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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 12TH DAY OF APRIL 2022

THE HON'BLE MR. JUSTICE P. VELMURUGAN

O.A.Nos. 725 & 726 of 2020

in

C.S.No. 385 of 2020

1. Murali Kabirdass,
S/o. Late. Mr. S.R. Kabirdass,
Old No.243, New No.75,
Kilpauk Garden Road,
Kilpauk,
Chennai – 600 010.
2. Mrs. Hari Priya Murali,
W/o. Mr. Murali Kabirdass,
Old No.243, New No.75,
Kilpauk Garden Road,
Kilpauk,
Chennai – 600 010.
3. M/s. Best Cast IT Limited,
Represented by its Director,
Mr. Murali Kabirdass,
S/o. Late. Mr. S.R. Kabirdass,
Having its Office at
Plot No.58 (SP) SF No. 184, 185,
Sector II, 3rd Cross Road,
Ambattur, Industrial Estate, South
Ambattur,
Chennai – 600 058.



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-Vs-

1. M/s. DLF Commercial Developers Limited.,
Having Registered Office at
DLF Centre, Sansad Marg,
New Delhi – 110 001.
and Office at DLF Home,
Manappakkam,
Chennai – 600 125.
2. M/s. DLF Home Developers Limited.,
(Formerly DLF Southern Home Private Limited),
Old No. 828, New No. 268,
Poonamallee High Road,
Next to KKR ENT Hospital,
Kilpauk,
Chennai – 600 010.
3. Indiabulls Housing Finance Limited.,
Having its Regd.Office F.60,
Malhotra Building, 2nd Floor,
Connaught Palace, New Delhi and
Having its Corporate Office :
Indiabulls House, 448-451,
Udyog – Vihar, Phase – V,
Gurgaon – 122 001.
and Having its branch office at
Indiabulls Home Loan Division,
1st Floor, Apex Chamber,
Theyagaraya Road,
Chennai – 600 017.
4. Trans Union CIBIL Limited.,
(Formerly Credit Information Bureau (India) Limited)
One Indiabulls Centre,
Tower 2A, 19th Floor,
Senapati Bapat Narg,
Elphinstone Road,
Mumbai – 400 013.

**O.A.No. 725 of 2020:-**

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Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the 4th respondent / defendant from declaring the applicants / plaintiffs as defaulters, in relation to the loan agreement between the applicants / plaintiffs and 3rd respondents / defendants pending disposal of the above suit.

O.A.No. 726 of 2020:-

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the 3rd respondent / defendant from collecting balance dues in respect of Home Loan Account No.HHLCHE00083056 from the applicants / plaintiffs pending disposal of the above suit.

These Original Applications coming on this day before this court for hearing in the presence of Mr.V.Srinivasan Advocate for the applicants in both Original Applications and Mr.Jeyesh Dolia, For M/s. Aiyar & Dolia, Advocates for the respondents 1 & 2 and Mr. T. Saikrishnan, Advocate for the 3rd respondent and Mr.S.Parthasarathy, Advocate for the 4th respondent in both Original Applications and upon reading the order dated 24.01.2022



C.S.No.385 of 2020 and this Court having observed that the pleadings have been completed and the suit is also ripe for trial and the applicants have not proved prima facie case and balance of convenience and irreparable injuries, even in case, if the applicants proved that they have paid amounts excessively, they can very well recover the same, which can be decided after recording evidence, therefore, the applicants are not entitled to the relief of interim injunction as sought for in the applications, **It is ordered as follows:-**

That the status quo order granted in pursuance of order dated 18/12/2020 made in O.A.Nos. 725 and 726 of 2020 maintaining the status quo both the parties thereto, be and is hereby set aside.

