IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 03.10.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.No.2108 of 2016

1.C.P.Radhakrishnan
2.R.Jothi .. Appellants/Petitioner Respondents

Vs

M/s.Cholamandalam Investment and Finance Company Limited,
Formerly known as Cholamandalam DBS Limited,
Rep. By its Deputy Manager, Legal Mr.R.Sivakumar,
Having its Registered office at Dare House,
No.2, NSC Bose Road,
Chennai - 1. .. Respondent/Claimant

Prayer: Appeal filed under Section 37 of the Arbitration and Conciliation Act, seeking to quash the interim order dated 04.08.2016, made in Interim Application No.1 of 2016 in Arbitration Case No.M.G/C.I.F.C.L./153 of 2013, on the file of the Sole Arbitrator Mrs.Meera Gnanasekar, Advocate, Chennai.

For appellants : Mr.G.Murugendran
For Respondent : Mr.S.Namasivayam

JUDGMENT

The present Civil Miscellaneous Appeal is directed against the interim order dated 04.08.2016 passed in Application No.1 of 2016 by the learned Arbitrator, in and by which, the claim of the first appellant to direct the respondent Company to release the title deed pertaining to the property bearing No.1022 IG Type, Mugappair East, Chennai-101, was rejected.

2. It is seen that the respondent is a Company incorporated and registered under the Companies Act, 1959, and it is engaged in the business of extending financial assistance against properties. The first appellant availed a home equity loan for a sum of Rs.1,00,00,000/- from the respondent Company with a condition to pay the said amount in monthly instalments

from 05.05.2010 to 05.03.2021, for which the first appellant has mortgaged two property documents, one at Plot No.10/1022, LIG Type, Mugappair East Chennai; and the other one at Plot No.4/16, 2nd street Alwarpet, Chennai. In the said transaction, the second appellant stood as a guarantor.

3. It is also further seen that after making some repayment, the borrower has committed several defaults to repay the loan amount, hence, for recovery of the said amount, arbitration proceedings were initiated during the year 2013. Pending arbitration proceedings, negotiations were initiated between both parties, one such negotiations was to pay a sum of Rs.60 lakhs on or before 23.11.2015 to release the original documents pertaining to property bearing Plot No.10/1022, LIG Type, Mogapir East, Chennai-101, as could be seen from the letter dated 19.11.2015 written by the respondent Company. Although the borrower has agreed to pay Rs.60 lakhs, in his letter dated 21.11.2015, he has requested the respondent Company to close the entire loan by returning the two property documents.

4. It is the contention of the learned counsel for the appellants that though respondent Company in the letter dated 19.11.2015 communicated that they would release the documents upon the payment of Rs.60 lakhs, they did not release the documents even after the payment made by the first appellant, vide Cheque No.196121, dated 21.11.2015, drawn at the Alwarpet Branch of State Bank of Inida, for a sum of Rs.60 lakhs. Therefore, when interim application was filed to release the documents, the learned Arbitrator, without considering the case on merits, dismissed the same in a mechanical manner, hence, he prayed for a direction to the respondent Company to release the documents.

5. It is the contention of the learned counsel for the respondent Company that a letter dated 19.11.2015 addressed to the appellants clearly shows that the respondent Company is ready to release the document pertaining to the property bearing Plot No.10/1022, LIG Type, Mogapir East, Chennai-101, provided the appellant/borrower agrees to abide by the all other terms and conditions of the agreement. However, without adhering to the clear stand of the respondent Company, the first appellant has written a letter dated 21.11.2011, by enclosing a cheque to the tune of Rs.60 lakhs, requesting to release the two property documents and also to close the said loan account. Such stand of the first appellant, he contended, was neither agreeable to the respondent Company nor the learned Arbitrator to pass the interim order. I also find merit on this submission. When the appellant/borrower has borrowed a loan amount of Rs.1,00,00,000/-, he should repay the entire amount with

interest as agreed upon, however, on the contrary, he cannot ask for the respondent Company to close down the loan account by merely paying a sum of Rs.60 lakhs.

6. Now, it is submitted by the learned counsel for the first appellant/borrower that since the first respondent has already paid a sum of Rs.60 lakhs, there would not be any difficult for them to pay back the balance amount as per the terms and conditions of the agreement. The said submission of the learned counsel for the appellants is recorded.

7. In view of the above, the appellant/borrower is directed to approach the learned Arbitrator within a period of four weeks from the date of receipt of a copy of this judgment and on filing of an affidavit of undertaking by the appellant borrower to clear the entire balance amount as per the terms and conditions of the agreement, learned Arbitrator may direct the respondent Company to release the documents and decide the issue on merits and in accordance with law.

8. Accordingly, for the aforesaid reasons, the Civil Miscellaneous Appeal is disposed of. No Costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

rkm

To
Mrs. Main a Gnana Sekar,
Sole Arbitrator, Advocate, Chennai

2 The Deputy Manager,
Cholamandalam Invert and finance co Ltd.,
Office at Dare Hoare No.2 NSC Bose Road Chennai 1

+1 CC to Mr. S. NamaSivayam, Advocate Sr.No.56832
+1 CC to M/s. G. Murugendran, Advocate Sr.No.56678

C.M.A. No.2108 of 2016

UG (CO)
MD : 05/10/2016