IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.03.2021

Pronounced on : 26.04.2021

CORAM

THE HON`BLE MR.JUSTICE R.PONGIAPPAN

A.No.3130 of 2020
in
C.S.No.251 of 2020 and OA No.462 of 2020
and A.No.3129 of 2020

1. Mr.Badri Kasturi.

2. M/s.Shraddha Entertainment,
Represented by its Authorised Signatory,
New No.2, Old No.17,
Ceebros Apartments,
3rd Floor, Camelot Centre Avenue,
Kesavaperumalpuram,
Chennai – 600 028. ... Applicant/defendants 1 & 2

Vs.

1. State Bank of India,
Stressed Asset Management Branch,
Red Cross Building, Montieth Road,
Egmore, Chennai – 8,
Rep by its Assistant General Manager. ... 1st Respondent/Plaintiff

2. M/s.Ondraga Entertainment,
Represented by its Authorised Signatory,
New No.2, Old No.17,
Ceebros Apartments,
3rd Floor, Camelot Centre Avenue,
Kesavaperumalpuram,
Chennai – 600 028. ... 2nd Respondent/Defendant 3

Prayer: This application is filed under Order XIV Rule 8 of the Original Side Rules read with Order VII Rule 11 of CPC, praying to reject the plaint in C.S.No.251 of 2020, as not maintainable.

For Applicants : Mr.ARL.Sundaresan, Sr. Advocate
for M/s.Rugan and Arya

For Respondents : Mr.M.L.Ganesh (for R1)
Mr.Abdul Hameed (for R2)
M/s.AAV Partners

ORDER

The defendants 1 and 2 in C.S.No.251 of 2020 has filed this application, under Order XIV Rule 8 of the Original Side Rules read with Order VII Rule 11 of CPC, praying to reject the plaint filed in the said suit.

2. The gist of the averments found in the common affidavit filed by the applicant in support of the applications, is as follows:

(i) The 2nd applicant/2nd defendant viz., M/s.Shraddha Entertainment, is a partnership firm, in which, the 1st applicant/1st defendant and his wife Mr.Radha Krishnasamy are the partners. The 2nd respondent/3rd defendant viz., M/s.Ondraga Entertainment, is a sole proprietary concern of one Mr.Gautham Vasudev Menon. Since the 2nd applicant/2nd defendant firm has nothing to do with the 1st respondent/plaintiff or the DRT proceedings initiated by them, the 2nd applicant/2nd defendant firm has not traversed the averments and allegations with regard to the same.

(ii) At the outset, the present suit has been filed by the 1st respondent/plaintiff without any cause of action as against the 2nd applicant firm. The 2nd applicant firm is not a borrower or a guarantor vis-a-vis, in the alleged loan transaction. Admittedly, the loan was borrowed by one M/s.Connect Wind India Pvt. Ltd., and the same was guaranteed by the 1st applicant herein in his personal capacity and not as a partner of the 2nd applicant firm. Hence, there is no privity of contract between the 1st respondent/plaintiff and the 2nd applicant/defendant firm.

(iii) Further, the entire suit filed by the 1st respondent/plaintiff is without jurisdiction. The 1st respondent/plaintiff, being the bank and having already initiated action against the borrowers and guarantors before DRT, Chennai, is only entitled to execute any orders that may be passed by the DRT by following the due process of law. The only remedy, available to the 1st respondent/plaintiff is under Section 19 followed by Sections 25 to 28 of Recovery of Debts Due to Banks and Financial Institutions Act (herein after referred to as 'DRT Act'). Even as per the guidelines issued by the Ministry of Finance, the Bank is only entitled to move an application under Sections 19(12) to 19(18) of the DRT Act for any remedy as against the guarantor. The relief sought in the present suit is squarely covered by Section 17(1) of the DRT Act and hence the jurisdiction of this Court has been ousted to even entertain the suit.

(iv) The 2nd applicant firm is outside the Ordinary Original Civil jurisdiction of this Court. It has its own registered office at No.2, Seaface Road, Palavakkam, Chennai – 600 041, which is situated outside the Ordinary Original Civil jurisdiction of this Court. Further, the 2nd respondent/3rd defendant in the main suit, is an independent entity unconnected with the other defendants or the subject matter of the suit and has its office at No.63, Gandhi Street, Kanagam, Tharamani, Chennai – 600 113, which is also outside the Ordinary Original Civil Jurisdiction of this Court.

