

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2815 of 2018
C.M.P.No.21465 of 2018

1.P.R.Ponragu

2.P.Vasanthi

..Petitioners/Plaintiffs

vs.

1.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.

2.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.

सत्यमेव जयते

.. Respondents/Defendants

PRAYER : Civil Miscellaneous Appeal filed under Order XLIII Rule 1(r) of C.P.C, against the Fair and Decretal Order dated 11.06.2018 passed by the XVI Additional Judge (FAC XIX Additional) City Civil Court, Chennai in I.A.No.44 of 2018 in I.A.No.17391 of 2017 in O.S.No.6480 of 2017 and allow the appeal with cost.

For Petitioners : Mr.R.Vivekanandhan
For Respondents : Mr.M.Arunachalam for R1
M/s.C.Deepanandhini for R2

O R D E R

The Fair and Decreetal Order dated 11.06.2018 passed in I.A.No.44 of 2018 in I.A.No.17391 of 2017 in O.S.No.6480 of 2017 is under challenge in the present Civil Miscellaneous Appeal.

2. The plaintiffs are the appellants in the present appeal. The suit was instituted for declaration, permanent injunction and mandatory injunction. Along with suit, Interlocutory Application in I.A.No.17391 of 2017 was filed and the trial Court granted an order of interim injunction. However, the appellants moved an interlocutory application in I.A.No.44 of 2018 to punish the respondents for committing contempt of Court as they have not obeyed the interim order granted by the trial Court. The said interlocutory application to detain the respondent in civil prison for their wilful disobedience to the order dated 22.12.2017 passed in I.A.No.17391 of 2017 was adjudicated by the trial Court. The trial Court considered the wilful disobedience with reference to the conduct of the respondents. The findings of the trial Court in this regard in paragraph No.11 are extracted hereunder:

11. In the case on hand, mere restraint over encashment of the cheques have been prayed for. In the circumstances when the ECS mandate has not been cancelled by the petitioners, the ECS mandate fed into their system automatically deducts the EMI, periodically. Therefore, wilful disobedience strictly speaking cannot be countenanced. Moreover, a proceeding under Rule 2A or 39 CPC is a serious matter and the power that is sought to be invoked by the petitioner being penal in nature, the burden rests heavily upon him to prove the ingredients of the offence beyond reasonable doubt. Nor can an order under Rule 2A or 39 CPC be passed on mere suspicion and in doubtful circumstances. There should be clear proof that the order was clearly communicated and the same was disobeyed. But in the case on hand, I find that the specific order of the Court, is preventing the respondents from encashing the cheques. In such circumstances when the deductions are made in the ECS mandate, there is every susceptibility of the order of this Court, referring to a different meaning. Therefore, the main ingredients of wilful disobedience missing in this case, I find, no reason to punish the alleged contemnors and sent them civil prison.

3. Perusal of the findings reveals that the appellant has not established any such wilful disobedience so as to punish the respondent for committing contempt. This Court do not find

any reason so as to interfere with the findings made by the trial Court in this regard and the findings are certainly candid and convincing. Accordingly, the Fair and Decretal Order dated 11.06.2018 passed in I.A.No.44 of 2018 in I.A.No.17391 of 2017 in O.S.No.6480 of 2017 stands confirmed and consequently, Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssb

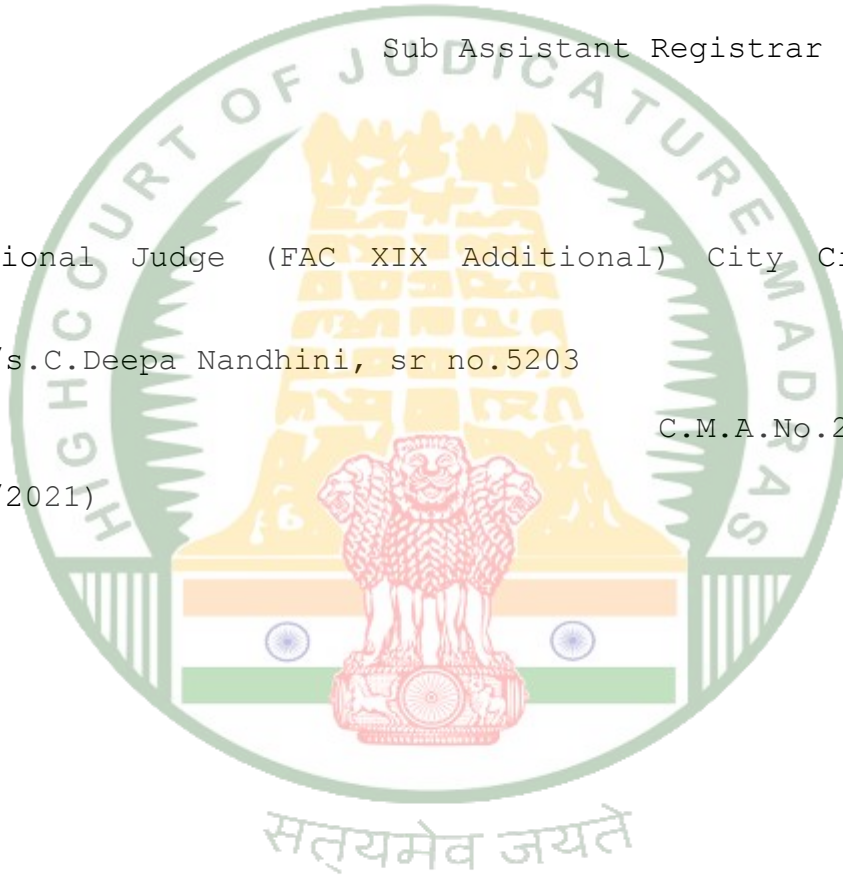
To

XVI Additional Judge (FAC XIX Additional) City Civil Court,
Chennai.

+2cc to M/s.C.Deepa Nandhini, sr no.5203

C.M.A.No.2815 of 2018

RMP (23/02/2021)



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