



CRP. (PD).2394 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.03.2022

DELIVERED ON : 07.06.2022

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.2394 of 2008

and

M.P.No.1 of 2008

M/s.TVS Finance and Services Ltd.,
(Formerly known as M/s.Haritha Finance Ltd.,)
Rep. By its Authorised Signatory Mr.G.Saikumar

... Petitioner/Petitioner/
/2nd defendant.

VS.

1.M.Selvaraj
2.A.Govindarajan

... Respondents/
/1st respondent/Plaintiff
/2nd respondent/1st defendant.

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 13.03.2008 made in I.A.No.7632 of 2005 in O.S.No.4044 of 2004 on the file of learned XIV Asst.City Civil Judge, Chennai.



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For petitioner : M/s.Anand Abdul
For respondents :
for R1 : Mr.P.Veeraraghavan- No appearance

ORDER

This Civil Revision Petition is filed against the order dated 13.03.2008 made in I.A.No.7632 of 2005 in O.S.No.4044 of 2004 on the file of learned XIV Asst.City Civil Judge, Chennai.

2. The petitioner company is incorporated under the provisions of the Companies Act 1956 and is involved in the business of Hire Purchasing, Leasing and other financial facilities. The case of the revision petitioner is that the petitioner had extended Bill Discounting Facilities to the 2nd respondent and the 2nd respondent failed to pay the due amounts within the stipulated time and thereafter, the 2nd respondent approached the revision petitioner for additional funds and agreed to provide the immovable property belonging to the 1st respondent as security and for which property, the 2nd respondent is the Registered Power Agent. The 1st respondent also agreed to stand as Guarantor on behalf of the 2nd respondent. The Revision petitioner had agreed to extend loan to the 2nd respondent, the 1st respondent also agreed to stand as guarantor



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on behalf of the 2nd respondent and vide letter dated 13.05.1999 confirmed that the 2nd respondent is his Power Agent and that the 2nd respondent is authorised to deal with the Schedule A property, to which the Revision Petitioner had agreed to extend a further loan amount vide its letter dated 29.11.1999.

3. After deliberations between the Revision Petitioner and the 2nd respondent, it was agreed that additional amounts would be sanctioned and major part of the said amounts would be adjusted by the Revision Petitioner against the out-standing amounts due from the 2nd respondent under the above Bill Discounting Facilities and the balance would be released to the 2nd respondent or its nominees.

4. In terms of the said understanding, the Revision Petitioner vide its sanction letter dated 29.11.1999 had agreed to extend loan for a sum of Rs.12,30,500/- to the 2nd respondent on terms and conditions contained therein. Thereupon, the Revision Petitioner and the 2nd respondent had entered into agreement dated 30.11.1999 referred as “Agreement dated 30.11.99”, whereby the revision petitioner had sanctioned loan for a sum of Rs.12,30,500/- to the 2nd respondent on terms and conditions contained therein.



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5. In terms of the Sanction letter dated 29.11.1999, the 1st respondent had stood as Guarantor on behalf of the 2nd respondent and had executed a Letter of Guarantee dated 30.11.1999 in favour of the Revision Petitioner guaranteeing due payment of the amounts mentioned therein to the Revision Petitioner. The 2nd respondent stood as Registered Power Agent of the 1st respondent and had deposited the Title Deeds pertaining to the Schedule A property in favour of the Revision Petitioner as security towards payment of the amounts under the “Agreement dated 30.11.1999” and had also executed a Power of Attorney dated 30.11.1999 authorising the Revision Petitioner to deal with the “Schedule A” property.

6. As per the terms and conditions of the “Agreement dated 31.12.2000”, the 2nd respondent was to pay a sum of Rs.28,200/- every month as Installment amount for a period of 36 months commencing from 05.04.2001. However, the 2nd respondent had failed to pay the installment amounts in full to the revision petitioner on the due dates under “Agreement dated 30.11.1999” and “Agreement dated 31.12.2000”. The additional finance charges levied by the revision petitioner on the 2nd respondent on account of delay in payment of the installment amounts by the 2nd respondent under the “Agreement dated



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30.11.1999” and “Agreement dated 31.12.2000” was also not paid by the 2nd respondent in full inspite of several promises in this regard.

