IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.842 to 844 of 2015 and
C.R.P.(PD)Nos.4081 to 4083 of 2015
and M.P.Nos.1 to 1 of 2015 (6 M.Ps.)

C.R.P.Nos.842 and 843 of 2015

1.Catholic Syrian Bank Ltd.,
Guindy Branch,
No.28, Lawyer Jagannathan Street,
Chennai – 600 032.

2.Catholic Syrian Bank,
Circle Office, Kilpauk,
Chennai – 600 010.

3.Catholic Syrian Bank,
Zonal Office, Mount Road,
Chennai – 600 002. ... Petitioners

C.R.P.No.844 of 2015

1.Catholic Syrian Bank Ltd.,
Guindy Branch,
No.28, Lawyer Jagannathan Street,
Chennai – 600 032.

2.Catholic Syrian Bank,
Zonal Office, Mount Road,
Chennai – 600 002. ... Petitioners

Vs.

C.R.P.Nos.842 and 843 of 2015

M/s. Corium Trading Limited,
Rep. By its Managing Director.
Mr.Jacob Cherian,
No.7, Sabapathy Street,
Nagalkeni, Chromepet,
Chennai – 600 044. ... Respondent

C.R.P.No.844 of 2015

Mr.Jacob Cherian ... Respondent

Prayer: Civil Revision Petition Nos.842 to 844 of 2015 are filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.Nos.3879 of 2013, 5530 of 2014 and 6036 of 2014 respectively, on the file of VI Assistant City Civil Court at Chennai.

In all CRPs.

For Petitioners : Mr.V.Bhiman
for M/s.Sampathkumar Associates

For Respondents : Mr.P.Ranganatha Reddy
for M/s. King & Patridge

C.R.P.Nos.4081 to 4083 of 2015

M/S. Corium Trading Limited,
Rep. By Managing Director.
Mr.Jacob Cherian,
No.7, Sabapathy Street,
Nagalkeni, Chromepet,
Chennai – 600 044. ... Petitioner

vs.

1.Catholic Syrian Bank Ltd.,
Guindy Branch,
No.28, Lawyer Jagannathan Street,
Chennai – 600 032.

2.Catholic Syrian Bank,
Circle Office, Kilpauk,
Chennai – 600 010.

3.Catholic Syrian Bank,
Zonal Office, Mount Road,
Chennai – 600 002. ... Respondents

PRAYER: Civil Revision Petition Nos.4081 to 4083 of 2015 are filed under Article 227 of the Constitution of India, against the fair and decretal order dated 06.08.2015 made in I.A.Nos.8219 to 8221 of 2015 in O.S.No.3879 of 2013 respectively, on the file of the VI Assistant City Civil Court, Chennai.

In all C.R.Ps.

For Petitioner : Mr.P.Ranganatha Reddy
for M/s. King & Patridge

For Respondents : Mr.V.Bhiman
for M/S.Sampathkumar Associates

COMMON ORDER

The Civil Revision Petition Nos.842 to 844 of 2015 are filed to strike off the plaint in O.S.Nos.3879 of 2013, 5530 of 2014 and

6036 of 2014 respectively, on the file of VI Assistant City Civil Court at Chennai.

The Civil Revision Petition Nos.4081 to 4083 of 2015 are filed against the fair and decretal order dated 06.08.2015 made in I.A.Nos.8219 to 8221 of 2015 in O.S.No.3879 of 2013 respectively, on the file of the VI Assistant City Civil Court, Chennai.

2. In all the six Civil Revision Petitions, the issues are inter linked and the parties are one and the same and hence, they are disposed of by this common order. For the sake of convenience, the petitioners in C.R.P.Nos.842 to 844 of 2015 are referred to 'petitioners Bank' and petitioner in C.R.P.Nos.4081 to 4083 of 2015 is referred to 'respondent company'.

