

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.02.2021

CORAM:

THE HONOURABLE Mr.JUSTICE **M.SUNDAR**

O.P.No.207 of 2013

1. M/s.PMR Software Technology Pvt. Ltd.,
Door No.14 Plot No.2036
15th Main Road, Anna Nagar West,
Chennai-600 040.
2. P.Muthuvelraj
S/o.Paramasiva Naidu,
3. Sangamitra
W/o.P.Muthuvelraj
4. P.Markkannathas
S/o.Paramasiva Naidu

... Petitioners

Vs.

1. Citifinancial Consumer Finance India Limited,
Regd. Office at;
3 LSC Pushp Vihar,
New Delhi-110 062.

2. The Branch Manager,
Citifinancial Consumer Finance India Ltd.,
“Citadel” 117 (New No.54)
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

3. Shri.Rajiv Shukla
Sole Arbitrator,
B.147, L.G.F, Lajpat Nagar-1,
New Delhi.

4. M/s.L & T Housing Finance Limited,
Rep. by its authorised Officer,
KGN Towers, 5th Floor,
No.62, Ethiraj Salai,
(Commander-in-Chief Road),
Egmore, Chennai-600 105.
(R4 impleaded as per the order dated 27.08.2020
made in A.No.4507/2015)

... Respondents

Prayer: Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, praying to set aside the award was passed by the 3rd Respondent/Arbitrator on 30.11.2012 in Ref.No.2189 of 2012 and received by the petitioners on 23.02.2013 determining a sum of Rs.2,68,75,773.10 (Rs.Two Crores Sixty Eight Lacs Seventy Five Thousand Seven hundred Seventy Three and Paise Ten only) as due to the claimant/respondents 1 and 2 together with an interest of 18% p.a. from 24.01.2012 till date of realization giving credit to intervening payments and also declared that the Respondent claimant shall be entitled to realize the amounts by selling the mortgaged property and also awarded a cumulative cost of Rs.9500/-; award costs to the petitioners herein.

For Petitioners : Mr.Varun Srinivasan

For Respondents : R1 to R3 – No appearance
Mr.D.Pradeep Kumar for R4

ORDER

Mr.Varun Srinivasan, learned counsel of N.V.S.Associates (Law Firm) on behalf of the four petitioners and Mr.D.Pradeep Kumar, learned counsel for contesting fourth respondent are before me.

2. This Court is informed that respondents 1 and 2 have assigned the alleged debt to fourth respondent, in other words fourth respondent has stepped into the shoes of respondents 1 and 2. To be noted, sole Arbitrator, who constituted AT and made the impugned award has been arrayed as respondent no.3. Though in the considered view of this Court, this may not be necessary. However, as territorial jurisdiction issue has arisen and captioned OP is being disposed of on this ground, I refrain myself from saying anything on this issue or for that matter on anything on merits.

3. Both the learned counsel submit that the fulcrum of this lis is an agreement captioned 'HOME EQUITY AGREEMENT' dated 16.06.2008 and the Arbitration Agreement between the parties being Arbitration Agreement within the meaning of Section 2(1)(b) read with Section 7 of 'The Arbitration and Conciliation Act, 1996 (Act No.20 of 1996)' [hereinafter 'A and C Act' for the sake of brevity] is in the form of a Clause in this Home Equity

Agreement, that clause is clause 10.7 (h) and the same reads as follows:

'10.7 THE BORROWER AGREES/CONFIRMS AS FOLLOWS:

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h) In the event of any dispute or differences arising under this Agreement including any dispute as to any amount outstanding, the real meaning or purport hereof ("Dispute"), such Dispute shall be finally resolved by arbitration. Such arbitration shall be conducted in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 or any amendment or reenactment thereof by a single arbitrator to be appointed by the Lender. The venue of arbitration shall be at New Delhi and the arbitration shall be conducted in English language.'

4. A perusal of the impugned award i.e., Arbitral Award dated 30.11.2012 made by the sole Arbitrator reveals that the arbitral proceedings were held in New Delhi.

