



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON: 10.09.2018
DELIVERED ON : 28.09.2018
CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) No. 956 of 2015
and
M.P. (MD) No. 1 of 2015

Shriram City Union Finance Ltd.,
Through Its Manager having Office at
No. 482/1, V.E. Road,
Thoothukudi,
Thoothukudi District.

.. Petitioner

Vs.

1. Chandrasekaran

2. Selvamary

.. Respondents

Prayer : This Civil revision petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 24.02.2015 made in I.A.No.1611 of 2014 in O.S.No.528 of 2013 on the file of the learned Principal District Munsif, Thoothukudi.

For Petitioner : Mr. B. Saravanan
For Respondents : No Appearance

ORDER

Heard Mr. B. Saravanan, learned counsel appearing for the petitioner.

2. This petition has been filed to set aside the fair and decreetal order dated 24.02.2015 made in I.A.No.1611 of 2014 in O.S.No.528 of 2013 on the file of the learned Principal District Munsif, Thoothukudi.

3. The petitioner herein is the defendant and the respondents herein are the plaintiffs in the suit. The respondents borrowed a sum of Rs. 10,00,000/- (Rupees Ten Lakhs only) from the petitioner herein and created simple mortgage in respect of the schedule property. On 30.03.2013, the petitioner entered into an agreement with the clause under the head of Arbitration Jurisdiction. The respondents filed a suit for the relief of permanent injunction. The petitioner herein filed a petition in I.A.No.1611 of 2014 in O.S.No.528 of 2013 for referring the case to Arbitration as per the agreement. The trial Court has dismissed the petition. Against the order, the petitioner has preferred this revision petition.



4. On the side of the petitioner, it is stated that the respondents borrowed a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) and create a mortgage in favour of the petitioner. There is an agreement between the parties on 30.03.2012 to go for the Arbitration in case of a dispute. Against the agreement, the respondents approached the lower Court and filed a suit for injunction in O.S.No.528 of 2013. It is stated that the case is to be referred to Arbitration as per the agreement.

5. The learned counsel appearing for the petitioner relied on the Judgment passed by this Court in the case of S.Sakthivel v. Manager, Vijay Hemant Finances Estate Ltd., Chennai reported in (2013) 5 MLJ 886, which reads as follows:

"When the parties have contracted to adjudicate disputes by an arbitration clause, the same shall be adhered to by them, otherwise, the very agreement would be set at naught."

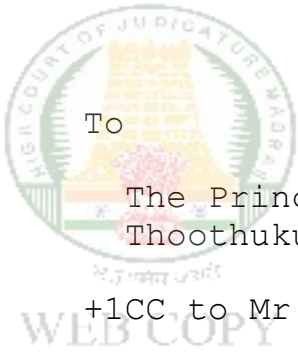
6. On the side of the respondents, it is stated that the petitioner has not charged interest rate as laid down by the Tamil Nadu Interest Act or as per the Arbitration Act. The Arbitration agreement was prepared after the execution of the mortgage deed. The arbitration agreement is null and void as one of the mortgager is not included in the agreement. The right of redemption is barred and the right of the respondent is under Sections 67 to 77 of the Transfer of Property Act and the petitioner cannot appoint the sole arbitrator and cannot call the respondents for arbitration. It is stated that no receipts were issued for their repayments. The mortgage deed is itself arbitrary. The rate of interest is abnormal.

7. Records perused. It is not disputed that there is an agreement for arbitration. The relief sought for in the suit is injunction but in the counter, the respondents have claimed the right of redemption. When there is an arbitration clause in the agreement, it is the bounden duty of the first respondent to approach the Arbitration and in case of failure of Arbitration efforts, then only he can approach the Civil Court. When there is an agreement, both the parties are bound by the terms of the agreement and as per Clause 11 of the Agreement, the respondents have to approach the Arbitrator. Hence, the order passed by the learned Principal District Musnif is hereby set aside and this Civil Revision Petition is allowed permitting both parties to go for an Arbitration proceedings. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/



To

The Principal District Munsif,
Thoothukudi.

+1CC to Mr.K.R.LAXMAN, Advocate, SR.No. 87450

C.R.P.(PD)(MD) No.956 of 2015
28.09.2018

MRN

ES/SKN/RSK/SAR 4/25.10.2018/3P/3C