(v) The very prayer in the above suit, seeking for declaration of first charge over the sale proceeds of the film 'Naragasooran' is absurd and not at all maintainable. The 2nd applicant firm herein never created any charge over the said film in favour of the 1st respondent/plaintiff . The 1st respondent/plaintiff has not even made any averment that such charge was created in their favour by anyone. The film 'Naragasooran' was produced by the 2nd applicant firm, a partnership firm, in which the 1st applicant/1st defendant, is only a minority partner. The 1st applicant/1st defendant does not have any right over the said film in his individual capacity.

(vi) Further, the very allegation that the loan disbursed, sometime in 2015, by the 1st respondent/plaintiff to a 3rd party company, has been diverted in 2017 by the 1st applicant herein to the 2nd applicant firm to make a film, is baseless. The 2nd respondent herein/3rd defendant has nothing to do with the film 'Naragasooran'. Further, the said film was sold and assigned vide agreement dated 25.11.2019 by the 2nd applicant firm to one M/s.Kondaduvom Entertainment in which the said Mr.Gautham Vasudev Menon and his associates, are partners. Hence, the 2nd applicant firm has nothing to do with the film 'Naragasooran'. In any event, the 1st respondent/plaintiff has not made a prima facie case for grant of interim order in the present case. Balance of convenience is also not in favour of the 1st respondent/plaintiff. Therefore, the plaint filed in C.S.No.251 of 2020 is liable to be rejected.

3. In response to the application filed by the applicants/defendants 1 and 2, the 1st respondent/plaintiff filed a common counter affidavit, stating that though the applicants/defendants 1 and 2 have contended that this Court is not having jurisdiction to try the suit, in order to prove the same, they have not chosen to file a copy of the partnership certificate to indicate that the said partnership firm is having registered office at No.2, Seaface Road, Palavakkam, Chennai-41. The 1st applicant/1st defendant claiming to be a Partner in the 2nd applicant firm signed the proceedings conducted by the CBI at Kutchanur Village, Theni District on 19.10.2020, wherein he had mentioned that he is having address at No.74, Lakeview Road, Chennai-33. When at the time of availing the loan, the 1st applicant had given the address as mentioned in the cause title as if it belongs to him. The 1st applicant had given another address in S.A.No.79 of 2018 before DRT-II, Chennai and hence, it goes without saying that the new address as mentioned in the above applications by the deponent is nothing but mischievous statement made for the purpose of the case.

(i) The censor certificate dated 24.07.2018 for the film 'Naragasooran' has been issued in favour of the 1st applicant/1st defendant only. The 1st applicant/1st defendant has defrauded the 1st respondent/plaintiff bank under the guise of performing business operation, but diverted the public money for ulterior purpose. The 1st applicant/1st defendant had admitted the fact that by filing documents he had availed various credit facilities from the 1st respondent/plaintiff bank and defaulted in repaying the same and further affirmed that a sum of Rs.1 Crore has been given by him as conditional order amount, pursuant to an order passed in S.A.No.79 of 2018 on the file of DRT-II, Chennai.

(ii) The present suit has been filed for the relief of declaration and permanent injunction restraining the applicants/defendants 1 and 2 from releasing the film 'Naragasooran' in any language, since the 1st applicant/1st defendant has not divulged any details about the movable and immovable assets belonging to him in order to recover the outstanding loan amount.

(iii) It is apt to mention that since the mortgaged properties are not sufficient enough to satisfy the staggering outstanding loan amount as stated in the plaint, the 1st respondent/plaintiff is left with no other option than to conduct due diligence and investigations and out of the said investigation exercise, found that the 1st applicant/1st defendant had diverted the public funds for ulterior purpose, which includes the production of the subject film. The suit filed by the 1st respondent/plaintiff is maintainable before this Court. There is no memorandum of compromise entered between the 2nd applicant/2nd defendant and 2nd respondent herein/3rd defendant.

4. The gist of the counter affidavit filed by the 2rd respondent/3rd defendant, is as follows:

(i) The 2nd respondent/3rd defendant viz., M/s.Ondraga Entertainment, a Proprietorship concern of Mr.Gautham Vasudev Menon, had conceived a project namely 'Naragasooran' and was involved in the making and production of the movie 'Naragasooran' starring Mr.Arvind Swamy, Ms.Shreya and others. The movie 'Naragasooran' was being directed by Mr.Karthik Naren and was being line produced by M/s.Knight Nostalgia Filmotainment, a Proprietorship concern of Mr.Manikandan on behalf of M/s.Ondraga Entertainment and M/s.Ondraga Entertainment Pvt. Ltd., a private limited company, with Mr.Viswanathan Karthikeyan and Mr.Balasubramaniam Suryanarayanan as its Shareholders and Directors.

