IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.04.2021

DELIVERED ON : 15.06.2021

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

C.M.A.No.3894 of 2019
&
C.M.P.No.22191 of 2019

M/s.L&T Housing Finance Ltd.,
Rep by its Managing Director,
Mr.Shashikant Harilal Bhojwani,
Having office at:
New No.62, Old No.30/31,
Ethiraj Salai, Egmore,
Chennai - 600 008.

... Appellant/2nd Defendant/Petitioner

Vs.

1.P.R.Ponragu

2.P.Vasanthy

3.M/s.Citicorp Finance India Limited,
(Formerly known as Citi Financial Consumer Finance India Ltd.,)
Rep by its Managing Director
Mr.Deepak Keshav Ghaisas
having office at:
"ACROPOLIS"
New No.148, Old No.68, 9th Floor,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004. ...Respondents

Prayer:Civil Miscellaneous Appeal filed under Section 37(1) of the Arbitration and Conciliation Act, 1996 against the order and decretal order dated 20.08.2019 made in I.A.No.223 of 2018 in O.S.No.6480 of 2017 on the file of XIX Additional City Civil Court, Chennai.

For Appellant : Mr.D.Pradeep Kumar

For Respondents : Mr.M.V.Vijaya Baskar,
(for R.1 & R.2)

JUDGMENT

The above CMA arises out of a decretal order passed by the XIX Additional City Civil Court, Chennai in I.A.No.223 of 2018 in O.S.No.6480 of 2017 dismissing the I.A. filed by the appellant herein who was the applicant in I.A. and the second defendant in the suit before the Trial Court.

2.The suit was filed by the plaintiffs, who are respondents 1 & 2 herein for declaring the excess deduction by the second defendant, who is the appellant herein after 05.09.2017 as illegal and not binding on them and for a consequential direction of permanent injunction restraining the defendants, their men, agents or from anyone claiming through them from encashing the cheques pertaining to Saving Bank Account No.3023131855, Central Bank of India, Kilpauk Branch, Chennai; for a mandatory injunction directing the defendants to issue "NO DUE CERTIFICATE" jointly and severally to the plaintiffs loan account No.13166873; directing the defendants jointly and severally to pay a sum of Rs.1,68,136/- with interest at the rate of 18% per annum from the date of Plaint till the date of its realization; for a mandatory injunction directing the defendants to hand over the Original documents i.e., (1) Sale Deed dated 17.05.1996 in Doc.No.1573/1996 registered on the file of the SRO Annanagar, (2) Construction Agreement dated 18.08.1996, (3) General Power of Attorney dated 22.12.2005 in Doc.No.2382/2005 registered on the file of he SRO, Annanagar, (4)Sale Deed dated 14.09.2007 in Doc.No.3303/2007 registered on the file of SRO Annanagar, 5)Pronotes, (6)Cheques pertaining to Saving Bank Account No.3023131855, Central Bank of India, Kilpauk Branch, Chennai; directing the defendants jointly and severally to pay the damages to a tune of Rs.2,00,000/- towards malafidely encashing the cheques pertaining to Saving Bank Account No.3023131855, Central Bank of India, Kilpauk Branch, Chennai; directing the defendants jointly and severally to pay the damages to a tune of Rs.3,00,000/- for non-handling over of the original property documents and directing the defendants jointly and severally to pay the damages to a tune of Rs.5,00,000/- towards distress, harassment, emotional and mental agony.

3.According to the plaintiffs therein, the respondents 1 & 2 herein had obtained housing loan by deposit of title deeds of the property situated at Flat No.G2 in Ground Floor, situated at Plot No.7, Old Door No.10, New Door No.13, 2R Type, East Club Road, Shenoy Nagar, Chennai – 600 030, flat measuring 961 Sq.Ft of Plinth area with 85 Sq.Ft of common area and in all a total built up area of 1046 Sq.Ft with 648 Sq.Ft. in Plot No.7, and comprised in Sy.No.40/3 Part, T.S.No.11 as per Patta T.S.No.10 of Aminjikarai Village, Egmore – Nungambakkam Taluk, Chennai District, from the first defendant who is the third respondent herein in the Appeal borrowed a sum of Rs.25,00,000/- with interest @ 13% per annum. According to the schedule of payment, the plaintiffs were required to pay 120 Equated Monthly Installments (EMI) at Rs.37,328/- commencing from 05.10.2007 to 05.09.2017. According to the plaintiffs therein, the repayment has been completed within time stipulated.

