IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 31st DAY OF JANUARY 2019

THE HON'BLE MR. JUSTICE M.GOVINDARAJ

A. No.6310 of 2018

In the matter of Arbitration & Conciliation Act, 1996
and
In the matter of Credit information Bureau (India) Limited

1. P.C.Bhaskar,
   S/o. P.K.Chandrasekaran,
   No.89, Poes Garden,
   Chennai 600 086.

2. Mrs.Kanthimathi Bhaskar,
   W/o. P.C.Bhaskar,
   No.89, Poes Garden,
   Chennai 600 086.

3. P.B.Abhinav Chandran,
   S/o. P.C.Bhaskar,
   No.89, Poes Garden,
   Chennai 600 086. ... Applicants

-Versus-

Trans Union CIBIL Limited(*),
One Indiabulls Centre,
Tower 2A, 19th Floor,
Senapati Bapat Marg, Elphinstone Road,
Mumbai 400 013. ... Respondent
(*)Amendment as per order in A.No.6763 of 2018
dated on 07.09.2018)

Application praying that this Hon'ble Court be pleased to grant an order of stay of the report issued by the respondent on 22.02.2018 against the petitioners on instruction from Indiabulls Housing Finance Limited.

This application coming on this day before this court for hearing, the court made the following order:-

This application is filed to grant an order of stay of the report issued by the respondent on 22.2.2018 against the applicants on instruction from India Bulls Housing Finance Limited.

2. The applicant is running a Distance Education Institution under the name and style of Bharat Post Graduates and Distance Educations. The respondent is a company incorporated under Companies Act for the purpose of disseminating credit information pertaining to wilful defaulters for cautioning banks and financial institutions so as to ensure further bank finance is not made available to them.

3. The Reserve Bank of India recognizes four credit information banks and the respondent is one among them. The respondent is bound to publish in its website outstanding amount of the wilful defaulters of a sum of Rs.25 lakhs and above as informed by the financial institutions.

4. The applicants during the course of its business appear to have borrowed loan from Indiabulls Housing

Finance Limited. On the information given by the financial institution namely Indiabulls Housing Finance Limited, the respondent published a report describing the applicant as a wilful defaulters and a suit has been filed by the financial institution, against which, the applicants herein filed a suit in C.S.No.251 of 2018 for a declaration declaring the description of the applicants as wilful defaulter as null and void. The financial institution namely Indiabulls Housing Finance Limited filed a petition for rejection of plaint on the ground that Section 18 of Credit Information Companies (Regulation Act 2005) arbitration is provided for resolution of dispute and Section 31 of the above Act bars jurisdiction of the Civil Courts. Thereafter, the applicant preferred an application before this Court for injunction pending arbitral proceedings.

5. The financial institution filed a case against them for dishonour of cheque given as security by the applicants under Negotiable Instruments Act, 1988 and the same is pending before the Courts of Delhi.

6. The financial institution had also initiated SARFAESI proceedings under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. In the meanwhile, the

financial institution reported the applicant as wilful defaulter and the respondent has also published in its website the report without verifying the correctness and accuracy of the same.

7. This Court considering the application filed under section 9 granted an order of interim injunction on 29.08.2018.

8. The respondent filed the counter setting out its functioning and prayed for the dismissal of the application for non joinder of necessary parties.

9. According to the learned counsel for the respondent, the applicants while filing the suit in C.S.No.251 of 2018 has consciously impleaded the financial institution, whereas in the present application, they have omitted to implead the necessary parties. It is the submission of learned counsel for the respondent that without the financial institution who advanced loan to the applicant, the matter cannot be resolved, the application as such is defective and not maintainable .

10. Learned counsel for the respondent would also rely on clause 5 of the Master Circular No.DBR.No.CID.BC.22/20.16.003/2015-16 dated 1.7.2015 to

show that it is the responsibility of the financial institutions to ensure the credit and accurate details and not on the respondent counsel.