2. That these O.A.Nos. 725 & 726 of 2020 be and are hereby dismissed.

Sd/-

ASSISTANT REGISTRAR (O.S.-II)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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



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ED
05.05.2022

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O.A.Nos. 725 & 726 of 2020
in
C.S.No. 385 of 2020

ORDER

DATED : 12.04.2022

THE HON'BLE MR. JUSTICE
P. VELMURUGAN

FOR APPROVAL: 05.05.2022

APPROVED ON : 06.05.2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 12TH DAY OF APRIL 2022

THE HON'BLE MR. JUSTICE P. VELMURUGAN

O.A.Nos. 725 & 726 of 2020

in

C.S.No. 385 of 2020

1. Murali Kabirdass,
S/o. Late. Mr. S.R. Kabirdass,
Old No.243, New No.75,
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Kilpauk,
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3. M/s. Best Cast IT Limited,
Represented by its Director,
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Having its Office at
Plot No.58 (SP) SF No. 184, 185,
Sector II, 3rd Cross Road,
Ambattur, Industrial Estate, South
Ambattur,
Chennai – 600 058.

... Applicants/Plaintiffs
(in both Original Applications)



-Vs-

1. M/s. DLF Commercial Developers Limited.,
Having Registered Office at
DLF Centre, Sansad Marg,
New Delhi – 110 001.
and Office at DLF Home,
Manappakkam,
Chennai – 600 125.
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(Formerly DLF Southern Home Private Limited),
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1st Floor, Apex Chamber,
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(Formerly Credit Information Bureau (India) Limited)
One Indiabulls Centre,
Tower 2A, 19th Floor,
Senapati Bapat Narg,
Elphinstone Road,
Mumbai – 400 013.

**O.A.No. 725 of 2020:-**

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Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the 4th respondent / defendant from declaring the applicants / plaintiffs as defaulters, in relation to the loan agreement between the applicants / plaintiffs and 3rd respondents / defendants pending disposal of the above suit.

O.A.No. 726 of 2020:-

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the 3rd respondent / defendant from collecting balance dues in respect of Home Loan Account No.HHLCHE00083056 from the applicants / plaintiffs pending disposal of the above suit.

These Original Applications coming on this day before this court for hearing, **The Court made the following order:-**

These applications have been filed for the following reliefs:

A.No. 725 of 2020 : for interim injunction

restraining the 4th respondent/defendant from declaring

the applicants / plaintiffs as defaulters in relation to the



loan agreement between the applicants/plaintiffs and the 3rd respondent /defendant pending disposal of the above suit.

A.No. 726 of 2020: for grant of interim injunction restraining the 3rd respondent/3rd defendant from collecting the balance dues in respect of Home Loan Account No.HHLCHE00083056 from the applicants/plaintiffs pending disposal of the above suit.

2. The applicants have filed a common affidavit for the relief sought for in these applications stating that they had approached the respondents 1 and 3 for financing the purchase of the apartment and the 3rd respondent also agreed to finance for the same. Accordingly the 1st applicant/1st plaintiff, 1st respondent/1st defendant and 3rd respondent/3rd defendant entered into a Tripartite Agreement on 25.01.2011 for financing for the purchase of the apartment. As per the Tripartite Agreement, the 3rd respondent/3rd defendant shall pay the loan amount towards sale consideration of the said apartment to the 1st respondent upon demand being raised by the 1st respondent/ 1st defendant in writing. As per the Tripartite Agreement, the transactions went smoothly.



3. The first applicant/1st plaintiff availed home loan from the 3rd respondent/3rd defendant to the extent of Rs.3,64,20,735/- @ 11.70% interest per annum for the purchase of the aforesaid flat vide Home Loan Agreement No.HHLCHE0083056 linked account No.HHLCHE00081236. The 1st applicant is the applicant in the loan document, the 2nd and 3rd applicants have signed the loan documents as co-applicants. The 1st applicant is directly as well as through the 3rd respondent has paid an amount of Rs.4,15,27,150/- to the 1st respondent as on 25.02.2013 and further paid a sum of Rs.25,00,000/- on 06.08.2016 aggregating to Rs.4,40,27,150/- as on 06.08.2016. As per Tripartite Agreement Clause 11(a), the 1st respondent should have completed the construction of the said apartment and handed over possession of the same to the 1st applicant/1st plaintiff on or before 5th February 2014. The 1st applicant received an e-mail dated 12.01.2015 demanding an amount of Rs.69,84,423/- from the 1st respondent stating that the construction is almost completed, the services are getting ready for operation and awaiting completion certificate from the competent authorities and gearing up for handing over the apartments shortly once completion certificate is received. Thereafter when the 1st applicant inspected the site, there were some defects and it was not free for occupation. Further, the respondents 1 and 2 did not even execute the sale deed for undivided share of land (UDS) though they received an amount of



