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C.R.P.(NPD)NO.4096 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 12 / 12 / 2025

ORDER DELIVERED ON: 16 / 12 / 2025

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.R.P.(NPD)NO.4096 OF 2022

AND

C.M.P.NO.21269 OF 2022

E.Latha

Old No.1403, New No.44,
15th Main Road, Anna Nagar West,
Chennai – 600 040.

... Petitioner/2nd Respondent /
2nd Judgment Debtor

Vs.

1.M/s.Kotak Mahindra Bank Ltd.,
5th Floor, Samson Towers,
4021, Pantheon Road,
Egmore, Chennai – 600 008
Represented by its
Authorized Signatory.

...1st Respondent/Petitioner/
Decree Holder

2.Prime International,
7-2, Leo Muthu Street,
Kalaimagal Nagar,
Ekkattuthangal,
Chennai – 600 032.

...2nd Respondent/1st Respondent/
1st Judgment Debtor

PRAYER : Civil Revision Petition filed under Section 115 of the Code



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of Civil Procedure, 1908, praying to set aside the Fair and Decreetal Order dated October 11, 2022 passed in E.P.No.2698 of 2021 in Arb.No.KB B EJ68/2020 by the learned XXVIII Assistant City Civil Judge, Chennai and allow the Civil Revision Petition.

For Petitioner : Mr.S.Parthasarathy
For Respondent-1 : Mr.M.Arunachalam
For Respondent-2 : Served – No appearance

ORDER

Aggrieved by the Order of attachment of movable properties passed in E.P. No.2698 of 2021 in Arbitration Case No.KB B EJ68/2020 on the file of 'the XXVIII Assistant City Civil Court, Chennai' ['Executing Court' for short], the second respondent therein has filed this Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908.

2. The first respondent herein - Kotak Mahindra Bank is the execution petitioner in E.P. No.2698 of 2021, while the revision petitioner herein - Latha is the second respondent therein and the second respondent herein - Prime International is the first respondent therein. For



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the sake of clarity and convenience, the parties will hereinafter be referred to as per their array in E.P. No.2698 of 2021.

3. The Arbitration Proceedings were initiated by the execution petitioner – Kotak Mahindra Bank against the first respondent - Prime International and the second respondent - Latha stating that the first respondent is the borrower and the second respondent is the guarantor. An Award was passed on December 31, 2020. Based on the Award, Kotak Mahindra Bank filed the execution petition.

4. Though respondents 1 and 2 were arrayed in the execution petition, the relief was sought for only against the second respondent. The execution petitioner sought to attach only the movable properties lying in Old No.1403, New No.44, 15th Main Road, Anna Nagar West, Chennai - 600 040, under Order XXI Rule 43 and 64 of the Code of Civil Procedure, 1908.

5. In the execution petition, the second respondent filed a counter stating that she married one R.Pazhanimurugan in February 2010. He started an export business in the name and the style of 'Prime International'. He obtained signatures in some forms while she was living with him. In 2018, she separated herself from him owing to some



matrimonial disputes and began residing with her father at Anna Nagar in the aforesaid house bearing Old Door No.1403. Further, she did not receive any notice with regard to the arbitration proceedings. Without initiating any action for recovery against the first respondent - Prime International, the execution petitioner is moving attachment of articles lying at second respondent's father's house which do not belong to the second respondent and the same is against the law. Accordingly, she prayed to dismiss the execution petition.

6. The Executing Court upon hearing either side concluded that at the time of entering into arbitration agreement the second respondent was living with her husband, but she did not give her husband's address as her address, instead she gave her father's address. Notice for the second respondent with regard to the arbitration proceedings were served to the second respondent's father's address. No *prima facie* evidence to show the alleged strained relationship between the second respondent and her husband. No document was adduced to show that the movable properties sought to be attached belongs to her father. Upon arriving at these findings, the Executing Court ordered for attachment of the movable properties described in the execution petition.

7. Reiterating the averments made in the Counter Statement filed



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by the second respondent, Mr.S.Parthasarathy, learned Counsel for the revision petitioner / second respondent - Latha submits that the second respondent as of now is residing with her father and the properties sought to be attached belong to her father and her sister. The execution petitioner did not produce any documents to show that the properties belong to the second respondent. Further, in this Civil Revision Petition, the second respondent has furnished bills to show that the refrigerator, the dishwashing machine and the washing machine in her father's house bearing Old Door No.1403 were purchased by her sister and father respectively. Hence, the Order of attachment passed by the Executing Court is not sustainable on facts as well as on law. Accordingly, learned Counsel prays to allow the Civil Revision Petition and set aside the Order passed by the Executing Court.