4.The plaintiffs have also arrayed the appellant herein as a party/second defendant as according to them, they have done so with abundant caution in view of the assignment of the loan outstanding as against the plaintiff by the first defendant in favour of the second defendant namely the appellant herein. The plaintiffs claimed to have repaid excess amounts and according to them, unilaterally the rate of interest has been increased and the amounts have been collected in excess against the RBI Norms and therefore the suit was filed by the plaintiffs against both the defendants.

5.In this suit, on behalf of the appellant herein, I.A.No.223 of 2018 was filed stating that there is an arbitration clause in the loan agreement and any dispute arising between the parties has to be referred to arbitration. According to the appellants herein, the loan availed by the plaintiffs was assigned by the first defendant namely the third respondent herein in favour of the second defendant, the appellant herein by way of deed of assignment dated 30.11.2013 and hence the I.A. was filed by the appellant herein for referring the matter to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996. The I.A. was instituted, as the original lender/the first defendant did not evince any interest in the lease as the loan availed by the plaintiffs was assigned in favour of the appellant herein. According to the appellant herein, Article 10.7(b) of the Home Loan Agreement refers to the disputes under the Arbitration, which reads as follows;

> "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 the arbitration shall be at New Delhi and the arbitration shall be conducted in English language."

Therefore, it was pleaded before the Trial Court that the suit was not maintainable in view of the operation of Section 8 of the Arbitration Act, 1996.

6.The plaintiffs filed their counter affidavit raising several objections to the maintainability of the I.A. According to the plaintiffs, the assignment deed dated 30.11.2013 was only in relation to Non-performing Assets and nowhere it was stated that the loan given to them was in relation on to the Non-performing Assets. Further, it was contended that the original loan agreement was not filed and therefore the appellant herein was not entitled to invoke the provisions of the Arbitration Act. On merits, it was further contended that the loan amount has been paid in 120 installments as per the agreement and therefore the same did not come under NPA at all. It was also contended that the appellant herein is under the purview of the loan agreement and nothing is specifically stated in the affidavit as the assignment deed covers the NPA pertaining to the loan objection by the plaintiffs and further plaintiffs were not the parties to any such agreement. Therefore, it was strongly pleaded that the I.A. filed by the appellant herein was not maintainable.

7.In consideration of the rival pleadings and the materials placed on record and also the decisions supplied by the rival parties, the Trial Court has accepted the submissions of the plaintiffs therein/respondents 1 & 2 herein and dismissed the I.A. on 20.08.2019 which is the subject matter of appeal herein.

8.The learned counsel for both the parties reiterated the above facts and placed their respective submissions for consideration of this Court.

9.The learned counsel for the appellant would submit that the Civil Court has misdirected itself by accepting the contentions of the plaintiffs without properly appreciating the facts in the legal position in support of the appellant. The learned counsel would draw the attention of this Court to the deed of assignment dated 30.11.2013. By virtue of the deed of assignment, the appellant steps into the shoes of the original lender and therefore the appellant has every right to invoke the arbitration clause. The Civil Court on hypothetical consideration, dismissed the I.A. without reference to various admitted facts.

10.The learned counsel would submit that the plaintiffs themselves have made the appellant as the second defendant in the suit knowing fully well that the loan, at a particular point of time made available to them by a assignment deed and in this regard he would refer to the documents in which payments were made by the plaintiffs themselves to the appellant on some occasions in October, 2017. He would also refer a letter written by the appellant to the plaintiffs in regard to the revision of rate of interest payable for the loan obtained by them.

11.The learned counsel would also refer to another communication dated 09.10.2017, where the plaintiffs have approached Banking Ombudsman, Reserve Bank of India only as against this appellant. Further at the request of the plaintiffs, a provisional certificate was issued to the plaintiffs covering a period from 01.04.2016 to 31.03.2017 by the appellants herein. All these documents would clearly establish the fact that the plaintiffs have been in the course of the loan transaction recognized the interest of the appellant in the loan repayment and therefore it was not open to them to plead that the arbitration petition before the Civil Court cannot be maintained by this appellant. According to the learned counsel, unfortunately the Civil Court without due regards to the admitted facts has simply without any subjective reasons dismissed the I.A.

12.On the other hand, learned counsel for the respondents/plaintiffs would submit that the appellant herein did not come forward with proper documents and the deed of assignment did not contain other details and therefore their claim on the basis of the incomplete documents needs to be discountenanced. According to him, no document has not been filed in terms of the clauses contained in the deed of assignment dated 30.11.2013. The learned counsel would also rely on another clause 6.14(b) which is extracted herein;

> "6.14.For a period of 3 (three) years from the Assignment Date, the Transferor shall, within 14 (fourteen) Business Days of receipt of a written request from the Acquirer, deliver to the Acquirer,
>
> (a).....
>
> (b) in relation to such of the Mortgages as may be specified in the relevant written request from the Acquirer, an original instrument of substitution in the form set forth in Part C of Schedule IV duly executed by an authorized signatory of the Transferor, assigning the rights and interests of the Transferor under the relevant Mortgage in favour of the Acquirer."