7. Likewise, the 1st respondent had also failed to pay the amounts guaranteed by him to the revision petitioner under the “Agreement dated 30.11.1999”. The revision petitioner for safeguarding its interest in terms of Schedule A property, filed Applications under Section 9 of the Arbitration and Conciliation Act, 1996 and invoked the Arbitration Clause contained in the Sanction Letter and had issued Arbitration Notices dated 06.09.2003 and 12.11.2003 to the 2nd respondent and 1st respondent in Arbitration Case No.52 of 2003. The respondents filed their statement of defence and subjected themselves to the Arbitration and contested the case. Subsequently, on 11.05.2009, award has been passed by the learned Arbitrator. The award has been challenged by the 1st respondent before this court and the same was dismissed on 15.02.2018 for non prosecution. This being the situation, the 1st respondent filed a suit in O.S.No.4044 of 2004 praying to declare the document General Power of Attorney dated 01.09.1988 (registered as Document No.237 of 1988 in the office of the Joint Sub Registrar, Central Madras) in respect of the schedule mentioned property be declared as void and not binding on the plaintiff/M.Selvaraj. In the said suit, the Revision Petitioner herein/2nd



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defendant, had taken out an application in I.A.No.7632 of 2005 praying to refer the suit to Arbitration. The learned Judge, City Civil Court, Chennai, by its order dated 13.03.2008 dismissed the said I.A., aggrieved by the same, the present Civil Revision Petition is filed.

8. It is the submission of the learned counsel for the Revision petitioner that the 2nd respondent herein/A.Govindarajan (borrower) had failed to pay the monthly dues to the revision petitioner, thereby committed breach of the terms of the agreement dated 30.11.1999. Therefore, the Revision Petitioner had invoked the arbitration clause and initiated Arbitration proceedings against the 1st and 2nd respondent in Arbitration Case No.52/2003. The respondents had filed their statement of defence and subjected themselves to the Arbitration and contested the case. Subsequently, on 11.05.2009 award has been passed by the learned Arbitrator. The Award has been challenged by the 1st respondent before this court and the same was dismissed on 15.02.2018 for non prosecution.

9. In the meanwhile, the 1st respondent herein/M.Selvaraj (Guarantor) has filed a suit in O.S.No.4044 of 2004 on the file of XIV Assistant, City Civil Court, Chennai, seeking for declaration to declare that the Power of Attorney dated 01.09.1988 as null and void. In the said suit, the petitioner had taken out



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an application in I.A.No.7632 of 2005 praying to refer the suit to Arbitration.

The said I.A., was dismissed on 1.03.2008, holding that there is no agreement between the revision petitioner and the plaintiff/1st respondent herein. Considering the dispute raised by the plaintiff disputing the genuineness of the letter of guarantee allegedly executed by him, the learned Judge dismissed the I.A., stating that Section 8 of the Act will not apply. The learned counsel for the Revision Petitioner submits that the suit in O.S.NO.4044 of 2004 has been filed to evade from the legitimate dues of the petitioner and the same is not maintainable in the eye of law.

10. On earlier hearing, both sides counsel made their arguments and this court directed to submit their written submissions. Today, the petitioner counsel filed his written submissions, but the respondents have not come forward to file their written submissions. Though opportunity was given to the respondents to file their written submissions, the respondents have not come forward to argue the case and file written submissions and hence, I am constrained to pass orders with the available records.

11. Admittedly, the petitioner has issued a sanction letter dated 29.11.1999 to the 2nd respondent containing an Arbitration clause and



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thereafter, the Loan agreement dated 30.11.1999 and other relevant documents were executed by the 2nd respondent in favour of the petitioner, where the 1st respondent has stood as a guarantor for the agreement dated 30.11.1999 and also executed guarantee letter dated 30.11.1999.