3. The respondent in C.R.P.Nos.842 and 843 of 2015 is the plaintiff in O.S.Nos.3879 of 2013 and 5530 of 2014, the respondent in C.R.P.No.844 of 2015 is the plaintiff in O.S.No.6036 of 2014 and the petitioners in C.R.P.Nos.842 to 844 of 2015/respondents in C.R.P.Nos.4081 to 4083 of 2015 are the defendants in all the three suits in O.S.Nos.3879 of 2013, 5530 of 2014 and 6036 of 2014. The

respondent in C.R.P.No.844 of 2015, who is the Managing Director of the Company viz., M/S. Corium Trading Limited/respondent in C.R.P.Nos.842 and 843 of 2015, filed suit in O.S.No.6036 of 2014 in his individual capacity.

4. The facts of the case are as follows:

(i) The petitioners Bank at the request of the respondent company in C.R.P.Nos.842 and 843 of 2015 granted loan of Rs.1,50,00,000/- on the security of immovable property belonging to Santhamma Ittycheria, mother of Jacob Cherian (respondent in C.R.P.No.844 of 2015), who is the Managing Director of the respondent company and personal guarantees of Jacob Cherian, Reena Jacob, A.Antonly John, Sakila Balaguru and Santhamma Ittycheria. Subsequently, the said loan was enhanced to Rs.3 Crores in March 2013 on the additional security of the property belonging to the Partnership Firm viz. M/s.Amity Trading Company, of which Sakila Balaguru, A.Antony John and Reena Jacob are partners and personal guarantees of Jacob Cherian, Reena Jacob, A.Antony John, Sakila Balaguru and Santhamma Ittycheria and the immovable property belonging to M/S.Amity Trading Company, in which, Mrs.Sakila Balaguru, A.Antony John and Reena Jacob are partners.

(ii) On 12.04.2013, Antony John and Sakila Balaguru revoked their guarantee and sought for return of title deeds. By letter dated 18.04.2013, they objected to handing over the title deeds to Mr.Jacob Cherian (respondent in C.R.P.No.844 of 2015 and the Managing Director of the respondent company in C.R.P.Nos.842 and 843 of 2015). In view of the same, the petitioners Bank could not allow the operation of the account as the account cannot continue without the guarantee. Therefore, the petitioners Bank by letter dated 23.04.2013 recalled the loan granted to the respondent company. The respondent company by letter dated 15.05.2013 informed the petitioners Bank that they are taking steps to regularise the account.

(iii) After such letter, the respondent company filed two suits in O.S.Nos.3879 of 2013 and 5530 of 2014 on the file of the VI Assistant City Civil Court, Chennai, for the following reliefs:

O.S.No.3879 of 2013

"a. Declaration declaring that the letter issued by the 1st Defendant dated 23.04.2013 is illegal and null and void.

b. Mandatory injunction directing the Defendants 1 to 3 to release all the Title Deeds of the property situated at 150 and 151, Valayapathy Street, Ganesh Nagar, Selaiyur, Chennai -73, belong to Mrs.Santhamma Ittycheria, to the Plaintiff upon executing a fresh guarantee by the new board of directors and partners of the reconstituted Amity Trading Company pertaining to the C.C.Account No.273 2661992 710501.

c. Mandatory injunction directing the Defendants 1 to 3 to allow normal operations to continue with immediate effect.

d. Pass permanent injunction restraining Defendants 1 to 3 from initiating action for recovery as per 1st Defendant's Letter dated 23.04.2013."

O.S.No.5530 of 2014

"a) For mandatory injunction directing defendants Bank to consider the security given by the plaintiff's mother Mrs.Santhamma Ittycheria to the tune of Rs.314 Lakhs and renew the existing Cash Credit Facility to the plaintiff company and resume normal operations.

b) For permanent injunction restraining the Defendants from declaring the account of the plaintiff with the Defendant Bank bearing No.2732661992710501 as NPA (Non-performing Asset).

c) For permanent injunction restraining the Defendant's Bank from charging the interest to the frozen account bearing No.2732661992710501."