(ii) By an agreement dated 15.09.2017, the 2nd respondent / 2nd defendant had taken over the movie 'Naragasooran' and agreed to produce the move 'Naragasooran' on terms and condition contained therein. The same was informed to the Tamil Nadu Film Producers' Council and in respect to the same a certificate dated 08.01.2018 was issued to the 2nd applicant/2nd defendant. The censor certificate for the movie 'Naragasooran' also stands in the name of the 2nd applicant/2nd defendant.

(iii) The 2nd applicant/2nd defendant was not able to release the movie 'Naragasooran' and therefore the 2nd respondent/3rd defendant through his partnership firm viz., M/s.Kondaduvom Entertainment had agreed to market and sell the movie and realise the sale proceeds of the movie 'Naragasooran'. However, the same also could not be done. The 2nd applicant/2nd defendant has initiated arbitration proceedings against the 2nd respondent/3rd defendant including the partnership firm "M/s.Kondaduvom Entertainment" before the Hon'ble Sole Arbitrator Retired Justice Mr.K.Kannan and the same is suitably contested by the 2nd respondent/3rd defendant and his partnership firm. The 2nd respondent/3rd defendant, is neither a borrower nor the guarantor for the due payment of the monies borrowed by the applicants/defendants 1 and 2. Hence the 2nd respondent/3rd defendant, is not a necessary party to the suit.

5. Heard the submissions made by Mr.A.R.L.Sundaresan, the learned senior counsel appearing for the the applicants/defendants 1 and 2, Mr.M.L.Ganesh, learned counsel appearing for the 1st respondent/plaintiff bank and Mr.Abdul Hameed, learned counsel appearing for the 2nd respondent/3rd defendant.

6. The first and foremost contention raised by the learned senior counsel appearing for the applicant/defendants 1 and 2 is that under Sections 17 and 18 of the DRT Act, this Court is not having any jurisdiction, to try the suit. Further, the prayer sought by the 1st respondent/plaintiff, has to be sought before the tribunal under Section 19(1) of the said Act. More than that, already the 1st respondent/plaintiff filed an Original Application before the DRT and obtained a recovery certificate. Therefore, the suit filed by the 1st respondent/plaintiff is without jurisdiction and cause of action.

7. In response to the said submission, the learned counsel appearing for the 1st respondent/plaintiff, would contend that by using the loan availed by M/s.Connect Wind India Pvt. Ltd., the 1st applicant/1st defendant being the partner of the said company, diverted the loan amount and produced the film 'Naragasooran' and as the said film was produced only by using the fund, which is availed by the applicants by way of loan. Therefore, the bank is

entitled to have the first charge from and out of the sale proceeds of the movie 'Naragasooran' produced in all languages by the 1st applicant/1st defendant through 2nd applicant/2nd defendant and 2nd respondent/3rd defendant.

8. Now, on considering the either side submissions with the relevant records, it seems that this application has been filed under Order 7 Rule 11 of Code of Civil Procedure. The law is well settled that while considering the application under Order 7 Rule 11 of CPC, the question before the Court is whether the plaint discloses any cause of action or whether the suit is barred by any law on the face of the averments contained in the plaint itself.

9. Further, while considering the application under Order 7 Rule 11 of CPC, the Court is not to look into the strength or weakness of the cases of the plaintiff on the defence placed by the defendant. In this regard, our Hon'ble Apex Court in the case of ***Chhotanben and another Vs. Kiritbhai Jalkrushnabhai Thakkar and Others,*** reported in **2018 (6) SCC 422**, wherein at paragraph No.15,

it is held as follows:

> "What is relevant for answering the matter in issue in the context of the application under Order 7 Rule 11 (d) CPC is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order 7 Rule 11(d). Only the averments in the plaint are germane."

10. Further, in the judgment of our Hon'ble Apex Court in ***Soumitra Kumar Sen Vs. Shyamal Kumar Sen and Others***, reported in **2018 (5) SCC 644**, it was held that the defence projected in the written statement cannot be considered while considering the application under Order 7 Rule 11.

