BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:27.02.2018

CORAM

THE HONOURABLE MRs. JUSTICE S.RAMATHILAGAM

CRP(PD)(MD).No.988 of 2013

1.R.Pandian
2.P.Poonkuzhali .. Petitioners/Petitioners/Defendants

Vs.

Bank of Baroda,
Veepathur Branch,
by its General Power of Attorney
Mr.P.Ramachandran,
Kumbakonam, Thajnavur District.
.. Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under article 227 of the Constitution of India, against the fair and decreetal order dated 19.02.2013 passed in I.A.No.60 of 2012 in O.S.No.13 of 2006 on the file of the Principal Sub Judge, Kumbakonam.

For Petitioners : Mr.B.Prasanna Vinoth
For Respondent : Mr.Pala Ramasamy

O R D E R

This Civil Revision Petition has been filed against the fair and decreetal order, dated 19.02.2013 passed in I.A.No.60 of 2012 in O.S.No.13 of 2006, on the file of the Principal Sub Judge, Kumbakonam.

2.The brief facts of the case are that the plaintiff has filed a suit in O.S.No.13 of 2006 against the defendants alleging that the defendants had obtained a housing loan from the plaintiff's bank and cheated the plaintiff. The defendants have come forward with this interlocutory application for appointment of commissioner directing him to inspect the property whether any house has been constructed in the suit property as alleged by the plaintiff and the same was dismissed. Hence the defendants have come forward with this Civil Revision Petition.

3.The learned counsel for the petitioners submitted that the court below ought to have appointed an Advocate Commissioner to inspect the suit property to prove that the defendants has never borrowed home loan from the plaintiff's bank. The defendants already have given a clear explanation in the written statement that on what circumstances Ex.A29 was issued. The plaintiff has not shown any materials like plan approval, title deeds, estimation of construction with the bank. Hence, he prays for allowing the petition.

4.The learned counsel for the respondent submitted that the defendants have availed loan from the bank and was proved through Ex.A29. If the defendants have raised the house building in various property other than the suit property, it is a cheating action of the defendants. The suit was in part-heard stage, hence this petition is not maintainable.

5.The petitioners herein are the defendants in the suit in O.S.13/2006. The suit in O.S.No.13/2006 was filed by the plaintiff for recovery of an amount of Rs.3,59,190/- with subsequent interest at the contract rate of 12% and also for passing of a preliminary decree for mortgage against the defendant. It is perused from the plaint that the first defendant approached the bank for a term loan for construction of his house. The first defendant has also executed a pronote and declaration in respect of deposit of title deeds. The second defendant, who is wife of the first defendant had executed a Guarantee Letter, dated 26.05.2003. The plaintiff has also stated that the first defendant had obtained the said loan on mis-representation of facts and subsequently the plaintiff / bank preferred a suit. The defendant being the petitioner in I.A.No.50/12 and stated that the plaintiff / bank alleged that the defendants have approached the plaintiff bank for obtaining housing loan for construction of house and the loan was granted for the building. But there is no building in the suit property. In the said petition, the petitioners/defendants have stated that for appointment of an Advocate commissioner to visit the suit property and make legal inspection in the suit property. During the cross examination of PW1, the suggestion by the defendants for the appointment of commissioner was made and based on their admission, this petitioner being the defendants in the suit have filed a petition for the appointment of commissioner to inspect the suit property and to decide the case. On a perusal of the counter statement filed by the respondent bank, a pre-suit notice was issued on 02.03.2005 which is marked as Ex.A26 was admitted by the defendants / petitioners herein. So the trial court has given a finding that when the plaintiff is entitled for the recovery of the amount that has been sanctioned to the defendants and whether it is a crop loan or for house loan is not the dispute and the purpose of the appointment of commissioner application will in no way serve any purpose for deciding the issue. When the receipt of loan by the defendant is admitted, the appointment of commissioner to inspect the suit property and verifying whether the said loan was utilized for the purpose is not the work of the plaintiff bank. Hence considering the issue involved in the suit, is one for the recovery of loan amount that is sanctioned to the petitioner, the dismissal of the said petition by the trial court does not require any interference and the same is dismissed. The trial court is directed to dispose of the suit in O.S.No.13 of 2006 within a period of one month from the date of receipt of this order, without prejudice of this order.

6.With the above direction this Civil Revision petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To
The Principal Subordinate Judge, Kumbakonam.

Copy to:
The Section Officer,V.R.Section,
Madurai Bench of Madras High Court,
Madurai(2 Copies)

+1CC to Mr.B.Prasanna Vinoth, Advocate, SR.No. 51814
+1CC to Mr.Pala Ramasamy, Advocate, SR.No. 51830

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