(iv) The Respondent in C.R.P.No.844 of 2015, the Managing Director of respondent company in C.R.P.Nos.842 and 843 of 2015 filed O.S.No.6036 of 2014 on the file of the VI Assistant City Civil Court, Chennai, for the following reliefs:-

"a). For permanent injunction restraining the 1st Defendant from in any way bring the gold ornaments pledged by the plaintiff and availed the gold Loan from 1st Defendant Bank under the Gold Loan account bearing Nos.0273-00007665-601007, 0273-00007665-601008, 0273-00007665-601009 by public auction/private treaty on 25.10.2014 or on any subsequent dates;

b) To direct the Defendant to pass the costs of the suit; "

(v) The petitioners Bank filed three C.R.P.Nos.842 to 844 of 2015 to strike off the plaint in all the three suits in O.S.Nos.3879 of 2013, 5530 and 6036 of 2014.

5. The learned counsel for the petitioners Bank contended as follows:

(i) All the three suits filed by the respondent company and its Managing Director are abuse of process of law. The suits filed by the respondent company and its Managing Director are frivolous in nature and the reliefs sought for by them are contrary to the regulation and bank procedure of the Reserve Bank of India.

(ii) When two guarantors have withdrawn their guarantees and objected to the documents of title being handed over to the respondent in C.R.P.No.844 of 2015, the petitioners Bank cannot allow the operation of account. Similarly, the relief of mandatory injunction seeking release of title deeds belonging to Mrs.Santhamma Ittycheria to the respondent in C.R.P.No.844 of 2015, the Managing director, beyond the statutory provisions and the petitioners Bank cannot be prevented from doing banking transactions.

(iii) As far as O.S.No.6036 of 2014 is concerned, the respondent in C.R.P.No.844 of 2015 is the plaintiff and seeking the relief of permanent injunction restraining the petitioners Bank from bringing the gold jewels pledged for gold loan availed by him. When the amount due to the gold loan is not paid and amount is not regularised, the Bank has every right to bring the gold jewels for sale in public auction to realise the amount due. The learned counsel also contended that all the three suits are devoid of merits. For the above reason, he prayed for striking off the plaint.

6. Per contra, the learned counsel for the respondent company and its Managing Director in C.R.P.Nos.842 to 844 of 2015 contended as follows:

(i) The petitioners Bank without properly following the procedure and regulation of the Reserve Bank of India, have recalled the loan. The petitioners Bank have not considered the request of the respondent company to return all the title deeds of Santhamma Ittycheria, even though the respondent company, its director and partners of M/S.Amity Trading Company offered personal guarantee, which would easily secure the amount due on the loan granted by the petitioners bank. The petitioners Bank acted upon on the basis of the letter of A.Antony John and Mrs.Sakila Balaguru and recalled the loan, without following the procedure. Apart from the said two persons, others have given personal guarantee and Mrs.Santhamma Ittycheria has given immovable property as a security.

(ii) In respect of the jewel loan taken by the respondent in C.R.P.No.844 of 2015 is concerned, the petitioners Bank are taking steps to auction the jewels only to pressurise the Managing Director of the respondent company and others to accept the proceedings initiated by the petitioners Bank. In view of the various violation of regularisation and banking procedure committed by the petitioners Bank, all the suits filed by the respondent are legal and valid. All the suits are filed to protect the interest of the respondent and to continue to enjoy the loan facilities, which they are entitled in view of the personal guarantee as well as immovable security given to the Bank. The petitioners Bank without any reason, refused to consider the offer of the respondent company, its directors and partners of M/S.Amity Trading Company to give personal guarantee to safeguard the interest of the petitioners Bank. The suits filed by the respondent are not abuse of process of law or frivolous.

(iii) As far as suit O.S.No.3879 of 2013 is concerned, the trial commenced and respondent company has let in evidence and closed his side. Subsequently, respondent company has filed three applications in I.A.Nos.8219 to 8221 of 2015 to reopen, recall the evidence of P.W.1 for marking document and receive additional document. The learned Judge on erroneous consideration dismissed all the applications. Against the said order of dismissal dated 06.08.2015 made in I.A.Nos.8219 to 8221 of 2015 in O.S.No.3879 of 2013, C.R.P.Nos.4081 to 4083 of 2015 are filed by the respondent company. The petitioners Bank only to drag on the proceedings have filed C.R.P.Nos.842 to 844 of 2015 to strike off O.S.Nos.3879 of 2013, 5530 and 6036 of 2014 after commencement of trial. The petitioners Bank have not made out any case for striking off the plaint in all the three suits. The respondent company will substantiate their case by letting in oral and documentary evidence.