Rs.440.15 lakhs. Instead of rectifying / repairing the damages/works, the respondents 1 and 2 once again sent an email dated 25.01.2018 demanding further amount of Rs.1,75,61,517/- from the 1st applicant. In spite of the applicants' best efforts, since the dispute could not be resolved amicably between the parties, the 1st applicant had sent a notice to the respondents 1 and 2 dated 30.01.2018 invoking Clause 55 of the Arbitration Agreement for the reference of the disputes to the Arbitration. However, the respondents 1 and 2 had not appointed any Arbitrator and thereby, the applicant approached this Court and this Court appointed a retired Judge of this Court as a sole Arbitrator. The Arbitrator after completing the proceedings, passed an award dated 18.11.2019 and directed the 1st applicant to pay a sum of Rs.83,34,895.91/- and further, directed to pay a sum of Rs.40 lakhs to the 2nd respondent towards interest from 01.05.2015 till the date of award and it was also ordered that the 1st applicant/ 1st plaintiff is not entitled for any compensation from the 2nd respondent. As per the arbitration award, the 1st plaintiff paid Rs.83,84,895.91/- to the 2nd respondent on 16.12.2019 and also sent a report listing out the repairing works to be carried out by the 2nd respondent inside the flat vide email dated 30.01.2020. But the 2nd respondent failed to deliver the possession even after having received the payment as per the Arbitration Award for no



Tripartite Agreement and demanded the 1st and 2nd respondents to pay directly to the 3rd respondent the entire amount of Rs.5,23,62,046/- paid to the respondents 1 and 2 together with interest @ 18% per annum of Rs.6,63,97,030/- aggregating to Rs.11,50,59,076/- and further interest till the payment is made by the 1st and 2nd respondents. For no fault on the applicants, they incurred loss and also they could not get the flat in usable condition/dwelling condition even after paying more than the agreed amount with unnecessary interest. Therefore, the applicants have filed the suit for the reliefs sought for in the plaint.

4. Heard the learned counsel appearing on either side and perused the materials available on record.

5. The respondents have denied all the allegations.

6. Now this Court has to decide whether the applicants are entitled to get the reliefs of interim injunction as sought for in these applications. The applicants have admitted availing of loan and also admitted the Arbitration Award and as per Arbitration Award, the 1st applicant has paid a sum of Rs.83,84,895.91/- and he is liable to pay a sum of Rs.40 lakhs towards interest from 01.05.2015 to till date of award for rectification. It is seen



that no proof is filed by the 1st applicant for the damages as contended by the 1st applicant/ 1st plaintiff and he has not paid the said amount of Rs.40 lakhs to the 2nd respondent towards interest for rectification as stated in the Arbitration Award. Under such circumstances, without recording evidence, this Court cannot decide whether the cancellation of the Arbitration Agreement by the 1st applicant/1st plaintiff in terms of Tripartite Agreement is right or not, the same can be decided only after trial and not at this stage. Now the pleadings have been completed and the suit is also ripened for trial and the applicants have not proved *prima facie* case and balance of convenience and irreparable injuries. Even in case, if the applicants proved that they have paid amounts excessively, they can very well recover the same, which can be decided after recording evidence.

7. Therefore, the applicants are not entitled to the relief of interim injunction as sought for in the applications. Accordingly, the applications are dismissed. The status quo order passed by this Court dated 18.12.2020 is hereby set aside.

Sd./- P.V.J.,
12/04/2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)