
(2013) 04 MAD CK 0082
In the Madras High Court
Case No : A. No. 4656 of 2012

Phoenix ARC Private Limited

APPELLANT

Vs

Mr. Jeyram Marthandan

RESPONDENT

Date of Decision : 22-04-2013

Acts Referred:

Citation : (2013) 04 MAD CK 0082

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—This application has been filed by the applicant for direction to the respondent to furnish security for a sum of Rs.

9,68,593/- (Rupees Nine Lakhs Sixty Eight Thousand Five Hundred and Ninety Three only) or in the alternative to attach the movable properties

belonging to the respondent. In support of the application, an affidavit has been filed. Learned counsel for the applicant vehemently contends, that

in view of the averments made in para-8 of the affidavit, the applicant is entitled to direction for furnishing of security or in alternative to attach the movable properties.

2. Para-8 of the affidavit reads as under:

8. The Applicant states that the Respondent is enjoying the benefit out of loan financed without paying the Applicant the agreed installments under

the said Agreement. All reasonable and bonafide attempts made by the Applicant calling upon the Respondents to pay having been failed in view

of the Respondent's intention to deny the dues lawfully payable to the Applicant. The Respondents have deliberately failed and neglected to take

any steps to clear the arrears of installments. The Respondent have committed default in the payment of the dues. The total amount due as of

05.06.2012 is sum of Rs. 9,68,593/- (Rupees Nine Lakhs Sixty Eight Thousand Five Hundred and Ninety Three only)

3. The averments made in para-8 even if taken on its face value do not show any overact on the part of the respondent in disposing of the property

to defeat the claim of applicant.

4. The contention of learned counsel for the applicant, that it is unsecured loan, cannot be the ground to order furnishing of security or for

attachment of property, as the unsecured loan cannot be converted to secured loan by invoking Section 9 of the Arbitration and Conciliation Act.

5. The power u/s 9 is also regulated by the settled principles of law, applicable for appointment of Receiver or attachment of properties etc., as

held by the Hon'ble Supreme Court in the case of Arvind Constructions Co. Pvt. Ltd. Vs. Kalinga Mining Corporation and Others, , which reads

as under:

12. The effect of the agreement dated 14.3.1991 and the Power of Attorney dated 25.3.1991 admittedly executed between the parties and the

rights and obligations flowing therefrom are really matters for decision by the Arbitral Tribunal. We do not think that it is for us, at this interlocutory

stage, to consider or decide the validity of the argument raised on behalf of the appellant-company that the agreement between the parties was co-

terminus with the mining leases and the respondent firm could not terminate the agreement so long as the mining leases in its favour continued to be

in force. Nor do we think it proper to decide the sustainability of the argument on behalf of the respondent firm that it was mainly an agency

agreement for a fixed term and on the expiry of the term, no right survives in the appellant-company unless of course the respondent firm agreed to

an extension of the period. We leave that question open for decision by the Arbitral Tribunal.

13. Prima facie, it is seen that the mining lessee had entered into an agreement with the appellant-company for the purpose of raising the iron ore

from the area covered by the mining lease. The term of the original agreement expired and this was followed by two extensions for three years

each. Thereafter, the respondent firm had refused to extend the agreement and

claims that it wants to do the mining itself. Prima facie, it is not possible to say that the High Court was wrong in thinking that it may be a case where an injunction could not be granted in view of the provisions of the Specific Relief Act. Here again, we do not think that we should pronounce on that question since that again will be a question for the arbitrator to pronounce upon. Suffice it to say that the position is not clear enough for us to assume for the purpose of this interlocutory proceeding that the appellant is entitled to specifically enforce the agreement dated 14.3.1991 read in the light of the Power of Attorney dated 25.3.1991. Of course, this aspect will be again subject to the contention raised by the appellant-company that the agreement created in his favour was co-terminus with the mining lease itself. But, as we have stated, these are the aspects to be considered by the Arbitral Tribunal. We refrain from pronouncing on them at this stage.

14. We think that adequate grounds are not made out by the appellant at this interlocutory stage for interfering with the order of the High Court. In that view alone, we consider it proper to decline to interfere with the order of the High Court and leave the parties to have their disputes resolved in terms of the arbitration agreement between the parties.

15. The argument that the power u/s 9 of the Act is independent of the Specific Relief Act or that the restrictions placed by the Specific Relief Act cannot control the exercise of power u/s 9 of the Act cannot prima facie be accepted. The reliance placed on *Firm Ashok Traders and Another etc. Vs. Gurumukh Das Saluja and Others etc.*, in that behalf does not also help much, since this Court in that case did not answer that question finally but prima facie felt that the objection based on Section 69(3) of the Partnership Act may not stand in the way of a party to an arbitration agreement moving the court u/s 9 of the Act. The power u/s 9 is conferred on the District Court. No special procedure is prescribed by the Act in that behalf. It is also clarified that the Court entertaining an application u/s 9 of the Act shall have the same power for making orders as it has for the purpose and in relation to any proceedings before it. Prima facie, it appears that the general rules that governed the court while considering the grant of an interim injunction at the threshold are attracted even while dealing with an application u/s 9 of the Act. There is also the principle that

when a power is conferred under a special statute and it is conferred on an ordinary court of the land, without laying down any special condition

for exercise of that power, the general rules of procedure of that court would apply. The Act does not prima facie purport to keep out the

provisions of the Specific Relief Act from consideration. No doubt, a view that exercise of power u/s 9 of the Act is not controlled by the Specific

Relief Act has been taken by the Madhya Pradesh High Court. The power u/s 9 of the Act is not controlled by Order XVIII Rule 5 of the CPC is

a view taken by the High Court of Bombay. But, how far these decisions are correct, requires to be considered in an appropriate case. Suffice it to

say that on the basis of the submissions made in this case, we are not inclined to answer that question finally. But, we may indicate that we are

prima facie inclined to the view that exercise of power u/s 9 of the Act must be based on well recognized principles governing the grant of interim

injunctions and other orders of interim protection or the appointment of a receiver.

6. If the averments made in affidavit even if taken on its face value, no ground is made out ordering furnishing of security or attachment of movable

properties. Consequently, finding no merit in this application, it is ordered to be dismissed. No costs.