(iv) As far as C.R.P.Nos.4081 to 4083 of 2015 are concerned, the respondent has given valid reason for reopen, recall P.W.1 and marking of the additional document. The learned Judge has committed irregularity in dismissing all the applications. For the above reason, the learned counsel for the respondent prayed for dismissal of C.R.P.Nos.842 to 844 of 2015 filed by the petitioners Bank and allowing C.R.P.Nos.4081 to 4083 of 2015 filed by the respondent company.

7. Heard both sides and perused the materials available on record.

8. From the materials available on record, it is seen that there is some dispute between the directors of respondent company. The two directors of respondent company, who are partners in M/S.Amity Trading Company, have revoked their guarantee. They have also given letter not to the release of title deeds deposited by them with the petitioners Bank to respondent in C.R.P.No.844 of 2015. Once when such objection is taken by the persons, who have given guarantees, the petitioners Bank is entitled to consider the said objection and if the petitioners Bank come to the conclusion that it will not be in the interest of bank to allow the loan account being operated, the petitioners Bank have got every right to recall the loan. Similarly, when an account becomes non-performing account as per the regulation of Reserve Bank of India, automatically the said loan is declared as non-performing asset.

9. As far as the sale of jewels pledged are concerned, the petitioners Bank have right to bring the jewels for sale in public auction to realise the amount due and payable by the borrower. The

borrower has no right to seek for permanent injunction to restrain the petitioners Bank from declaring the account as non-performing asset or restraining the Bank from auctioning the pledged jewels for any payment of loan. The respondent company cannot force the petitioners Bank to assist them personally and to continue the operation of the loan account. The petitioners Bank have right to grant and allow the operation of the account only if the guarantee or the security provided by the guarantors or the Bank to accept the personal guarantee of the directors or partners.

10. In the present case, in all the three suits, the reliefs sought for by the respondent company are not maintainable and all the suits are only abuse of process of law, frivolous and vexatious. It is a fit case for this Court to exercise the discretionary power under Article 227 of the Constitution of India to strike off the plaint. The plaint in all the three suits O.S.Nos.3879 of 2013, 5530 and 6036 of 2014 are liable to be struck of and accordingly, they are hereby struck off.

11. The learned counsel for the petitioners Bank contended that the petitioners Bank already filed O.A.No.114 of 2015 against

the respondent company in C.R.P.Nos.842 and 843 of 2015, its director and others before the Debt Recovery Tribunal. After contest, the Debt Recovery Tribunal by order dated 31.07.2017 allowed the said application holding that the petitioners Bank is entitled to recover the amount with interest from the defendants therein/respondent company and others and also ordered to issue recovery certificate to the petitioners Bank. As far as the jewel loan is concerned, the petitioners Bank filed O.A.No.553 of 2016 against Jacob Cherian, respondent in C.R.P.No.844 of 2015 before the Debt Recovery Tribunal. After contest, the Debt Recovery Tribunal, by order dated 12.12.2017 allowed the said application. According to the learned counsel for the petitioners Bank, they brought the property of the respondent company in public auction and recovered the entire amount. In view of the fact that the petitioners Bank have exercised their statutory right and obtained orders in Debt Recovery Tribunal, the suits filed by the respondent company cannot be continued.

12. In the result, C.R.P.Nos.842 to 844 of 2015 filed by the petitioners Bank are allowed. In view of the order passed in C.R.P.Nos.842 to 844 of 2015, C.R.P.Nos.4081 to 4083 of 2015 filed

by the respondent company and its Managing Director are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

22.01.2018

Index:Yes/No
Speaking/Non-speaking Order

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To

VI Assistant Judge

City Civil Court, Chennai.

V.M.VELUMANI,J.

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C.R.P.(PD)Nos.842 to 844 of 2015 and
C.R.P.(PD)Nos.4081 to 4083 of 2015
and M.P.Nos.1 to 1 of 2015 (6 M.Ps.)

22.01.2018