12. The Sanction Letter dated 29.11.1999 and Loan agreement dated 30.11.1999 form part of the same transaction and the Letter of Guarantee dated 30.11.1999 contains a reference to the Sanction letter dated 29.11.1999. Therefore, the issue whether the 1st respondent is governed by the arbitration clause or not can be decided only before the arbitration proceedings and the said dispute can be raised before the Arbitrator. For this purpose, the learned counsel for the revision petitioner rightly relied on the decision reported in **2004 (2) R.A.J. 87 (Mad) [Ramco Super Leathers Ltd., Vs. Associates India Financial Services (P) Ltd.,]** . It is observed in paragraph 17 as under:-

“only to avoid repetition of incorporation of the clauses, the clauses in the loan agreement were not repeated in the agreement creating charge. Taking advantage of non-mention of Arbitral clause, the second plaintiff cannot contend that the agreement creating charge is not part of the loan agreement and that the second plaintiff is out of the Arbitration agreement. Thus, this court is of the view that the Arbitration clause is enforceable against the second plaintiff



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also.” It is also held that the basis and the questions on which the parties are to be referred to Arbitration are (i) on the amount payable to the defendants (ii) to bring the mortgaged property to sale (iii) liability of the parties to pay the amount. For the reasons stated above, as the parties are referred to Arbitration as per the Arbitration agreement, the suit is dismissed.”

13. The learned counsel for the Revision Petitioner further relies on the decision reported in **1992(2) RAJ 314 (Bom) [Premlaxmi and Co., Andheri (West) Mumbai Vs. Trafalgar House Construction India Ltd., Bombay]** wherein, the Bombay High Court held that “it is clear that reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing, as in the present case, and the reference is such as to make that arbitration clause part of the contract.”

14. The learned counsel next contended that when the dispute referred to Arbitration and once the other party has submitted his first statement of defence, but if the party who wants the matter to be referred to arbitration applies to the court after submission of his statement, but does not object, there is no bar on the court referring the parties to arbitration. In this connection, the counsel referred to the decision reported in **(2000) 4 SCC 539 [P.Anand Gajapathi Raju and others Vs. P.V.G.Raju (dead) and others]**, in which



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decision, the Honourable Supreme Court held that “in the application for arbitration, where moved after submission of first statement on the substance of dispute, but party which instituted civil suit did not object, held, there was no bar preventing referral of dispute to arbitration.”

15. It is the submission of the learned counsel for the Revision Petitioner that though the sanction letter dated 29.11.1999 and the letter of Guarantee dated 30.11.1999 involves two agreements, both forms integral part of the same transaction. Based on the Power of Attorney dated 01.09.1988 the respondents had offered the immovable property as security only to secure repayment of the due by the 2nd respondent under the agreement dated 30.11.1999. The sanction letter dated 29.11.1999 and letter of Guarantee dated 30.11.1999 are interconnected and cannot be isolated against each other.

16. As rightly pointed out by learned counsel for the Revision Petitioner, when the 1st respondent had subjected himself to the Arbitration by filing statement of defence and contested the case by raising the same issue before the Arbitral Tribunal, the 1st respondent has waived his rights over the suit. The learned Arbitrator has duly framed issues raised by the 1st respondent in the



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Arbitral Proceedings and gave a detailed finding in the Arbitral Award that the

Power of Attorney executed by the 1st respondent is legally valid and therefore, in my opinion, the suit filed in O.S.No.4044 of 2004 on the file of City Civil Court, Chennai, runs contrary as it challenges the power of attorney and it would only defeat the rights of the petitioner and therefore, I am inclined to interfere with the order passed by the learned Judge in I.A.No.7632 of 2005 in O.S.No.4044 of 2004 and accordingly allow the above Civil Revision Petition and thereby, dismiss the suit in O.S.No.4044 of 2004 on the file of City Civil Court, Chennai.

17. In the result, this Civil Revision Petition is allowed. The suit in O.S.No.4044 of 2004 stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Index :yes/No
Internet:yes/No
nvsri

07.06.2022



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J.NISHA BANU, J.

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To

1. The XIV Asst.City Civil Judge, Chennai.
2. The Section Officer, V.R.Section, High Court, Madras.

PRE-DELIVERY ORDER
MADE IN
CRP.No.2394 of 2008

DATED : 07.06.2022