, Kanyakumari District. Even in the impugned orders, the learned District Judge has observed that the respondents/judgment debtors did not raise any objections seriously. But, the learned District Judge by holding that the awards obtained by the decree holder are nullity, as the same are against public policy and the vehicles were seized without following the judicial guidelines of the High Court in the case of ***Cholamandalam Dbs Finance Ltd vs Sudheesh Kumar*** reported in ***2010(1) CTC 481***, dismissed the execution petitions. Aggrieved by the orders of dismissal, the present revisions came to be filed.

5. At the outset, it is pertinent to note that the judgment debtors have not challenged the awards under Section 34 of Arbitration and Conciliation Act and as such, the awards have attained finality. It is also pertinent to note that the judgment debtors have not raised any specific objections in the execution proceedings. As already pointed out, the learned District Judge himself has observed that they did not raise any objections seriously. But, as rightly contended by the learned counsel for the revision petitioners, the learned District Judge by himself has taken some objections and by referring some decisions, has come to the decision that the awards are nullity.

6. According to the learned District Judge, the petitioner and the respondents are residing at Madurai and Kanyakumari respectively; that the cause of action had taken place at Kanyakumari, but the place of arbitration fixed at Chennai, is very very far away place to the judgment debtors, who are poor individuals and small borrowers and by referring to the judgment of the Hon'ble Apex Court in the case of ***Rattan Chand Hira Chand Vs. Askar Nawaz Jung (dead) by LRs***., reported in ***1991 SCC (3) 67*** and by observing that the contract in choosing a place which is more than 500 km away is against public policy and the Arbitrator did not give equal opportunity to the judgment debtors and the judgment debtors were

sufficiently prevented from attending the arbitration proceedings, has come to the decision that the awards are against public policy and as such, are nullity.

7. The decision of the Hon'ble Supreme Court in ***Rattan Chand Hira Chand's*** case above referred has absolutely no connection whatever with the case on hand and in that case, some contracts were held to be against public policy. But in the case on hand, the borrowers and the finance company have entered into an arbitration agreement fixing arbitration place at Chennai and as such, by no stretch of imagination, can be considered as against public policy.

8. The judgment debtors have nowhere whispered a stand that they were not able to travel to Chennai, as the same is far away from their place of residence/business and that the arbitrator has not given any opportunity to defend the proceedings.

9. As rightly contended by the learned counsel for the petitioner, the learned District Judge has himself quoted a decision of the Hon'ble Supreme Court in the case of ***Indus Mobile Distribution Private Limited***

Vs. Datawind Innovations Private Limited and others reported in ***2017 (4) CTC 213***, wherein it was held that the arbitral seat can be fixed even in a place where no cause of action had taken place and any place can be chosen by parties to arbitral agreement as arbitral seat. But the learned District Judge has proceeded to show that in those cases parties involved are Multi Crore Companies and the same cannot be considered to the parties who are not equally placed.

10. As rightly contended by the learned counsel for the revision petitioner, the borrowers in the present case cannot be considered as poor individuals or small borrowers, as projected by the learned District Judge, but they have borrowed loan of above Rs.10 lakhs for the purchase of vehicles. Moreover, the learned District Judge has observed that in a loan transaction, the finance company normally insist the applicants to sign many forms and documents for the security of the loan amount and nobody sign the document with voluntariness; that even if an arbitral agreement is signed by the judgment debtor, it is not a voluntary act but out of necessity and that the finance company by choosing a far away place makes the attendance of the judgment debtor as impossible.

11. As rightly contended by the learned counsel for the revision petitioner, in the absence of any allegations made by the borrowers/judgment debtors, the above observations are totally unwarranted and beyond the scope of the enquiry.

12. The next reason assigned is that the decree holder has seized the vehicles without following the judicial guidelines. But, it is pertinent to note that such seizure and sale of the vehicles were not at all challenged by the borrowers/judgment debtors and it is not their case that they have challenged the seizure and sale of their vehicles before the appropriate forum and more importantly the above aspects are beyond the scope of arbitration proceedings, as the petitioner company has initiated the arbitration proceedings for the recovery of the remaining amount, after apportioning the sale amount towards the amount due to them.