11. More than that, in the case of ***Dahiben Vs. Arvindbhai Kalyanji Bhanusali,*** reported in **(2020) 7 SCC 366**, it was held that if cause of action prima facie disclosed, Court not required to further enquire into truthfulness of allegations on fact for disposing of the application filed under Order 7 Rule 11.

12. Thus, all the decisions rendered by our Hon'ble Apex Court in respect to the application filed under Order 7 Rule 11, is very clear that this Court has to find out whether the cause of action has arisen or whether the suit is barred by any law or not.

13. In this regard, the specific submission of the applicants/defendants 1 and 2 is that under Sections 17 and 18 of the DRT Act, this Court is not having any jurisdiction.

14. Now, on going through the said provisions, it is true only the tribunal which constituted under Chapter III Section 17(1) and (2) of the DRT Act, is having the power to recover the dues and decide the applications, which are filed by the bank and financial institutions. Further under Section18 of the Act, no Court or other authorities shall have or be entitled to exercise any jurisdictional powers or authority, which is having jurisdiction under Section 17. For easy reference, Sections 17 and 18 of DRT Act, are extracted hereunder.

17. Jurisdiction, powers and authority of Tribunals. - (1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.

(1A) Without prejudice to sub-section (1),-

(a) the Tribunal shall exercise, on and from the date to be appointed by the Central Government, the jurisdiction, powers and authority to entertain and decide applications under Part III of Insolvency and Bankruptcy Code, 2016.

(b) the Tribunal shall have circuit sittings in all district headquarters.

(2) An appellate Tribunal shall exercise, on and from the appointed day the jurisdiction, powers and authority to entertain appeals against any order made,or deemed to have been made, by a Tribunal under this Act.

(2A) Without prejudice to sub-section (2), the Appellate Tribunal shall exercise, on and from the date to be appointed by the Central Government, the jurisdiction, powers and authority to entertain appeals against the order made by the Adjudicating Authority under Part III of the Insolvency and Bankruptcy Code, 2016.

17A. Power of Chairperson of Appellate Tribunal.- (1) The Chairperson of an Appellate Tribunal shall exercise general power of superintendence and control over the Tribunals under his jurisdiction including the power of appraising the work and recording the annual confidential reports of Presiding Officers.

(1A) For the purpose of exercise of general powers of superintendence and control over Tribunals under sub-section (1), the Chairperson may-

(i) direct the Tribunals to furnish, in such form, at such intervals and within such time, information relating to pending cases both under this Act and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, or under any other law for the time being in force, number of cases disposed of, number of new cases filed and such other information as may be considered necessary by the Chairperson;

(ii) convene meetings of the Presiding Officers of Tribunals periodically to review their performance.

(1B) Where on assessment of the performance of any Presiding Officer of the Tribunal or otherwise, the Chairperson is of the opinion that an inquiry is required to be initiated against such Presiding Officer for misbehaviour or incapacity, he shall submit a report to the Central Government recommending action against such Presiding Officer, if any, under section 15, and for reasons to be recorded in writing for the same.

(2) The Chairperson of an Appellate Tribunal having jurisdiction over the Tribunals may, on the application of any of the parties or on his own motion after notice to the parties, and after hearing them, transfer any case from one Tribunal for disposal to any other Tribunal.

18. Bar of jurisdiction.- On and from the appointed day, no Court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in section 17.

Provided that any proceedings in relation to the recovery of debts due to any multi-State co-operative bank pending before the date of commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 under the Multi-State Co-operative Societies Act, 2002 shall be continued and nothing contained in this section shall, after such commencement, apply to such proceedings.

15. Therefore, applying the above said provisions with the facts of the present case, it seems in the plaint filed by the 1st respondent/plaintiff, he has narrated his case as the 1st applicant/1st defendant is the Director of M/s.Connect Wind India Pvt. Limited, besides guarantor for the loan liability. Further, the said M/s.Connect Wind India Pvt. Limited., had represented before the 1st respondent/plaintiff bank that the power projects were to be executed by formerly M/s.Trishe Renewable Energy Solutions Pvt. Limited, presently M/s.Infinitas Energy Solutions Pvt. Ltd., on turn-key basis.

