

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
( Civil Appellate Jurisdiction )

Wednesday, the Nineteenth day of April Two Thousand and Twenty  
Three

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PRESENT

The Hon`ble Mr.Justice C.SARAVANAN

C.R.P.(MD)No.1049 of 2023

and

C.M.P.(MD)No.4950 of 2023

KALAIYARASAN

... PETITIONER/4TH RESPONDENT/  
4TH RESPONDENT

Vs

1 M/S.SHRI RAM CITY UNION FINANCE LIMITED,  
REP THROUGH ITS MANAGER,  
HAVING REGISTERED OFFICE AT  
DOOR NO.5, 1ST FLOOR,  
MADURAI MAIN ROAD,  
AXIS BANK UPSTAIRS,  
VIRUDHUNAGAR 626 001.

... 1ST RESPONDENT/PETITIONER/  
CLAIMANT

2 KARIKALAN

3 ARASI

4 VINEETH

5 MURUGESWARI

... RESPONDENTS 2 TO 5/RESPONDENTS  
1 TO 3 & 5/RESPONDENTS 1 TO 3 & 5

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to STRUCK OFF the impugned EP No. 110 of 2022 in ACP TF no. 46 of 2016, pending on the file of the 1st Additional District Judge, Madurai and pass such further order or any other order as this Honourable Court may deem fit in the circumstances of the case and thus render justice.

Prayer in CMP(MD). 4950/ 2023 :

To stay all further proceedings in EP No.110 of 2022 in ACP  
<https://www.mhjc.go46/judis> of 2016 pending on the file of the 1st Additional District



Judge, Madurai, pending disposal of the above Civil Petition and thus render justice.

ORDER: This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.R.ARAVINDAN, Advocate for the petitioner, the court made the following order:-

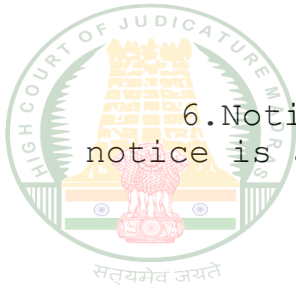
The petitioner appears to be the guarantor for the loan advanced to the second respondent by the first respondent under a loan agreement dated 30.11.2015. It appears that the second respondent committed default and therefore, the first respondent was constrained to invoke the Arbitration clause in the Agreement, dated 30.11.2015.

2.The learned counsel for the petitioner submits that the petitioner has not received any notice before invoking the Arbitration clause. That apart, it is submitted that the award passed by the Arbitrator is *void ab initio* in view of Section 12(5) read with Schedule VII to the Arbitration and Conciliation Act, 1996 as in force with effect from 23.10.2015.

3.It is submitted that both Arbitration by a person in the Management of the respondent or by a person nominated by the Management is *void ab initio*, unless there was a waiver. Such Arbitration could not have been proceeded and therefore, the first respondent ought to have filed an application under Section 11(6) of the said Act for appointment of an Arbitrator.

4.*Prima facie*, the petitioner appears to have made out a case for grant of an order of interim stay of the operation of impugned award. However, the petitioner has not disputed the loan that was advanced by the first respondent to the second respondent has not been repaid. The petitioner has also accepted his status as surety. The amount that has been awarded by the Arbitral Tribunal is Rs.16,75.192/- and further interest of Rs.15,97,464/- at the rate of 18% between 30.09.2016 and 30.03.2022.

5.Considering the fact that petitioner's property is sought to be auctioned to recover the award amount, there shall be an order of interim stay of all further proceedings in E.P.No.110 of 2022 in A.C.P.T.F.No.46 of 2016, pending on the file of the I Additional District Court, Madurai, subject to the petitioner depositing a sum of Rs.10,00,000/- [Rupees Ten Lakhs only] to the credit of E.P.No.110 of 2022 before the I Additional District Court, Madurai, within a period of four weeks from the date of receipt of a copy of this order.



C.R.P.(MD)No.1



nd

6. Notice to the respondents returnable in six weeks.  
notice is also permitted.

sd/-  
19/04/2023

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/04/2023

Sub-Assistant Registrar (C.S.)  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

SMN2

TO

The 1st Additional District Judge, Madurai.

ORDER  
IN  
CRP (MD) No.1049 of 2023  
AND  
CMP (MD) No.4950 of 2023  
Date :19/04/2023

NA/MMS/SAR-I/26.04.2023/3P/2C