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C.M.A.No.1602 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-01-2026

CORAM

**THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN
AND
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

C.M.A.No.1602 of 2023

and

C.M.P.No.16051 of 2023

L & T Finance Limited,
No.62, 6th Floor, KGN Towers,
Ethiraj Salai, Egmore,
Chennai – 600 008.

Appellant

Vs

1. M/s. Virgo Properties Private Limited,
Plaza House, New No.5, Old No.3,
Thirumurthy Street,
Chennai – 600 017.

2.M/s.Virgo Realtors Private Limited,
Plaza House, New No.5, Old No.3,
Thirumurthy Street,
Chennai – 600 017.

Respondents

CMP No. 16051 of 2023

L & T Finance Limited,
No.62, 6th Floor, KGN Towers,
Ethiraj Salai, Egmore,
Chennai – 600 008.

Appellant



C.M.A.No.1602 of 2023

Vs

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1. M/s. Virgo Properties Private Limited,
Plaza House, New No.5, Old No.3,
Thirumurthy Street,
Chennai – 600 017.

2.M/s.Virgo Realtors Private Limited,
Plaza House, New No.5, Old No.3,
Thirumurthy Street,
Chennai – 600 017.

Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996, praying to set aside the order dated 04.07.2023 made in I.A.No.5 of 2022 in Arbitration No. of 2022 and consequently allow I.A. No.5 of 2022.

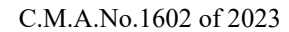
For Petitioner : Mr.Srinath Sridevan, Senior Counsel
for Ms.Aishwarya S.Nathan

For Respondents-1 & 2: Mr.A.K.Sriram, Senior Counsel
Assisted by
Mr.P.C.Harikumar

JUDGMENT

(Judgment of the Court was made by C.V.KARTHIKEYAN, J.)

The Civil Miscellaneous Appeal has been filed against the order of the sole Arbitrator dated 04.07.2023 in I.A.No.5 of 2022 in Arbitration No. of 2022 filed by the respondent to the arbitration proceedings.



4. We are deeply conscious of the fact that the matter is still seized of by the learned Arbitrator and therefore, we consciously refrain from entering into the relative merits of either the statements made in the claim petition or in the counter filed to the said claim statement. As a matter of fact, a counter claim has been raised by the respondent before the learned Arbitrator.



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5. Be that as it may. It is the contention of Mr.Srinath Sridevan, learned Senior Counsel for appellant that the primary reason under which the learned Arbitrator had rejected the interlocutory application in I.A.No.5 of 2022 was that the deed of assignment dated 29.03.2022, by which, L & T Finance Limited had assigned the loan to M/s.Phoenix ARC Private Limited, was not a registered document. The learned Senior Counsel pointed out that the learned Arbitrator should have considered the implication of Section 5(2) of the SARFAESI Act, 2002, which stipulates that any assignment of a loan would be automatic on the date of entering into assignment deed. It had been further pointed out that subsequently, the deed of assignment had been registered as a fact and therefore this changed circumstance should be considered by this Court.

6. Mr.A.K.Sriram, learned Senior Counsel for the respondents/claimants however, pointed out that Section 5(2) of SARFAESI Act had been only cursorily stated and was not the crux of the arguments advanced before the learned Arbitrator. He pointed out that the learned Arbitrator had correctly noted in his opinion that the Assignment Deed was not registered and had therefore, correctly dismissed the application. The



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learned Senior Counsel however stated that it is a fact that Assignment Deed had been subsequently registered. The effect of such registration and whether it would relate back to the date of deed of assignment, are issues, which will have to be argued and we are of the opinion that these issues will have to be put up only before the learned Arbitrator and the learned Arbitrator will have to adjudicate about the issues.

7. We would also state that the effect of Section 5(2) of SARFAESI Act, 2002 will also have to be examined by the learned Arbitrator and it would only be appropriate that the issues kept open to be advanced before the learned Arbitrator and the learned Arbitrator renders a finding on the same. It may not be proper on our part to interject on these issues, as it would deny the parties a valuable right of appeal on any order passed by the learned Arbitrator. We would also not interfere with the order of the learned Arbitrator since on that day, as a fact, the deed was not registered, though subsequently the deed had been registered. We are of the opinion that the parties will have to be given an opportunity to raise this issue once again before the learned Arbitrator and the learned Arbitrator be given the privilege to render a finding on all issues raised before him including the effect of Section 5(2) of SARFAESI Act, 2002.



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8. Owing to the nature of the order passed, it would only be appropriate that the appellant herein files a fresh application before the learned Arbitrator taking a ground that subsequently, the deed had been registered and also pointing out the implication of Section 5(2) of SARFAESI Act, 2002. It always be open to the respondents to counter the same.

9. With the above observations, the Civil Miscellaneous Appeal stands disposed of. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

(C.V.KARTHIKEYAN J.) (K.KUMARESH BABU J.)

[23.01.2026]

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Index : Yes / No

Neutral citation : Yes / No

Speaking / Non-speaking order

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