5. To be noted, captioned OP is an application under Section 34 of A and C Act assailing the impugned award. In this view of the matter, the **BGS SGS Soma** principle, which is to the effect that the juridical seat becomes exclusive jurisdiction qua Supervisory Court assumes significance. To be noted, in **Engineering Projects India Ltd., Vs. Balaji Projects** reported in MANU/TN/0392/2021 relevant paragraph is 24 and the same reads as follows:

'24. In BGS SGS Soma, Hon-ble Supreme Court after survey of various prior judgments, concluded that whenever there is designation of place of arbitration in an arbitration clause as being 'venue' of arbitration proceedings, the expression 'arbitration proceedings' would make it clear that 'venue' is really 'seat' of arbitration proceedings. Relevant paragraph in BGS SGS Soma is paragraph 82 and the same reads as follows:

'82. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the "venue" of the arbitration proceedings, the expression "arbitration proceedings" would make it clear that the "venue" is really the "seat" of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as "tribunals are to meet or have witnesses, experts or the parties" where only hearings are to take place in the "venue", which may lead to the conclusion, other things being equal, that the venue so stated is not the "seat" of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings "shall be held" at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular

place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a "venue" and not the "seat" of the arbitral proceedings, would then conclusively show that such a clause designates a "seat" of the arbitral proceedings. In an international context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that "the venue", so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the "stated venue", which then becomes the "seat" for the purposes of arbitration.'

6. There is no disputation or disagreement before me about the aforementioned obtaining legal position.

7. It is brought to my notice that the records of the Arbitral Tribunal pertaining to the impugned award, which were requisitioned are also before me as part of the case file.

8. It is open to the petitioners to present captioned OP in the jurisdictional Supervisory Court in New Delhi. Though obvious, it is open to the petitioners to seek benefit under Section 14 of The Limitation Act, 1963 (Act No.36 of 1963) but all that would be in the domain and discretion of jurisdictional Supervisory Court as it would not be proper for this Court to say anything even on this aspect of the matter owing to lack of territorial jurisdiction.

9. Though obvious it is made clear that this Court has expressed any opinion or view on the merits of the matter.

10. In the light of the aforementioned narrative, captioned OP is closed without expressing any opinion on merits for being returned to the counsel for petitioners under due acknowledgement. Registry to return the papers including the original impugned award in the aforesaid manner within ten (10) working days from the date of receipt of a copy of this order by the counsel for petitioners. The records of the Arbitral Tribunal shall be retained by the Registry in a sealed envelope and if requisitioned by Supervisory Court, Registry shall send it to the jurisdictional Court.

11. Captioned OP is closed with aforementioned directives regarding return of case papers/case file including the original impugned award. There shall be no order as to costs.

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Speaking order: Yes/No

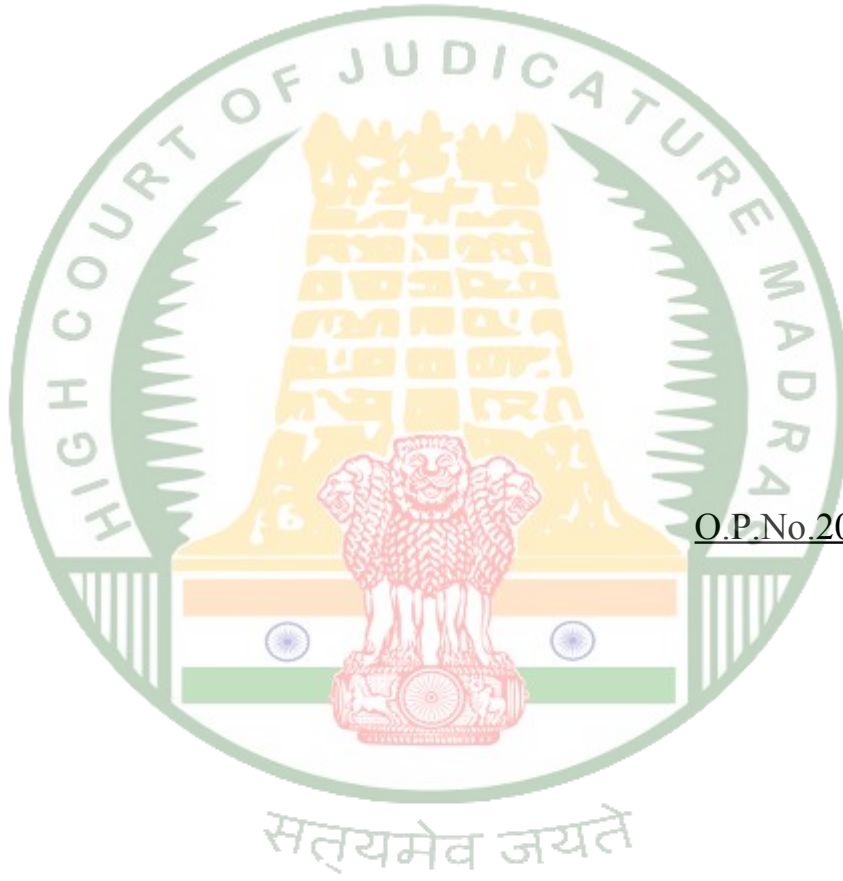
Index: Yes/No

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