IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 8THDAY OF OCTOBER 2021

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

A.No.3030 of 2021
in
C.S.(Comm.Div.) No.209 of 2019

M/s.Housing Development Finance
Corporation Limited, rep. by its
Asst Manager – Credit Risk Management
2nd Floor, ItC Centre, No.760, Anna Salai,
Chennai-600 002. ..Plaintiffs

-Versus-

1.D.Hariramsingh
2.H.Meena Kumari

both are residing at
No.19, Sai Kirupaa Santhanam Street,
Nehru Nagar, Bye Pass Road,
Madurai-625 010. ..Defendants

A.No.3030 of 2021

1.D.Hariramsingh
2.H.Meena Kumari

both are residing at
No.19, Sai Kirupaa Santhanam Street,
Nehru Nagar, Bye Pass Road,
Madurai-625 010. ..Applicants

Vs

M/s.Housing Development Finance
Corporation Limited, rep. by its
Asst Manager – Credit Risk Management
2nd Floor, ItC Centre, No.760, Anna Salai,
Chennai-600 002. ..Respondent

Application praying that this Hon'ble Court be pleased to reject the plaint in C.S.(Commercial Division) No.209 of 2021.

This Application coming on this day before this court for hearing, the Court made the following order:

Heard the learned counsel for the applicants/defendants and the learned counsel for the respondent/plaintiff.

2. The suit is filed for recovery of money on the premise that the loan advanced to the defendants for the purchase of land not been repaid and property against which the loan was sanctioned itself smeared with suspicion and not a genuine document. After receipt of the suit summons for the 1st and 2nd defendants on 30.04.2019, the defendants failed to file their written statement within the statutory period of limitation and therefore, their right to file the written statement got forfeited and the same was recorded by this Court on 09.07.2021.

3. The present application is filed by the defendants under Order XIV Rule 8 of O.S.Rules, read with Order VII Rule 11(d) of C.P.C., to reject the plaint.

4. The submissions of the applicants in support of their application is capsulised in the paragraph Nos.3 and 4 of the affidavit, which reads as below:

> *"3. I submit that the amount sought to be recovered was a "debt"within the meaning of Section 2(g) of the Recovery of Debts and Bankruptcy Act, 1993. I submit that the above suit filed by the respondent/plaintiff is a suit for recovery of loan and falls under the definition of "debt"under the Act.*
>
> *4. I submit that on the establishment of the Tribunal under the Recovery of Debts due to Banks and financial institutions Act, 1993 no Court or other authority had any jurisdiction, power or authority except the Hon'ble Supreme Court of India and the Hon'ble High Court exercising jurisdiction under Articles 226 and 227 of the Constitution in relation to the matters specified in Section 17 of the Act. Under Section 17 of the Act it was only a Tribunal constituted under the Act which could exercise jurisdiction,*

power and Authority to entertain and decide applications from bank and financial institutions for recovery of debts due to respondent/plaintiff. I submit that under Section 18 of the Recovery of Debts and Bankruptcy Act, 1993, the suit for recovery of Debt lies within the jurisdictional competence of the Tribunal and the same is excluded from the jurisdiction of Civil Court."

5. The learned counsel for the applicants would submit that Section 11 of the Commercial Courts Act, 2015, imposed specific bar to entertain or decide any suit/application or proceedings relating to any commercial dispute in respect of which the jurisdiction of the Civil Court is either expressly or impliedly barred under any other law for the time being in force. Whereas, the Recovery of Debts and Bankruptcy Act, 1993, under Section 17 confers jurisdiction to the Debts Recovery Tribunal to exercise power and authority to entertain and decide the applications from the banks and financial institutions for recovery of debts due.

6. According to the learned counsel for the applicants/defendants, the plaintiff - M/s. Housing Development Finance Corporation Limited is the financial institution as defined under Section 2 (h) of the Recovery of Debts and Bankruptcy Act, 1993. The Central

Government has already notified the HDFC bank as one of the financial institutions. Since the debt now sought to be recovered by the financial institution as notified and declared as the financial institution by the Central Government, jurisdiction of the Civil Court is excluded. Hence the present plaint has to be rejected.

7. In response to the above submissions, the learned counsel for the respondent/plaintiff would referred the counter filed on behalf of the respondent/plaintiff would submit that there is no bar to entertain the suit by the Civil Court as contended by the applicants counsel.

8. The suit is based on the loan availed and the loan was granted not based on any security. Therefore, the loan between the defendants does not attract the provisions of Securitization Act, 2002. Only, in case, where the financial institution resort to the provisions of the Securitization Act, 2002, the Civil Court jurisdiction is excluded. The learned counsel for the respondent/plaintiff referring notification relied by the applicants' counsel would submit that the said notification is issued in exercise of powers conferred under Section 2(m)(iv) of the Securitization Act, 2002 and not under Section 2(h)(ii) of the Recovery of Debts and

Bankruptcy Act, 1993.

9. The learned counsel to buttress his arguments also relied upon the judgment of Kerala High Court, the identical facts and situations, there is no statutory bar under RDDBFI Act, for HDFC to file a civil suit for recovery of money. The suit has laid for recovery of money advanced as housing loan. The specific allegations made in the plaint is that the security/mortgage property is not available for recovery of debts as the defendants have played fraud and fabricated records they deliberately kept the plaintiff's financial institution. Therefore, from the plaint itself, it is made clear that they are not relying upon the so called security furnished under the Securitization Act, 2002 and the suit is filed as a simplicitor money suit for recovery.

10. To accept his submission of the applicants/defendants that the remedy for the plaintiff is to approach the Debts Recovery Tribunal. At the first instance, the plaintiff should satisfy the definition of financial institution as defined under the Debts Recovery Tribunal, Act. The definition of financial institution as defined under the DRT,Act, *per se*, does not exclude HDFC bank or any housing financial institution. To include such institutions, there must be a notification by the Central Government

invoking the power confers under Section 2(h)(ii) of the Recovery of Debts and Bankruptcy Act, 1993 which reads as below:

> **(***ii) such other institution as the Central Government may, having regard to its business activity and the area of its operation in India, by notification , specify;*

11. Admittedly, there is no such notification issued by the Central Government to include specifically HDFC as a financial institution. In the said circumstances, a Judgment of the Kerala High Court rendered in ***M/s.Housing Development Finance Corporation Limited Vs. Geethu Viswanath and other*** reported ***in online*** squarely applies. Therefore, this Court is of the view that this application is devoid of merits and liable to be dismissed.

12. Hence, the application is dismissed. No costs.

Sd/-G.J.J

08/10/2021

// Certified to be true copy//

Dated at Madras this day of 2021.

Court Officer(O.S.)

From 25th day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

jj 20/10/2021