OA.No.867 of 2019
in
CS.No.556 of 2019

K.KALYANASUNDARAM, J.

The Plaintiffs in the suit filed for declaration, direction for recovery of Rs.5.00 Crores as damages and for permanent injunction, have come up with this application seeking for an ad interim injunction.

2. Mr.V.P.Senguttuvel, learned counsel for the applicants would submit that the first applicant is a Public Limited Company incorporated under the Companies Act in the year 1994 and it is also a non-banking finance Company. The first applicant is providing financial support to the aspirations of entrepreneurs since its inception. While so, the respondent approached the applicants in February 2019 stating that the respondent has huge finances at their disposal and is ready to support for the business of the applicants.

3. The learned counsel for the applicants would add that on 14.03.2019, the respondent issued the term sheet approving Rs.20.00 Crores loan to the applicants and on 15.05.2019 a sanction letter was issued. As per the directions of the Facility Agreement, which is enclosed in Page No.64 of the typed set, the applicants have created charge by way of hypothecation,

executed a demand promissory note and a letter of continuity. Further, the same was intimated to the Registrar of Companies. It is the submission of the learned counsel that the entire amount of Rs.20.00 Crores had to be utilised by the applicants within a period of three months. Based on the assurance given by the respondent, the applicants have made arrangements accordingly to disburse the amount to their customers. But when the applicants requested the respondent through an email dated 16.05.2019 for disbursement of Rupees two crores, the respondent disbursed only Rs.1,00,00,000/- [Rupees one crore only] on 17.05.2019. Likewise for the subsequent request on 04.06.2019 for release of Rs.3.00 Crores, the respondent disbursed only Rs.1,00,00,000/- [Rupees one crore only] on 07.06.2019.

4. The learned counsel for the applicants drawing attention of this Court to the documents annexed in the typed set of papers filed along with the application submitted that on 5 occasions, the applicants approached the respondent to disburse the amount, which was not released and eventually for no fault on the applicants, the respondent has cancelled the loan facility. According to the learned counsel, the respondent has breached the contract entered into between the parties and for the illegality committed by the

respondent, the applicants have suffered loss in their business and their rating has also came down heavily. It is the submission of the learned counsel that the applicants have made out a *prima facie* case for grant of interim injunction and if an order is not granted, it would cause irreparable loss to the applicants.

5. Per contra, Mr.AR.L.Sundaresan, learned Senior Counsel appearing on behalf of the respondent would urge that the respondent has agreed to lent a sum of Rs.20.00 crores, within a period of three months. Subsequently, the respondent became aware of the fact that the applicants have suppressed the material facts. Hence, the entire amount was not disbursed as per the request of the applicants. The learned Senior Counsel further contended that the applicants have approached this Court for declaratory relief with regard to the cancellation of the agreement by the applicants as valid. Since it is not disputed that the respondent had disbursed Rs.6.00 crores to the applicants, no injunction can be granted restraining the respondent from taking legal remedies. He further submitted that if the respondent files a suit for recovery of money, at the best, the applicants can make a counter claim against the respondent and hence, the application is not maintainable.

6. A perusal of the documents would reveal that admittedly the respondent have agreed to lent a sum of Rs.20.00 crores to the applicants by Facility Letter dated 15.05.2019. It is further evident that the applicants have executed the deed of hypothecation, the applicants 2 and 3 have furnished a personal Guarantee Letter in favour of the respondent and complied other formalities. Though the learned Senior counsel for the respondent contended that the applicants violated the agreement, he is not in a position to point out any violations said to have been committed by the applicants, and on the other hand, the respondent arbitrarily violated the facility agreement by delaying or refusing to disburse the amount demanded by the applicants.

7. In the light of the above facts, in my considered opinion, the applicants are entitled for interim protection.

8. At request of the learned Senior Counsel appearing for the respondent for filing counter, adjourned to 27.09.2019. In the meanwhile, the respondents are directed to maintain status quo.

23.09.2019

KMI

K.KALYANASUNDARAM, J.

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