

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF JUNE, 2021

PRESENT

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SURAJ GOVINDARAJ

COMAP NO.46 OF 2021

BETWEEN:

1. M/S. MVR GAS
SY. NO.400
SARJAJPURA-ATTIBELE MAIN ROAD
SARJAPURA HOBLI
BANGALORE - 560 125
REPRESENTED BY ITS PROPRIETOR
SHRI B.V.SADANAND
2. SHRI B.V.SADANAND
S/O SHRI VENKATA SWAMY REDDY
AGED ABOUT 60 YEARS
NO.801, 9TH MAIN, 3RD BLOCK
KORAMANGALA
BANGALORE - 560 004
3. SMT. S.L.MANJULA
W/O SHRI B.V.SADANAND
AGED ABOUT 60 YEARS
NO.801, 9TH MAIN, 3RD BLOCK
KORAMANGALA
BANGALORE - 560 004

... APPELLANTS

(BY SHRI G.S.BHAT, ADVOCATE)

AND:

M/S. ADITYA BIRLA FINANCE LIMITED
ONE INDIA BULLS CENTRE
TOWER I, 18TH FLOOR
JUPITOR MILL COMPOUND
#841, SENAPATHI BAPATH MARG
ELPHINSTAN ROAD

MUMBAI - 400 013
REPRESENTED BY ITS
AUTHORISED SIGNATORY
SHRI AKASH N A

... RESPONDENT

(BY SHRI B.C.AVINASH, ADVOCATE)

THIS COMAP IS FILED UNDER SECTION 13(A) OF THE COMMERCIAL COURTS ACT, 2015 PRAYING TO SET ASIDE THE ORDER PASSED BY THE COMMERCIAL COURT (CCH 84) OF I.A. NO.1 IN COM.AA NO.7/2021 DATED 29.01.2021 BY ALLOWING THE ABOVE APPEAL.

THIS COMAP COMING ON FOR HEARING THROUGH VIDEO CONFERENCING THIS DAY, **CHIEF JUSTICE** MADE THE FOLLOWING:

JUDGMENT

Heard the learned counsel appearing for the appellants.

2. The appellants are the respondents in a petition filed by the respondent herein under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, "the said Act of 1996"). In the petition filed under Section 9 of the said Act of 1996, the respondent has contended that the appellants have not repaid the loan granted to them to the extent of Rs.99,75,465/- as on 14th July 2020. It is stated in the petition that the arbitration clause has been already invoked by the respondent.

3. In the said petition under Section 9 of the said Act of 1996, I.A No.1 for interim relief was filed by the respondent seeking interim custody of the schedule plant and machineries in possession of the appellants. The impugned order is an *exparte ad* interim order directing the appellants to furnish a security for payment of Rs.99,75,465/- within a period of fifteen days, failing which the respondent shall be permitted to take interim custody of the machineries mentioned in the petition schedule from the appellants, if necessary, with the help of jurisdictional police and to keep the same in its safe custody till the next date.

4. An order was passed by this Court on 8th March 2021 staying the order passed by the Commercial Court permitting the respondent to take interim custody subject to various conditions including a condition of depositing Rs.10,00,000/- on or before 22nd March 2021. The amount was not deposited. Therefore, the order of stay dated 8th March 2021 stands vacated.

5. The impugned order is an *exparte ad*-interim order passed pending the final disposal of I.A No.1 filed in the petition under Section 9 of the said Act of 1996. Hence, the appellants can file a statement of objections to I.A No.1 and

apply for vacating the *exparte* order. If the appellants succeed and I.A No.1 is rejected by the Commercial Court, the action of restitution may follow.

6. Therefore, it is not necessary, at this stage, to interfere with the *exparte ad-interim* order passed by the Commercial Court.

7. The appeal is disposed of subject to the observations made above.

8. All the contentions of the parties on merits of the pending proceedings are kept open.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

AHB