Further, for the loan application submitted by M/s.Connect Wind India Pvt. Ltd., the 1st applicant/ 1st defendant Mr.Badri Kasturi, offered personal guarantee and M/s.PPS Enviro Power Limited and M/s.Sun Power Solar Technick Pvt. Ltd., offered corporate guarantee in favour of the 1st respondent/plaintiff bank.

16. Moreover, for the said loan, Mr.Badri Kasturi, the 1st applicant/1st defendant has executed a loan security document on 17.05.2014 to cover the loan liability of Rs.35.70 Crores payable to the 1st respondent/plaintiff bank which includes Guarantee Deed by the 1st applicant/1st defendant. Subsequent to that on investigation, it was found that after receiving the funds from the 1st respondent/plaintiff bank, the loan amount was diverted to M/s.PPS Enviro Power Limited.

17. M/s.PPS Enviro Power Limited, has also availed loan from the 1st respondent/plaintiff bank which is represented by its Director, the 1st applicant herein/1st defendant and liable to pay a sum of Rs.237,94,44,380.77p. For the

above said loan liability, the 1st applicant/1st defendant stood as guarantor and accordingly, executed Guarantee Deed in favour of the 1st respondent/plaintiff bank.

18. It is the further case of the 1st respondent/plaintiff that after diverting the loan amount, the 1st applicant/1st defendant is currently producing a tamil film called 'Naragasooran' under the banner of 2nd applicant/2nd defendant and 2nd respondent/3rd defendant. Therefore, the 1st respondent/plaintiff has got first charge or lien over the said film including that of DVD rights, satellite rights, VCD rights, distribution rights and OTT platform rights, etc. In otherwise, in the plaint itself, the 1st respondent/plaintiff has admitted that the Debts Recovery Tribunal, Chennai allowed O.A.No.207 of 2017 against the 1st defendant, on July 2018.

19. Therefore, it is made clear that the allegation levelled by the 1st respondent/plaintiff against the applicants/defendants 1 and 2, is that by using the

loan availed from the 1st respondent/plaintiff, the film 'Naragasooran' was produced in the banner of the 2nd applicant/2nd defendant and 2nd respondent/3rd defendant. So it is for the 1st respondent/plaintiff to prove that the 1st applicant/1st defendant alone diverted the loan amount for the production of the said film. Further, the same is a matter of trial.

20. On the other hand, it is necessary to see, after obtaining the recovery certificate, whether the 1st respondent/plaintiff is entitled to file a suit for the declaratory relief.

21. In this regard, the learned senior counsel appearing for the 1st respondent/plaintiff relied on the judgment of our Hon'ble Apex Court reported in ***Nahar Industrial Enterprises Ltd., and Ors. Vs. Hong Kong and Shanghai Banking Corporation and Ors.,*** reported in **2009 (4) CTC 74,** and made submission that this Court is having jurisdiction to try this case.

22. In this context, in the judgment referred above, our Hon'ble Apex Court has held as follows:

> 102. A provision in the Code is benevolent in character and sub serve the social justice doctrine in a situation of that nature has been applied, but the same, in our opinion, by itself would not make a Tribunal a civil court. No reason has been assigned as to why a Tribunal has been considered to be a civil court for the purpose of Section 25 the Act. The court appears to have proceeded on the basis that an appeal before the High Court shall lie in terms of Section 173 the Motor Vehicles Act, 1988 from an Award passed by the Tribunal, thus showing that it is a part of the hierarchy of the civil court. Motor Accident Claims Tribunal, thus, is a court subordinate to the High Court. No appeal against the judgment of the Debt Recovery Tribunal lies before the High Court unlike under the Motor Vehicles Act, 1988. The two Tribunals are differently structured and have been established to serve totally different purposes.
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> 103. If the Tribunal was to be treated to be a civil court, the debtor or even a third party must have an independent right to approach it without having to wait for the Bank or Financial Institution to approach it first. The continuance of its counter-claim is entirely dependent on the continuance of the applications filed by the Bank. Before it no declaratory relief can be sought for by the debtor. It is true that claim for damages would be maintainable but the same have been provided by way of extending the right of counter-claim.

104. Debt Recovery Tribunal cannot pass a decree. It can issue only recovery certificates. [See Sections 19(2) and 19(22) of the Act].