11. A reading of Proviso (1) of Section 14 of the Credit Information Company (Regulation) Act 2005 Act which describes the function of the credit information company reads as follows;

> '14. Functions of a credit Information company-(1) A credit information company may engage in any one or more of the following forms of business namely;-
>
> (a) to collect, process and collate information on trade, credit and financial standing of the borrowers of the credit institution which is a member of the credit information company;
>
> (b) to provide credit information to its specified users or to the specified users of any other credit information company or to any other credit information company being its member;'

As per the above section, the respondent company may engage in the business of collecting, processing and collating information on trade, credit and financial standing of the borrowers of credit institution which is a member of the credit information of the company. It also provides credit information to specified users and its members among others.

12. Section 18 of the above Act specifies settlement of dispute among the parties. Section 18 reads as under;

> '18. Settlement of dispute.-(1) Notwithstanding anything contained in any law for the time being in force, if any dispute arises amongst, credit information companies, credit institutions, borrowers and clients on matters relating to business of credit information and for which no remedy has been provided under this Act, such disputes shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996 (26 of 1996), as if the parties to the disptue have consented in writing for determination of such dispute by conciliation or arbitration and provisions of that Act shall apply accordingly.
>
> (2) Where a dispute has been referred to arbitration under sub-section (1), the same shall be settled or decided,-
>
> (a) by the arbitrator to be appointed by the Reserve Bank;
>
> (b) within three months of making a reference by the parties to the dispute;
>
> Provided that the arbitrator may, after recording the reasons therefor, extend the said period up to a maximum period of six months:
>
> Provided further that, in an appropriate case or cases, the Reserve Bank may, if it considers necessary to do so (reasons to be recorded in writing), direct the parties to the dispute to appoint an arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996), for settlement of their dispute in accordance with the provisions of that Act.
>
> (3) Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to all arbitration under this Act as if the proceedings for arbitration

> were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996.'

As per Section 18 of the Act, if any dispute arise among credit information companies, credit institution, borrowers and client shall be settled by conciliation or arbitration. The arbitrator be appointed by the Reserve Bank of India on the dispute being referred.

13. Therefore it is crystal clear that if there arises a dispute amongst the credit information companies and the borrowers, it can be referred to arbitration through the arbitrator appointed by Reserve Bank of India. In the instant case, the applicant seeks for an interim protection pending referral of the dispute by the arbitrator to be appointed by Reserve Bank.

14. Section 19 under Chapter VI of the above Act mandates certain responsibilities on the credit information company or credit institution or specified user, as the case may be, about the accuracy and security of the credit information which reads as under;

> '19. **Accuracy and security of credit information-** A credit information company or credit institution or specified user, as the case may be, in possession or control of credit information shall take such steps (including security safeguards) as may be prescribed, to ensure that the data relating to the credit information maintained by them

> is accurate, complete, duly protected against any loss or unauthorised access or use or unauthorised disclosure thereof.''

15. As per first proviso to Section 21 of the above said Act, the credit information company and the specified user shall make the correction, deletion or addition in the credit information only after such correction, deletion or addition has been certified as correct by the concerned credit institution.

16. With this background, the materials placed before this court were perused by this Court. It is to be seen as to whether the respondent published the report without accuracy and incorrect information. The materials when perused shows that there is a default by the applicants to the tune of Rs.7,55,02,596/- and a suit is pending. Curiously no suit number is given. In fact the applicants 1 and 2 are not the borrowers, but connected to institution which borrowed the loan, whereas the third applicant has nothing to do with the same. According to the applicants, the 3rd applicant was also shown as wilful defaulter. The disclosure with respect to the third applicant is inaccurate, incomplete and erroneous. The records would show that the 3rd applicant is a joint owner and does not describe him as a borrower.

17.The Permanent Account Number issued by the Income Tax Department in respect of 'C P C Bhaskar AC' is shown as male and in the later part of additional Matches, the same person was shown as Female. Superficially it may appear a minor mistake, but it will have great impact on the identification of the individuals.

18. The judgment of the Honourable Division Bench of this Court reported in **2018 (6) CTC 1 Bharath Post Graduate College Vs. Indiabulls Housing Finance Limited)** has been placed before this Court.

19.Perusal of the judgment shows that Bharath Post Graduate College, an institution has been shown as a borrower in respect of a sum of Rs.7,55,02,596/- and not the applicants in their individual capacity. Proceedings initiated under Section 13(1) and 13(3-A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 was quashed by the Honourable Division Bench.