13.According to the learned counsel, in relation to these clauses, no document has been filed and therefore, the Court has correctly discountenanced the claim of the appellant herein and dismissed the I.A. The learned counsel would also emphasize the fact that in the absence of any privity of contract nor in the absence of any material to show that the loan obtained by the plaintiffs have been infact assigned to the appellant, the Civil Court has correctly applied the legal position and rejected the claim of the appellant herein. He would further submit that the decreetal order passed by the Court below does not call for any intervention.

14.This Court has considered submissions of the learned counsel for the appellant and the respondents and perused the materials and pleadings placed on record.

15.The third respondent herein is not represented in this proceedings when the matter was heard finally today. However, the parties have made their submissions elaborately by placing reliance on the documents and also the conclusion reached by the Civil Court. This Court while perusing the contents of the decreetal order of the Court below finds that the reasons for which the conclusion was arrived at, appear to be misplaced and cannot be countenanced both in law and in facts. First of all, the Court has completely misdirected itself by accepting the hyper technical objections of the plaintiffs therein to the complete execution of the validity of the contentions raised on behalf of the appellant. In fact, when the judgments were sought to be relied upon are cited on behalf of the appellant herein, the Civil Court has perfunctorily brushed aside without giving any reasons.

16.The acceptance of the objections raised on behalf of the plaintiffs by the Civil Court is that the plaintiffs herein are not direct parties to the assignment which is completely misconceived and unsustainable in law. By virtue of deed of assignment dated 30.11.2013, the loan has been assigned to the appellant herein and as such, the appellant had stepped into the shoes of the original lender and therefore, it is well within the right of the appellant herein to maintain I.A., by invoking the arbitration clause in the loan agreement. The Court's acceptance of other objections of the plaintiffs regarding non-filing of original documents and whether there was assignment of the NPA in favour of the appellant regarding the loan obtained by the plaintiffs is contrary to the records and facts.

17.This Court's attention is drawn to the admitted facts namely the payments of loan account to the appellant herein by the plaintiffs themselves in 2017 and the correspondence would also establish the factum that the plaintiffs themselves were corresponding with the appellant in relation to the said loan transactions. Infact, for their income tax purposes, the appellant has approached the plaintiffs for seeking issue of interest certificate for a particular period and the certificate was also issued on 27.03.2017 by the appellant herein.

18.Moreover, the very fact that the appellant herein was made as a party to the suit though it was stated to be by way of abundant caution, yet the plaintiffs recognized the appellant as a necessary party and therefore, the appellant's attempt to invoke the arbitration clause in the loan agreement cannot be resisted by the plaintiffs. Moreover, once the first defendant who is the original lender did not evince any interest in the transaction, as a consequence of the deed of assignment dated 30.11.2013, the appellant herein is the interested party for recovery of the loan amounts from the plaintiffs herein.

19.The arguments resisting the I.A., advanced on behalf of the respondents/plaintiffs appear to this Court are invalid without any substance and legally unacceptable. The learned counsel's contentions assailing the validity of the appellant's status for maintaining the I.A., are extremely hyper-technical and lacking in bonafides and such objections cannot be basis for rejecting the right of the appellant herein nor it can be the premise on which the objections to the maintainability of the I.A., at the instance of the appellant could be countenanced.

20.On the whole, this Court is of the view that the Civil Court has legally gone astray by focusing more on contentions which are not quite germane to the core issue as to the legal status of the appellant herein. The Court below miserably failed to recognize the status of the appellant herein, who was admittedly an assignee of the loan transaction by the first defendant, and a consequence of the assignment, the appellant herein has every right as that of the first defendant in the suit to raise objection as to the maintainability of the suit. Therefore, the impugned order of the Civil Court in rejecting the claim of the appellant cannot be either countenanced in law or on facts and therefore, the same is liable to be interfered with.

21.For the above said reasons, the decreetal order dated 20.08.2019 made in I.A.No.223 of 2018 in O.S.No.6480 of 2017 on the file of XIX Additional City Civil Court, Chennai is hereby set aside the Civil Miscellaneous Appeal stands allowed. No costs. Consequently, the connected miscellaneous petition stands closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

mrm

To

XIX Additional City Civil Court,Chennai.

Copy To

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.R.Vivekanathan, Advocate, S.R.No.27935

C.M.A.No.3894 of 2019

LN(CO)
RGA(02/08/2021)