13. The learned District Judge has referred some decisions of Hon'ble Supreme Court that the executing Court has very limited jurisdiction and the executing Court cannot go behind the decree. The learned District Judge by referring to the decisions of the Hon'ble Supreme Court in the case of ***ONGC Ltd., Vs. Saw Pipes Ltd.***, reported in ***(2003) 5 SCC 705*** and ***Punjab State Civil Supplies Corporation Ltd., and another***

Vs. M/s.Atwal Rice and General Mills, rep.by its Partners reported in ***2017 4 L.W. 658***, has proceeded to raise a question whether the executing Court is empowered to ascertain whether the award is a valid one or not ?, even though it was not raised by the judgment debtors.

14. It is very fundamental that the executing Court cannot go beyond the decree and the Court has to execute the decree as it is. The Hon'ble Supreme Court in the case of ***Bhawarlal Bhandari Vs. Universal Heavy Mechanical Lifting Enterprises*** reported in ***AIR 1999 SCC 246***, has held that the award decree, on the face of it, was not shown to be passed without jurisdiction and that even if the decree was passed beyond the period of limitation, it would be an error of law or a wrong decision which can be corrected in appellate proceedings and not by the executing Court and that since the respondent/judgment debtor has not filed any objections, award has become final and that therefore, plea by the judgment debtor in execution proceedings to ignore the decree as being nullity is not tenable.

15. The learned District Judge has referred the judgment of the Hon'ble Supreme Court in the case of ***Vasudev Dhanjibhai Vs. Rajabhai***

Abdul Rehman reported in ***1970 (1) SCC 670***, wherein it was held as follows :

> *"A Court executing a decree cannot go behind the decree between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties. When a decree which is a nullity, for instance, where it is passed without bringing the legal representatives on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a Court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record : where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction. In Jnanendra Mohan Bhaduri v. Rabindra Nath Chakravarti (AIR 1933 PC 61) the Judicial Committee held that where a decree was passed upon an award made under the provisions of the*

Indian Arbitration Act, 1899, an objection in the course of the execution proceeding that the decree was made without jurisdiction, since under the Indian Arbitration Act, 1899, there is no provision for making a decree upon an award, was competent. That was a case in which the decree was on the face of the record without jurisdiction."

16. In the case of ***ONGC Limited Vs. M/s. Modern Constructions and Company*** reported in ***2014 (1) SCC 648***, the Hon'ble Supreme Court has held that the Executing Court cannot go behind the decree and in absence of any challenge to the decree, no objection can be raised in execution. The Hon'ble Supreme Court in the case of ***Shivshankar Gurgar Vs. Dilip*** reported in ***2014 (2) SCC 465***, has observed that the executing Court has no jurisdiction to modify a decree and the relevant portions are extracted hereunder :

"13.2 In our opinion, the order dated 23.11.2005 virtually amounts to the modification of the decree and is without jurisdiction on the part of the executing court, therefore, a nullity. It is a settled principle of law that the executing court cannot go beyond the decree. It has no jurisdiction to modify a decree. It must execute the decree as it is. This Court in Deepa Bhargava v. Mahesh Bhargava 13 held thus:-

"9. There is no doubt or dispute as regards interpretation or application of the said consent terms. It is also not in dispute that the respondent judgment-debtors did not act in terms thereof. An executing court, it is well known, cannot go behind the decree. It has no jurisdiction to modify a decree. It must execute the decree as it is...."

17. Considering the entire facts and circumstances of the case and the legal position above referred, this Court has no hesitation to hold that the executing Court has travelled beyond the awards as the awards have not been challenged by the judgment debtors by invoking Section 34 of Arbitration and Conciliation Act and the awards passed by the arbitrators have become final by virtue of provision contained in Section 35 of Arbitration and Conciliation Act and in the absence of challenge, the only Course available to the Executing Court is to execute the awards as they are, in accordance with law. But the executing Court in the present case, has exceeded its jurisdiction by declaring that the awards are nullity and by rejecting the execution petitions. Consequently, this Court concludes that the impugned orders, dismissing the execution petitions are liable to

be set aside and the execution petitions are ordered to be restored to the file of the Principal District Court, Kanyakumari at Nagercoil for execution of awards in accordance with law.

18. In the result, the Civil Revision Petitions are allowed. No costs.

04.06.2024

NCC :yes/No
Index :yes/No
Internet :yes/No
das

To

1.The Principal District Judge,
Kanyakumari District at Nagercoil.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

K.MURALI SHANKAR,J.

DAS

Pre-delivery order made in
C.R.P.(MD)Nos.387, 388, 389 and 390 of 2019

Dated : 04.06.2024