20. To be precise, the judgment shows that the borrower as an institution and not the applicants in their individual capacity. Secondly, the said litigation was initiated under SARFAESI Act and as such, no suit was filed. Even before this Court, the respondent has not

given the details of the suit which was filed against the present applicants.

21. We have already seen Section 19 of the Credit Information Act 2005 mandates that the credit information company or the credit institution or specified user, as the case may be, in possession of or control of credit information shall take such steps including security safeguards, maintained by them is accurate, complete and duly protected against any loss or unauthorised access or use or unauthorised disclosure thereof. The above provision mandates that the data relating to the credit information shall be maintained with accuracy, completeness and shall not be unauthorisedly disclosed. Therefore, it is crystal clear that a credit information company shall take all steps including security safeguards to ensure the data relating to the credit information maintained by them is accurate and complete. In the instant case, as seen above, the applicants were not shown as the borrowers in the SARFAESI proceedings initiated by the financial institution. In that case, the publishing of the names of the applicant as the borrowers is improper, inaccurate.

22. Secondly, there are discrepancies in describing the parties as to their gender. The applicants are reported as wilful defaulters and a suit is said to have been filed against them without any data or valid

information, therefore, the credit information published by the respondent is absolutely inaccurate, incomplete and erroneous.

23. The contention of the learned counsel for the respondent that the function of the respondent company is only to collect, process and collate the details and publish the same in their website and that they do not have any other responsibility is not at all tenable.

24. Further reliance made by the respondent on the Master Circular issued by the Reserve Bank of India dated 1.7.2015 is also not acceptable. The Circular is issued to the Banks to ensure providing correct information and fixing the responsibility on them will not in any way absolve the credit information companies of their responsibility. This Master Circular issued by Reserve Bank of India will not prevail over the statutory Act namely the Credit Information Company (Regulation) Act 2005.

25. Section 19 of the above Act 2005 clearly mandates that the data shall be accurate and complete. When there is a failure to maintain accurate and credit data, it will certainly give rise to a disptue. Therefore the respondent cannot wash off his hands as if he is not responsible for

the inaccurate reporting or publication in their website putting the blame on the financial institution.

26. In sofaras the contention of the respondent with regard to non joinder of necessary party is concerned, the dispute is between the applicant and the respondent. To be specific, the dispute is about the disclosure of information without maintaining the data as to its accuracy and correctness. It is the mandatory duty of the credit information company, financial institution and specified user to maintain correct data and take steps to security safeguards. Even assuming that the information given by the financial institution is wrong, before publishing the report, it is the responsibility of the respondent to verify its accuracy and correctness . A wrong reporting may kill good entrepreneurs from the market. Therefore abundant caution should have been taken by the respondent in maintaining and publishing correct and accurate data.

27. But in the instant case, the respondent has drastically failed in its responsibility in publishing the correct and accurate data and also lacked in maintaining data supporting disclosure. There is no material produced by the respondent to show that a suit was filed and that the applicants are the wilful defaulters. Therefore taking shelter under clause 5 of the Master Circular issued by the

Reserve Bank of India that the financial institution shall ensure provision of correct information and the responsibility lies on them will not come to the aid of the respondent. The said circular was issued only to the banks and not to the respondent credit information company. Therefore, the materials placed before this Court prima facie shows that the applicants were not the borrowers but Bharath Post Graduate College and Educational Institution was a borrower. The description of the applicants in their individual capacity is a matter for arbitration and data is prima facie inaccurate and incomplete. Hence the dispute of wrongful, inaccurate and incomplete disclosure is a dispute between the applicants and the respondent and the financial institution is not a necessary party to the dispute.

28. Considering the same, this Court on 29.08.2018 granted an interim injunction. I do not find any materials to interfere with the same. Accordingly the interim order is made absolute. It is open to the parties to seek for referral of the dispute to arbitration by the arbitrator be appointed by the Reserve Bank of India or on their own volition.

29. In fine, the application is allowed and the interim order already grnated by this court earlier is made absolute.

Sd./-M.G.R.J
31/01/2019

//Certified to be true copy//

Dated at Madras this the day of 2019.

COURT OFFICER(O.S.)

JJ 10/04/2019

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