IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.09.2015

CORAM:

THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

S.A. No. 1048 of 2009

1. P.N.George Graham
2. Dr.Baby Jhansi .. Appellants/Plaintiffs

Vs.

Industrial Development Bank of India
Rep by its Chairman/Managing Director
IDBI Tower, Guffeparade,
Mumbai - 400 005 .. Respondent/Defendant

Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 18.12.2007 made in A.S. No.306 of 2007 on the file of the VII Additional District Judge at Chennai, confirming the judgment and decree, dated 14.06.2006 made in O.S. No.3576 of 2004 on the file of the VI Assistant City Civil Judge, Chennai.

For Appellants : Mr.V.Selvaraj

For Respondent : Mr.Suresh for M/s.Shivakumar & Suresh

JUDGMENT

The appellants are the plaintiffs in the suit. The first and second appellants are husband and wife. While the first appellant being a lawyer, the second appellant is a doctor.

2. The appellants stated that there was an advertisement in the paper inviting the public to subscribe for the issue of bonds on various description with the respondent bank. The plaintiffs also accordingly requested the defendant to issue IDBI deep discount bond, after remitting a sum of Rs.5,300/-. On receipt of the applications from the plaintiffs, the defendant also accepted the offer and complied with the plaintiffs' request and sent two certificates dated 18.03.1996 in favour of the plaintiffs' in the form of bonds. The maturity date of the bond is on 18th March 2021. The bond also contains certain recitals, namely, the bond may be treated as promissory note and the holder of the certificate would be entitled to exercise right of redemption before its maturity in the manner morefully set out therein. As per the bond, the defendant is liable

to pay a sum of Rs.2,00,000 on the date of maturity. However, on or about 25.05.2000, the defendant had informed that the bonds were oversubscribed and hence, they want to exercise the call option. The said call option is challenged by the plaintiffs, contending that there was no such clause empowering defendant to exercise the same. Therefore, it was alleged that the action of the defendant was unilateral and it was not supported by any document with respect to any acceptance from the other party to the contract. Hence, the suit has been filed by the plaintiffs, declaring that the power to exercise the call option of the suit bond is illegal and enforceable and for permanent injunction.

3. The suit was contested by the respondent-bank. As the defendant is a statutory Corporation, even on the date of issuance of the bond, the defendant was given the option to redeem the bond inter-alia without any pre-condition for invoking such redemption clause. These call options have already been printed by the defendant on the bond certificates to avoid confusion in the minds of the investor. The plaintiffs' admittedly had subscribed the bonds only on the public offers. The defendant had exercised only the redemption clause under the contractual terms and hence claimed that there is no violation.

4. After elaborated trial, considering the facts and evidence available on record, the trial Court dismissed the suit, against which, an appeal was filed in A.S.No.306 of 2007 before the VII Additional District Judge at Chennai, which was also dismissed. The above Second Appeal is directed against the said judgments by the plaintiffs.

5. The only question that has to be decided in this Second Appeal is as to whether the call option exercised by the defendant/respondent is correct.

6. The respondent had made public issue of bonds in March 1996 and offered four types of bonds for subscription to the public. One such bond is the IDBI Deep Discount Bond, which was taken by the appellants herein, by making payment of Rs.5,300/- along with application and on maturity i.e. on March, 18, 2021, the respondent agreed to pay a sum of Rs.2,00,000/- to the plaintiffs. However, both the bond holder as well as the respondent were given the option to redeem the bond on 01.08.2000 at Rs.10,000/- without any pre-condition for invoking such redemption clause and the said condition was also printed by the respondent on the bond certificates to avoid confusion or misinterpretation. As the said public issue was over subscribed, in order to satisfy such investors who could not get allotment of bonds under the public issue were given the option to subscribe the bond under the memorandum of private placement. As the plaintiffs were alloted the bonds under the public issue and not under private placement, they are governed only by the offer document. Admittedly, the respondent had not altered or modified the original terms and conditions of the said bond. The said call option

was exercised by the respondent only keeping in mind the fluctuations in interest and future market. When it is not commercially viable to continue to pay higher interest on such bonds, with a view to safeguard the interest of the bond holders, the call option is exercised. Therefore, the respondent also had done so, only in the interest of the bond holders. The said exercise of redemption was also as per the contractual terms. Based on the above reasoning, the Courts below had dismissed the suit as not maintainable. When the bonds are redeemable at the instance of either the subscriber or the bank, the call option exercised by the respondent cannot be found fault with. In such circumstances, there is no question of law arising for consideration in the above Second Appeal.

6. In the result, the Second Appeal is dismissed, confirming the judgment and decree of the Courts below. However, there will be no order as to costs.

srn

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

1. The VII Additional District Judge at Chennai

2. The VI Assistant City Civil Judge, Chennai

3. The Record Keeper, V.R. Section, High Court Madras

+ 1 cc to Mr.V.Selvaraj, Advocate SR 48254

+ 1 cc to M/s.Shivakumar and Suresh Advocates SR 48203

jsv(co)

prk9/10

S.A. No. 1048 of 2009