8. Per Contra, Mr.M.Arunachalam, learned Counsel appearing for the first respondent herein / execution petitioner submits that the second respondent has given her father's address as her address at the time of signing as guarantor. That *prima facie* proves that the properties sought to be attached belongs to the second respondent. The second respondent did not produce any evidence to show that the articles does not belong to her but belong to her father. As regards the bills furnished now before this



Court, the revision court cannot take into the same as per law. The second respondent ought to have produced the alleged bills before the Executing Court, but she failed to do so. The alleged bills have to be marked and the execution petitioner has to be given an opportunity to cross-examine in respect of the same which could only be done in an enquiry before the Executing Court. Accordingly, he prays to dismiss the Civil Revision Petition.

9. This Court has considered both sides' submissions. Perused the material available on record.

10. The second respondent's husband was running a business in the name and style of 'Prime International' (first respondent herein). The first respondent borrowed loan from the execution petitioner - Bank and the second respondent's signature is found in the place of guarantor for the said loan, however the second respondent denies any knowledge of the same. The execution petitioner initiated arbitration proceedings which culminated into the Arbitration Award dated December 31, 2020. It is admitted that the movable properties sought to be attached are lying in the second respondent's father's house. Hence, the presumption should be that those properties belong to the owner of the house / second respondent's father. The burden to prove that the said properties belong to



the second respondent is upon the execution petitioner. Merely because the second respondent is residing at her father's house, or merely because she has mentioned her address as that of her father's house while allegedly signing as a guarantor, it cannot be said that all the items in the house belongs to the second respondent. No such presumption arises. Unless otherwise established that the said properties do belong to the second respondent, the execution petitioner cannot attach them. The Executing Court without considering the facts and circumstances of this case in the right perspective, erroneously placed the burden of proof on the second respondent and ordered for attachment. The same is not sustainable in law and liable to be set aside.

11. As regards the bills furnished before this Court, as rightly contended by the learned Counsel for the first respondent / execution petitioner, they cannot be taken into consideration by this Court *qua* revision court. Doing so would deprive the execution petitioner of the valuable opportunity to cross-examine while marking the bills.

12. Before parting with this Order, this Court is well aware of the fact that an executing court cannot go behind the Decree or Award as the case may be and that this is not a petition under Section 34 of the Arbitration And Conciliation Act, 1996. But, this Court is compelled by



its judicial conscience to make the following observations. In this case, the copy of the Arbitral Award is annexed in the typed set of papers found in the case file. Perusal of the same reveals the fact that the first hearing of the arbitration proceedings was held on April 3, 2020, which was followed by the subsequent hearings on November 5, 2020 and December 4, 2020. Eventually, the Award was passed on December 31, 2020. It need not be mentioned that the hearing dates were mostly during peak Covid - 19 pandemic period when strict lockdowns were in place [See ***In Re: Cognizance for Extension Of Limitation*** (Suo Moto Writ Petition No.3 of 2020)]. In fact, the execution petition was also filed during the Covid 19 Pandemic period on July 19, 2021. Further, the Arbitral Award discloses nothing more than what seems to be a general narration or rather a general format. There is no specific information whatsoever. Everything is in vague terms. There is no date except the hearing dates and the date of Award. There is no information as to the date of loan application, date of borrowal, date of notice, repayments if any, the terms of the loan agreement, rate of interest, *etc.* The principal sum is no exception; the Award passed in a matter relating to loan, has no mention even that of the principal sum. There is no information as to how the proceedings were conducted *i.e.*, whether in physical, virtual or hybrid manner. Under Section 34 of the Arbitration And Conciliation Act,



1996, contravention of the fundamental policy of the Indian law is a ground for setting aside an Arbitral Award. The principles of natural justice form the core of every legal system, including our Indian legal system. Affording due opportunity to the other side to put forth their case and delivering a speaking Order are important aspects of natural justice. Hence, Arbitrators must follow principles of natural justice and act in judicial conscience [See Judgments of this Court in **Naveen G. Rolands -vs- M/s Cholanandalam DBS Finance Ltd** [Single Judge], reported in (2017) 2 LW 627 (Relevant Paragraph Nos.18 and 19) and **M.Maher Dadha -vs- Mr.S.Mohanchand Dadha** [Single Judge], reported in 2025 SCC OnLine Mad 9152 (Relevant Paragraph Nos.32 and 33). In this case, the conduct of the Arbitrator *prima facie* shows violation of the principles of natural justice and unduly favouring the execution petitioner – Kotak Mahindra Bank. Bare perusal of the Award would show that the Arbitration Proceedings were conducted in a mechanical manner without a due application of mind and without any discussion or reasons assigned for it. The Award cannot be termed as a reasoned/speaking Award. This Court finds it very disheartening to note that the arbitration proceedings does not reflect a judicial approach.

13. In the result, the Civil Revision Petition is allowed and the



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Order of attachment passed by the Executing Court is set aside. In view of the facts and circumstances of this case, there shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

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Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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The XXVIII Assistant City Civil Court,
Chennai.



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R. SAKTHIVEL, J.

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PRE-DELIVERY ORDER MADE IN

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