



CRP No. 441 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-04-2025

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THE HONOURABLE MR JUSTICE A.D.JAGADISH CHANDIRA

CRP No. 441 of 2024

Sundaram Finance Ltd.,
No.21, Patullos Road,
Chennai-600 002.
Rep. by AGM (Legal) S.Sornaraj

Petitioner(s)

Vs

1. K.Karthikeyan
S/o.Krishnaraj,
D.No.1/1213, Succuess Nagar,
Arumuthampalayam, Naranapuram,
Palladam Taluk, Thiruppur District.

2.K.Krishnaraj
S/o.Kodasamy,
D.No.1/1213, Succuess Nagar,
Arumuthampalayam, Naranapuram,
Palladam Taluk, Thiruppur District.

3.R.Palanisamy
S/o.Rangasamy,
D.No.8/439, Arulpuram,
Karaipudur, Thiruppur-641605



Respondent(s)

PRAYER Petition filed under Article 227 of the Constitution of India to partly set aside the Order dated 11.07.2023 passed in IA No.106/2023 in Arbitration No.ST/SF/018/2021 on the file of Principal District Judge, Tiruppur in so far as directing the Petitioner to file a IA for enforcement of order under sec.17 and appointing an Advocate Commissioner to accompany and assist the Bailiff.

For Petitioner(s): Mr.S.Mukunth
Senior Advocate
for Mr.S.Suresh

For Respondent(s): No appearance

ORDER

This Civil Revision Petition has been filed to partly set aside the Order dated 11.07.2023 passed in IA No.106/2023 in Arbitration No.ST/SF/018/2021 on the file of Principal District Judge, Tiruppur, in so far as directing the Petitioner to file an IA for enforcement of order under sec.17 and appointing an Advocate Commissioner to accompany and assist the Bailiff.

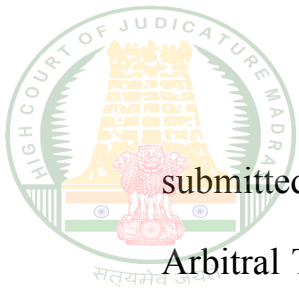
2.Brief facts of the case:

The petitioner/Finance Company represented by its authorised representative had entered into a loan cum hypothecation agreement with the respondents herein on 12.09.2018 who purchased a vehicle along with its



accessories. The total agreement value was Rs.4,50,744/-, payable in 60 monthly installments commencing from 10.10.2018 for a sum of Rs.7,654/- per month. Since the respondents were irregular in paying of installments, the vehicle was recovered from them and sold for Rs.1,85,000/- on 31.01.2020 and in respect of the balance sum of Rs.1,50,035.10, the present arbitration proceedings was initiated against the respondents. The petitioner had moved an application under section 17 of the Arbitration and Conciliation Act seeking for a direction to the respondents to furnish security to the claim amount, failing which, to pass an order of conditional attachment of property, and the Arbitrator by order dated 20.11.2021 in I.A.No.47 of 2021 in ARB.No.ST/SF/018/2021 passed an order of attachment of the property of the respondents, since the respondents failed to furnish security of Rs.1,50,035.10 and the attachment order was forwarded to the District Court for notification. However, the District Court had insisted the petitioner file an application under Section 136 & 151 of CPC and the same was filed in I.A.No.106/2023, wherein the trial Court allowed the application, pursuant to which an Advocate Commissioner was appointed, and he was directed to submit a report of attachment to the Court. Challenging the insistence of filing an application under Section 136 & 151 CPC and the appointment of an Advocate Commissioner, the present revision petition has been filed by the petitioner/Finance Company.

3.Mr.S.Mukunth, learned Senior counsel appearing for the petitioner



submitted that as per Section 17 of Arbitration and Conciliation Act, the Arbitral Tribunal shall have the same powers for making orders as a Court for the purpose of and in relation to any proceedings before it and in such circumstances, an order passed under Section 17(2) of the Arbitration and Conciliation Act by the Arbitraor is to be construed as the order of the Court for all purposes and no judicial order is warranted from the District Court for implementing such interim orders passed by the Arbitral Tribunal under Section 17 of Act, and that the Court is only discharging the ministerial responsibility and it cannot sit as an Appellate Forum over an order passed by the Arbitral Tribunal. In such circumstances, the District Court exceeds its jurisdiction in directing the petitioner to file an application under Section 136 & 151 of CPC and also appointing an Advocate Commissioner to submit his report of attachment to the Court. He would further emphasise that the interim order issued by the Arbitral Tribunal shall be deemed to be an order of the Court for all purposes, and it shall be enforceable under CPC in the same manner as if it were an order of the Court. He would seek to set aside the impugned order insofar as it is compelling the petitioner to file a separate application for attachment and appointment of an Advocate Commissioner. The learned senior counsel would further submit that the similarly placed persons with that of the petitioner are also facing problems and on account of that, are facing delays in notification of the orders of the attachment.



4. Heard the learned counsel for the Petitioner and perused the available records.

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5. This Court finds that the issue is only between the petitioner and the Court, hence, notice to the respondent is dispensed with.

