

Application No.1538 of 2021

in

C.S.No.51 of 2021

V.PARTHIBAN, J.

The above application has been filed by the applicant, who is the defendant in the Suit. The respondent is the plaintiff, who has filed the above suit directing applicant / defendant to pay a sum of Rs.4,35,25,000/- with interest, on a sum of Rs.3,60,00,000/- at 12% at the cost of the Suit. According to the respondent / plaintiff that the applicant / defendant has borrowed money from the plaintiff from time to time for putting up housing complex called Prince Towers. According to the respondent / plaintiff from April 2017 to June 2018, a total sum of Rs.6,50,00,000/- have been lent to applicant / defendant for his commercial project. The applicant / defendant appeared to have repaid a part of the amount and there was still a balance of Rs.3,50,00,000/- payable to the respondent / plaintiff, as on date.

2. During the course of negotiation for the repayment of the loan amounts, there was an agreement for sale of a property in the ongoing housing project dated 11.07.2019 between the applicant and the

respondent herein as per which the applicant / defendant would get no objection from the principal lender to the project in order to effect ultimate sale to the respondent/plaintiff.

3. For some reason that the agreement could not fructify into a sale and the respondent / plaintiff could not realize the entire outstanding dues from the applicant / defendant, therefore, the suit has been filed for recovery of the dues with an agreed interest.

4. On behalf of the defendants, the present application has been filed questioning the maintainability of the suit on the ground that there is an Arbitration Clause provided in the agreement for sale dated 11.07.2019 and the dispute ought to be referred to the Arbitration. The applicant / defendant therefore prays for dismissal of the suit by rejecting the plaint.

5. The learned counsel appearing for the applicant / defendant would submit that in terms of Clause – 21 of the sale agreement dated 11.07.2019 the respondent / plaintiff has agreed to enforce the specific

performance in terms of the agreement through arbitration process. He would draw the attention of this Court particularly to the Specific Performance to arbitration in Clause – 21, which reads as follows:

“Either party shall have the right to enforce specific performance of this contract.

Arbitration shall be conducted as follows:-

- *The Arbitration Proceedings shall be conducted in English.*
- *The Venue of such arbitration shall be held in Chennai.*
- *The dispute shall be referred to a Sole Arbitrator appointed by the Vendor herein.*
- *The decision and award of the arbitrator shall be final and binding on the parties hereto and the parties herein agree to be bound thereby and to act accordingly.*
- *The Arbitration Proceedings shall be governed by the Arbitration and Conciliation Act, 1996 and any amendments thereof.”*

6. The learned counsel, therefore, submits that in view of the Arbitration Clause found in the agreement, the present suit is not maintainable and it has to be dismissed.

7. On the other hand, the learned counsel for the respondent / plaintiff would submit that the application is completely misconceived and not maintainable for the simple reason that the present suit is not for enforcement of any specific performance in terms of the sale agreement entered into between the plaintiff / defendant dated 11.07.2019. It is a simple suit for recovery of dues from the defendant and therefore, Arbitration Clause contended in the sale agreement cannot be pressed into service in the present suit proceedings.

8. The learned counsel for the respondent / plaintiff would draw the attention of this Court to various averments contained in the plaint pointing out the facts of the loan transactions, repayments etc., and the outstanding amounts. Since the sale agreement could not fructify into discharge of debts due from the applicant / defendant, the respondent / plaintiff has come up with the present suit for recovery of money. Therefore, he would submit that the question of dismissal of the suit on the specious plea of Arbitration Clause found in sale agreement dated 11.07.2019 is to be rejected as completely devoid of merits and substance.

9. At this learned counsel for the applicant / defendant attempted to draw the attention of this Court to various factual details in order to impress upon this Court that there are no amounts due and payable to the respondent / plaintiff under the subject loan transactions. According to the learned counsel, the loan amounts have been discharged through various methods and therefore, the plaintiff has no cause of action for filing the suit.

10. This Court considered the pleadings in the application, plaintiff averments and the materials placed on record. The application for dismissal of the suit is premised on the legal plea that there is an Arbitration Clause in the sale agreement entered into between the plaintiff / defendant dated 11.07.2019 and hence, the present suit is not maintainable.

11. This Court is unable to appreciate the arguments and the submissions of the learned counsel for the applicant / defendant for the simple reason that this is not the suit for specific performance. As rightly contended by the learned counsel for the respondent / plaintiff, it is the

suit for recovery of money payable by the applicant / defendant to the respondent / plaintiff and, therefore, the Arbitration Clause as found in sale agreement dated 11.07.2019, would have no application at all in this case.

12. When the suit is laid only for recovery of dues payable namely money suit, *dehors* the sale agreement dated 11.07.2019, it is untenable on the part of the applicant herein for invoking the Arbitration Clause found in sale agreement dated 11.07.2019 and be pitchforked into present proceedings and non-suit the respondent / plaintiff herein. Merely because there was an agreement of sale between the parties that cannot be the reason for dismissing the suit on the ground of Arbitration Agreement, when the fact of the matter is that the suit is not premised on such agreement at all.

13. Further the other arguments advanced on behalf of the applicant / defendant about the discharge of entire loan transaction and there is no amount outstanding as on date is a matter to be determined in the trial and such submission cannot be the subject matter of

consideration at this stage. This Court cannot accept the submissions of the applicant / defendant on the basis of some self serving factual assertion of the applicant herein and dismiss the suit at the preliminary stage, without the issues going through the process of trial and final determination.

14. Therefore, this Court finds the arguments advanced on behalf of the applicant / defendant are invalid at this stage and do not merit any consideration presently for the purpose of holding the suit not maintainable and dismissal of the same. On the whole, this Court finds there is absolutely no merit and substance in the above application filed on behalf of the applicant / defendant and the same is liable to be dismissed.

15. Accordingly, the application stands dismissed.

25.06.2021

pns/mrm

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