



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.Nos.2858, 2859 & 2862 of 2019

1. Srini.T.S.

2. Revathi.S

3. Sudersen.N

..Appellants/Respondents in all the appeals

-vs-

M/s Sundaram BNP Paribas Home Finance Limited

rep by its Authorized Signatory

having office at Sundaram Towers

No.46, Whites Road, Chennai-14

.. Respondent/Claimant
in all the appeals

Memorandum of Grounds of Civil Miscellaneous Appeals under Section 37 of the Arbitration and Conciliation Act, 1996, against the orders dated 11.12.2018 made in I.A.Nos.3, 2, 1 of 2018 in Arbitration Case No.KER/SHF/82, 81, 61 of 2018 respectively, on the file of the learned sole Arbitrator.

For Appellants :: Ms.V.Divia Bharathi for
Mr.K.T.S.Sivakumar

JUDGMENT

The appellants have come to this Court with these three civil miscellaneous appeals challenging the correctness of the orders dated 11.12.2018 passed in I.A.Nos.3, 2, 1 of 2018 in Arbitration Case No.KER/SHF/82, 81, 61 of 2018, respectively by the learned sole Arbitrator holding that the claim raised by the respondent company was not affected by the Law of Limitation and accordingly, the applications filed by the appellants praying to declare the initiation of arbitral proceedings for the loan recovery has been barred by limitation, were dismissed.

2. Learned counsel for the appellants submitted that when the accounts of the appellants were declared as NPA on 28.2.2015, legal action for recovery of the outstanding amounts should have been initiated on or before 27.2.2018. But since the arbitration proceedings have been initiated on 24.4.2018 beyond the period of limitation prescribed under Article 37 of the Limitation Act, which says that the limitation for the action to recover the amount due commences from the date of default being committed and the legal action has to be taken within three years, the claim made by the respondent company has been affected by the Law of Limitation. The learned counsel for the appellants also, referring to the notice dated 28.2.2017, stated that at no point of time, as mentioned in paragraph III-d of the



impugned order, the appellants have admitted their liability. Whereas, the learned Arbitrator has come to the conclusion that after the accounts were declared as NPA on 28.2.2015 and proceedings were initiated on 1.3.2015 under the SARFAESI Act, the appellants had admitted their liability through the legal notice dated 28.2.2017, which is incorrect.

3. A perusal of the legal notice dated 28.2.2017 issued by the first appellant to the notice dated 1.3.2015 issued under the SARFAESI Act calling upon the appellants to clear the balance dues shows that even in paragraph-1 of the said notice, the first appellant had admitted the borrowing of Rs.40 lakhs by mortgaging the property during the year 2011 through three different loan accounts on various dates. Again in paragraph-6, it has been stated that due to demonetisation order issued by the Government, the cash flow has been completely stopped and whatever payments the appellant had to receive from various clients have not at all been recovered and in such circumstances, during the last three to four months, the appellant has not been able to pay the installments towards the loan availed by him. One another stand taken by the first appellant in paragraph-13 of the legal notice shows that the earlier notice dated 1.3.2015 was not at all served on him, but in spite of such notice, he continued to pay the installments. Therefore, when the appellants have admitted the borrowing from the respondent company and subsequently, although they were regularly repaying the amount for sometime, on their default in making the repayments, the initiation of arbitration proceedings on 24.4.2018 cannot be contended as after the lapse of three years, inasmuch as when the legal action to recover the outstanding amount had been initiated on 1.3.2015 after the accounts of the appellants were declared as NPA on 28.2.2015 and when the appellants also have admitted their liability through the legal notice dated 28.2.2017, the arbitral reference made on 1.1.2018 is well within three years time. Hence, this Court does not find any infirmity or error in the impugned orders. Accordingly, the civil miscellaneous appeals fail and they are dismissed. Consequently, C.M.P.Nos.14935, 14941, 14952 of 2019 are also dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

+3cc to Mr.K.T.S.Sivakumar,Advocate Sr. 61146

AKM/13.09.19/2P-4C /

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