6. A perusal of the impugned order shows that the learned District Judge at paragraph 7 has held that the Arbitrator has got ample powers to pass an interim order under Section 17 of the Arbitration and Conciliation Act, 1996 and the orders passed by the Arbitrator shall be deemed to be an order of the Court for all purposes and shall be enforceable u/s.136 of the CPC. However, in the previous paragraph i.e., Para No.6, it was held that an application under Section 17 of the Arbitration and Conciliation Act is to be moved in order to enforce the interim order passed by the Arbitrator. In this regard, it is apposite to refer to the judgment of the Madurai Bench of this Court in the case of *Sundaram Finance Ltd., Vs. P.Sakthivel* reported in 2018 (5) CTC 801, the relevant portion is extracted as under:

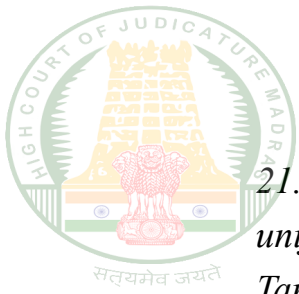
“19. Since the Arbitral Tribunal cannot in any event enforce the interim order passed by it on its own, it has to necessarily knock the doors of the District Court. In this case, the venue of the Arbitral Tribunal is at Chennai. Even if the property attached is located in Chennai, the Arbitral tribunal could not have enforced the order of attachment on its own. It will have to seek the assistance of the Principal District and Sessions Judge, Chennai.



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Therefore, whenever the Arbitral Tribunal passes an interim order under Section 17 of the Act, it has to follow the procedure laid down under Section 136 of CPC. Whenever the District Judge receives communication from another Court for enforcement in terms of Section 136 of CPC, he will immediately forward the order to the Nazir section for implementation. The recipient court will have not have any difficulty because the process fee would have been remitted in the court which passed the order. But, in the case of an Arbitral Tribunal, there is no scope for receiving the process fee. It will have to be necessarily remitted only in the court by the party in whose favour the interim order has been passed. In the very nature of things, this remittance will have to be made in the Nazir section of the District Court. These are days when we do come across acts of forgery and fraud committed even in respect of orders of court.

20. Therefore, it is directed that the process fee in such cases should be remitted by a counsel who is practising before the District Court to which the order of the Arbitral Tribunal is communicated. Of course, the counsel who is remitting the process fee in the Nazir section will have to hold Vakalat and he will have to authenticate the genuineness of the interim order transmitted by the Arbitral Tribunal. But then, there is no necessity to take out an application in the form of an I.A. before the court. What is to be performed is a pure ministerial act. No judicial order is warranted from the District Court for implementing the interim order passed by the Arbitral Tribunal under Section 17 of the Act. The District Court is only discharging a ministerial responsibility and cannot sit in appeal over the order passed by the Arbitral Tribunal. Since such an interim order is appealable in view of Section 37(2)(b) of the Act, there is a built-in safeguard also.



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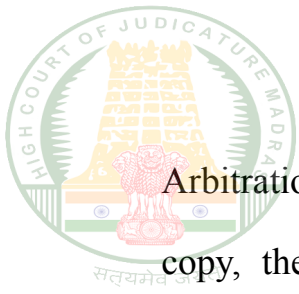
21. *The learned Senior Counsel expresses his grievance that an uniform approach is not adopted by all the District Courts in Tamil Nadu. While some courts proceed to implement the interim order as contemplated under Section 17(2) of the Act r/w Section 136 of CPC, many do not. He passed on a copy of a formal application in the form of an I.A. filed by a counsel before the District Court in Madurai in one such case.*

22. *This Court, therefore, reminds all the District Courts that an interim order issued by the Arbitral Tribunal shall be deemed to be an order of the court. This is for all purposes. It shall be enforceable under CPC in the same manner as if it were an order of the Court. The expression “for all purposes” is significant. This Court calls upon all the District Courts to take note of the legislative amendment and the decision of the Hon'ble Supreme Court reported in 2017 (6) CTC 38 (Alka Chandewar v. Shamshul Ishrar Khan) and give effect to the interim order passed by the Arbitral Tribunals accordingly.”*

7. This Court also takes note of Section 136(2) of CPC, which is extracted here under:

“(2) The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment.”

A bare reading of the provision extracted above makes it amply clear a separate application is not necessary to implement the orders passed u/s.17 of the



Arbitration and Conciliation Act. Furthermore, on receipt of such an order copy, the District Court has to get along with the procedure rather than directing the petitioner to file a separate application for enforcing the order. Hence, this Court is inclined to allow the present revision petition.

8. Accordingly, the order in IA No.106/2023 in Arbitration Case No.ST/SF/018/2021 passed by the learned Principal District Judge, Tiruppur, in respect of directing the petitioner to move an application under Section 17 of the Arbitration and Conciliation Act for enforcing the interim order passed by the Arbitrator and the appointment of Advocate Commissioner alone is set aside. The learned Principal District Judge, Tiruppur, shall follow the procedure as per Section 136 (2) of CPC.

9. With the above observation and direction, this Revision Petition is allowed. No costs.

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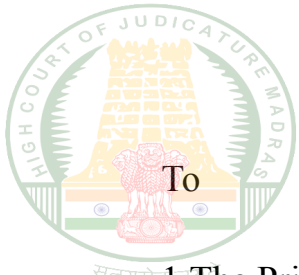
Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

1. The Principal District Judge, Tiruppur

2. K. Karthikeyan

S/o. Krishnaraj,

D.No.1/1213, Succuess Nagar,

Arumuthampalayam, Naranapuram,

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