

In the High Court of Judicature at Madras

Dated: 05.09.2017

Coram

The Honourable **Dr.Justice ANITA SUMANTH**

Original Petition No.348 of 2017

1. C.P.Radhakrishnan

2. R.Jothi

.... Petitioners

Vs.

1. M/s.Cholamandalam Investment and Finance Company Limited
Formerly known as Cholamandalam DBS Limited
rep. By its Deputy Manager, Legal
Mr.R.Sivakumar

2. Mrs.Meera Gnanasekar

The Sole Arbitrator,

No.319, (Old No.155), Second Floor,

Lingi Chetty Street, Chennai – 600 001.

.... Respondents

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PETITION filed under Section 11(6), 14 and 15 of the Arbitration and Conciliation Act, 1996, for appointment of Arbitrator to terminate the 2nd respondent/sole arbitrator and to appoint new arbitrator in the Arbitration Case No.M.G./C.I.F.C.O./153 of 2013 pending on the file of the 2nd respondent.

For Petitioner : Mr.G.Murugendran

For Respondents: Mr.S.Namasivayam - R1

ORDER

This petition is filed praying for the termination of the mandate of the second respondent/sole arbitrator and for the appointment of a new arbitrator in Arbitration Case No.M.G./C.I.F.C.O./153 of 2013 pending on the file of the second respondent.

2. The petitioners have availed of a home equity loan under agreement No.X0HECHE00000467492 for a sum of Rs.1,00,00,000/-. The loan was to be repaid by way of Equated Monthly Installments (EMIs) of Rs.1,49,311/- per month from 05.05.2010 to 05.03.2021. The second petitioner stood as a guarantor to the loan.

3. Proceedings for arbitration had been initiated pursuant to defaults in repayment of the installments. In the course of the proceedings, an application was filed by the petitioners seeking release of the title deeds that had been presented by the second petitioner as a guarantor to the loan. The said application was dismissed by interim order dated 04.08.2016 that was challenged by the petitioner by way of Civil Miscellaneous Appeal before this Court. The Civil Miscellaneous Appeal was disposed of on 03.10.2016 by this Court permitting the borrowers to approach the Arbitrator within a period of

four (4) weeks from the date of receipt of that order with an affidavit of undertaking by the borrower to clear the entire balance as per the terms and conditions of the agreement. The Court observed that the learned Arbitrator may, upon filing of the aforesaid affidavit, direct the company to release the documents in its possession and decide the issue on merits and in accordance with law.

4. Mr.G.Murugendran, learned counsel appearing for the petitioner would submit that an affidavit had been filed on 16.10.2016 undertaking to clear the entire arrears. However, the property documents remained in the possession of the company till date.

5. Mr.Namasivayam, learned counsel appearing for the company would on the other hand state that the amount due and outstanding was an amount of Rs.56,75,910.53 as on 30.09.2016 repayable with interest at the rate of 24% from 01.10.2016 till date of payment and till such time the said amount was paid, the documents were not liable to be released as per the order of this Court dated 03.10.2016.

6. The arbitrator thereafter has passed an order dated 10.11.2016 rejecting the prayer for the release of the documents on the ground that there was no agreement between the parties as to the amount remaining unpaid and rejecting the affidavit filed by the petitioner dated 06.10.2016.

7. Challenging the aforesaid order dated 10.11.2016, the petitioners came up by way of an original petition in O.P.D.No.46471 of 2017 that was disposed by this court on 02.02.2017. In the course of the hearing of the aforesaid matter a sum of Rs.19,41,042.44 was paid by the borrower and documents relating to one of the immovable properties appears to have been released by the company. This court also observed that the demand of the company would have to be scaled down taking into account the payments subsequently made by the borrower.

8. Pursuant thereto, the petitioners have filed a Memo before the Arbitrator computing the payments already made and offering to remit the balance as a one time settlement. According to the petitioners, a sum of Rs.1,55,59,860/- has been paid.

9. Having heard learned counsel and perused the documents, I find that there is no clarity as to the exact amount outstanding. According to the petitioners, they have paid a sum of Rs.1,55,59,860/- towards the loan and undertake to pay the balance in one instalment. The balance remaining unpaid, according to the company, is an amount of Rs.56,75,910.53 as on 30.9.2016.

10. The petitioners would agree, despite the prayer made in the present petition, that the proceedings could go on before the second respondent/sole arbitrator.

11. Let the Arbitrator quantify the amount remaining unpaid on priority.

12. Both parties are directed to file a statement as on date before the Arbitrator quantifying the actual amount outstanding as per their working.

13. The matter may be taken up by the Arbitrator on 15.09.2017, or in the alternative, any other date as proximate to 15.09.2017 as may be convenient to the Arbitrator. The proceedings may be disposed of within a period of three months from the date of receipt of a copy of this order.

14. The Original Petition is disposed of accordingly. No costs.

05.09.2017

msv/sl

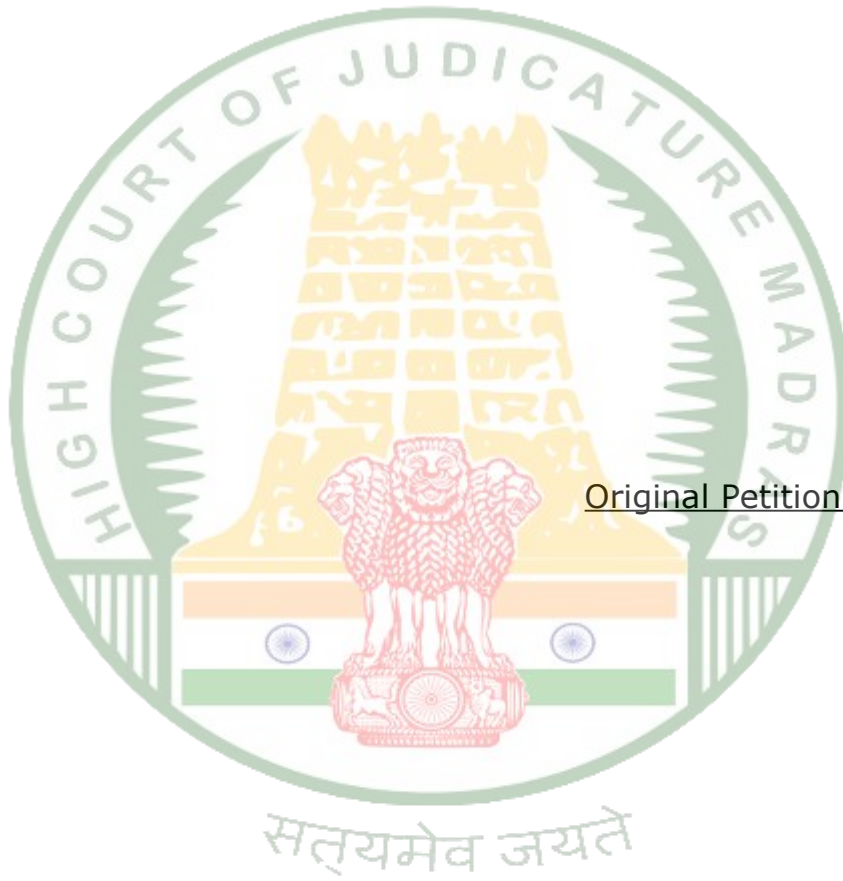
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Dr.ANITA SUMANTH,J.

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