IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2020

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
&
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

O.S.A.No.322 of 2019

Trans Union CIBIL Ltd.,
One Indiabulls Centre,
Tower 2A, 19th Floor,
841, Senapati Bapat Marg,
Elphinstone Road,
Mumbai 400 013. ... Appellant

Vs.

1. P.C. Baskar,
2. Mrs.Kanthimathi Bhasker
3. P.B. Abhinav Chandran ... Respondents

Prayer: Original Side Appeal filed under Order 36, Rule 1 of the Original Side Rules, read with Clause 15 of the Letters Patent Act against the fair judgment and decreetal order dated 31.01.2019 passed in Application No.6310 of 2018 in the Ordinary Original Jurisdiction of this Court.

For Appellant : Mr.S.Parthasarathy

For Respondents : Mr.G.Veerabadran

O R D E R

(Delivered by Dr.Vineet Kothari, J.)

The Court was held by Video Conference, as per the Resolution of the Full Court dated 3 July 2020, by Judges at their respective residences and the counsel, staff of the Court appearing from their respective residences.

2.The appellant Transunion CIBIL Limited, a credit institution working under the provisions of the Credit Information Companies (Regulation) Act 2005, (hereinafter referred to as the "Act"), issued certain information in public domain, which according to the respondents /borrowers Mr.P.C. Baskar and others, are prejudicial to their interest and therefore, the respondents viz., Mr.P.C.Baskar and others have approached the learned Single Judge of this Court apparently under Section 9 of the Arbitration and Conciliation Act, 1996. Though the said provision is not referred in the order impugned before us, by the impugned order dated 31.1.2019, the learned Single Judge, while dealing with A.No.6310 of 2018 (P.C.Baskar and 2 others vs. Trans Union CIBIL Limited) has granted an ad-interim injunction on 29.08.2018 restraining the respondent therein, who are the appellant before us, from disseminating the information declaring the applicants therein as wilful defaulters. Against the said interim order being made absolute by the learned Single Judge, the present appeal has been filed by the appellant herein.

3. Mr. S. Parthasarathy, learned counsel appearing for the appellant Company made the two following submissions:

(i) that since the information is compiled by the appellant company on the basis of the data information supplied by the lending institutions namely Banks and other financial institutions, without impleading these lending institutions as a party respondents in A.No.6310 of 2018 before the learned Single Judge, the respondents/borrowers could not have approached the learned Single Judge under Section 9 of the Arbitration and Conciliation Act 1996 and therefore, the order of the learned Single Judge deserves to be set aside; and

(ii) that since an remedy is provided under Section 21(3) of the Act, 2005, for the borrowers to approach the concerned Credit Institution itself for correction in the data or information compiled by them, which, after due approval by the concerned lending institution, can be so corrected, the respondents could not have approached this Court by way of aforesaid application under Section 9 of the Arbitration and Conciliation Act 1996. Therefore, he also urged that the said application was not maintainable.

4. Per contra, Mr. Veerabadhran, learned counsel appearing for the respondents urged that since the information put in the public domain against the respondents are prejudicial to the interest of the respondents and the same was disseminated without notice to the respondents, the respondents were entitled to invoke the provisions of Section 9 of the Arbitration and Conciliation Act, 1996 in view of the provisions under Section 21 of the said Act and Section 9 of the Arbitration and Conciliation Act.

5. We have heard the learned counsels appearing on either side.

6. The provisions of the two enactments relevant for our

purpose are quoted below for ready reference.

"Section 21 of the Credit Information Companies (Regulation) Act 2005:

21. Alteration of credit information files and credit reports.—(1) Any person, who applies for grant or sanction of credit facility, from any credit institution, may request to such institution to furnish him a copy of the credit information obtained by such institution from the credit information company. (2) Every credit institution shall, on receipt of request under sub-section (1), furnish to the person referred to in that sub-section a copy of the credit information subject to payment of such charges, as may be specified by regulations, by the Reserve Bank in this regard.

(3) If a credit information company or specified user or credit institution in possession or control of the credit information, has not updated the information maintained by it, a borrower or client may request all or any of them to update the information; whether by making an appropriate correction, or addition or otherwise, and on such request the credit information company or the specified user or the credit institution, as the case may be, shall take appropriate steps to update the credit information within thirty days after being requested to do so: Provided that 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: Provided further that no such correction, deletion or addition shall be made in the credit information if any dispute relating to such correction, deletion or addition is pending before any arbitrator or tribunal or court and in cases where such dispute is pending, the entries in the books of the concerned credit institution shall be taken into account for the purpose of credit information.

Section 9 of Arbitration and Conciliation Act, 1996 read as follows;

Interim measures, etc., by Court.— [(1)] A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court— (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or (ii) for an interim measure of protection in respect of any of the following matters, namely:— (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it."

7. Apparently, a recourse to the provisions of the Arbitration and Conciliation Act, 1996 is therefore permissible. If a person is aggrieved with the information disseminated by credit institution like the present appellant in the public domain and there is a dispute with regard to the same, the person aggrieved by such information can either approach the concerned credit institution itself for correction of such information or can approach the Reserve Bank of India, for such grievance. Therefore, the remedial measures to be undertaken by the aggrieved parties have a necessary recourse to the provisions of the Arbitration and Conciliation Act, 1996. Section 9 of the said Act, as quoted above, provides for interim relief to the aggrieved party before or during the course of arbitral proceedings. In the present case, it seems that the dispute as of now, does not stand referred to any Arbitrator appointed by the Reserve Bank of India.

8. Further, we do not find any discussion by the learned Single Judge on the two submissions aforesaid made by the appellant institution namely (i) maintainability of the application under Section 9 of Arbitration and Conciliation Act,

1996 or (ii) the necessity of impleadment of lending institutions in such application under Section 9 of the Arbitration and Conciliation Act, 1996.

9. The parties do not seem to have raised these issues before the learned Single Judge in appropriate manner and there is no discussion in the order impugned before us dated 31.1.2019 passed by the learned Single Judge. Therefore, we are deprived of the benefit of reasoned opinion of the learned Single Judge on these two important issues raised in this appeal.

10. In such circumstances, we are inclined to relegate the parties before the learned Single Judge with liberty to them to raise these questions properly before the learned Single Judge, with a request to the learned Single Judge to decide those issues after giving an opportunity of hearing to both parties. Till the learned Single Judge decides the aforesaid issues, the interim order dated 31.1.2019 passed by the learned Single Judge, shall continue.

11.With these observations, the present appeal is disposed of. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

+1cc to Mr.S.Parthasarathy, Advocate, Sr.No.29076

pp (co)
rr ii (28/09/2020)