105. The power of the Tribunal to grant interim order is attenuated with circumspection.

23. Applying the ratio laid down in the above judgment with the case in our hand, herein it is a case the suit is filed only for the purpose of obtaining the decree. Therefore, it cannot be said that only the DRT has to resolve the dispute having by the 1st respondent/plaintiff and the defendants. More than that in the proceedings initiated by the Central Bank of India dated 19.10.2020, it was narrated that the 1st applicant/1st defendant did not use the loan amount for errecting the wind mill. Further in the said document after admitting the contents, the 1st applicant/1st defendant has signed as a party to the document. Further, the Deed of Confirmation dated 15.09.2017 confirmed that M/s.Ondraga Entertainment, represented by Gautham Vasudev Menon, has entered into an agreement with M/s.Shraddha Entertainment, a Partnership Firm, represented by

its Partner Mr.Badri Kasturi [1st applicant/1st defendant], son of Sri K.S.Kothandaraman, for the production of 'Naragasooran' film. Therefore, prima facie case has been shown by the 1st respondent/plaintiff that the fund availed from the bank as a loan was diverted for production of the movie viz., 'Naragasooran'.

24. At this juncture, it is relevant to see the judgment decided by the High Court of Gujarat, on 18.12.2019 in ***Prime Cottex Pvt. Ltd., Vs. Bank of Baroda, reported in MANU/GJ/3395/2019***. In the said judgment, the High Court of Gujarat has held as follows:

> 37. In Nahar Industrial Enterprises Ltd. [Supra], the Hon'ble Supreme has held that Section 34 the SARFAESI Act does not oust the jurisdiction of the Civil Court altogether to entertain a suit under Section9 of the Civil Procedure Code. It was held therein that the jurisdiction of the Civil Court is plenary in nature and the Civil Court is entitled to decide the respective claims of the parties in a suit unless the jurisdiction of the Civil Court to entertain such suit under Section 9 of the Civil Procedure Code is ousted expressly by a statute or by necessary implication therefrom. After examining the scope and/or ambit of the Debt Recovery Act and the SARFAESI Act, the Hon'ble Supreme

Court held therein that the Debt Recovery Tribunal cannot be treated as a Civil Court, as the said Debt Recovery Tribunal was constituted with a specific purpose and has a limited jurisdiction; it can neither pass a decree nor can debtor seek declaratory relief from the Debt Recovery Tribunal. The Debt Recovery Tribunal can only issue recovery certificate. Some instances were also mentioned in the said judgment. It was further held therein that notwithstanding the provision contained in Section 34 of the SARFAESI Act, the Civil Court's jurisdiction is not ousted in certain circumstances; say for example, (i) the banks and the financial institution for the purpose of enforcement of their claim for a sum below rupees ten lakh is required to file civil suit before the Civil Court; (ii) even the debtors can file their claims or set off or counterclaim before the Civil Court; (iii) even before filing any proceeding or recovery of debt by the bank or the financial institution, the debtor may file C/FA/5349/2019 JUDGMENT preemptive suits and obtain order of injunction; (iv) civil suit is also maintainable in a case where allegation of fraud and misrepresentation is involved; (v) Civil Court's jurisdiction can also be invoked when several other issues of complicated nature may arise between the parties etc. We quote the relevant paragraphs:

97. A debtor under the common law of contract as also in terms of the loan agreement may have an independent

> right. No forum has been created for endorsement of that right. Jurisdiction of a civil court as noticed hereinbefore is barred only in respect of the matters which strictly come within the purview of Section 17 and not beyond the same. The Civil Court, therefore, will continue to have jurisdiction.

25. Therefore, in view of the said decision, it is clear that if the allegation of fraud and misrepresentation is involved, the jurisdiction of Civil Court can also be invoked, though other issues are having by the parties.

26. Herein also, the averments disclosed in the plaint is very clear that by playing fraud, the applicants herein/defendants 1 and 2 had diverted the loan amount and produced the application mentioned movie viz., 'Naragasooran'. Therefore, this Court is having jurisdiction to try the suit filed by the 1st respondent/plaintiff and it is also held that the suit filed by the plaintiff's is not barred by any law.

27. Therefore, in the light of the above discussions, the application filed by the applicants/defendants 1 and 2, praying to reject the plaint in C.S.No.251 of 2020, is dismissed.

26.04.2021

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R.PONGIAPPAN, J.

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Pre-delivery order in
A.No.3130 of 2020
in C.S.No.251 of 2020 and
OA No.462 of 2020 and
A.No.3129 of 2020

26.04.2021