



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) No.659 of 2020

and

C.M.P. (MD) No.4349 of 2020

WEB COPY

1.M/s.Anand Engineering Products P. Ltd.,
Rep., by its Managing Director,
K.Premanathan,
Having Office at No.D56,
Developed Plot Estates, Thuvakudi,
Tiruchirappalli-620 015.

2.K.Premanathan

.. Petitioners/Petitioners/
Plaintiffs

-vs-

1.State Bank of India,
Rep., by its Chairman,
State Bank Bhavan,
Having Office at 16th Floor,
Madam Cama Road, Mumbai-21.

2.The General Manager,
State Bank of India,
Local Head Office,
Credit Committee Circle-II, 16,
College Lane, Nungambakkam,
Chennai.

3.The Deputy General Manager,
State Bank of India,
Zonal Office, Mc. Donalads Road,
Cantonment, Tiruchirappalli-620 001.

4.The Regional Manager,
State Bank of India,
Regional Business Office-1,
Mc. Donalads Road, Cantonment,
Tiruchirappalli-620 001.

5.The Assistant General Manager/
Chief Manager, State Bank of India,
Thuvakudi Branch, Thuvakudi,
Thiruchirappalli-15.

.. Respondents/Respondents/
Defendants



Prayer :- Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 19.12.2019 passed in I.A.No.2 of 2019 in O.S.No.25 of 2018 on the file of the I Additional District Judge (PCR), Thiruchirappalli.

For Petitioners : Mr.M.Saravanan

For Respondents : Mr.M.Ponniah

ORDER

The order dated 19.12.2019 of the learned I-Additional District Judge (PCR), Tiruchirappalli refusing to permit the plaintiffs to amend the plaint has resulted in the filing of this revision petition.

2. The plaintiff has filed a suit in O.S.No.25 of 2018 against the defendant-Bank for the following reliefs:-

"A) For declaration that no amount is due and payable by the first plaintiff to the defendants towards the Cash Credit and Term Loans availed by it and for consequential relief of Mandatory Injunction directing the defendants to return the documents more fully described in the Loan documents executed by the plaintiffs which were given as primary and collateral securities for the Cash Credit and Term Loans obtained by the first plaintiff from the 5th defendant within a date to be fixed by the first plaintiff from the 5th defendant within a date to be fixed by the Hon'ble Court failing which have the same executed through process of Court,

B) For Mandatory Injunction directing the defendants to issue a 'No Due Certificate' to the first plaintiff stating that the first plaintiff has cleared the loans availed by it from the 5th defendant within a date to be fixed by the Hon'ble Court failing which have the same executed through process of Court,

C) For the relief of declaration that the defendants are not entitled to charge/levy any interest in the erstwhile Term Loan Account of the first plaintiff beyond 31.07.2017 and for consequential relief of recovery of the sum of Rs.8,71,723/- high-handedly and illegally levied/collected by the defendants towards interest for the month of August, 2017 from the first plaintiff in the erstwhile Term Loan Account of the first plaintiff in No.32260480140 with interest @ 12% per annum from the date of suit till date of realization,



D) For recovery of the sum of Rs.5,92,402/- high-handedly and illegally levied/collected by the defendants towards interest for the month of September, 2017 from the first plaintiff in the erstwhile Term Loan Account of the first plaintiff in No.32260480140 with interest @ 12% per annum from date of suit till date of realization,

E) For recovery of the sum of Rs.1,16,294/- high-handedly and illegally debited by the 5th defendant in the month of July, 2017 from the Cash Credit Account No.30032615391 of the first plaintiff with interest @ 12% per annum from date of suit till date of realization,

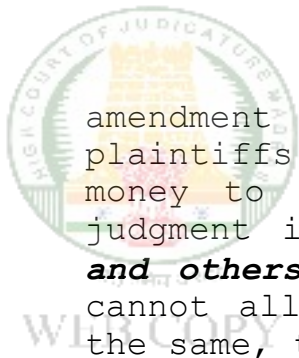
F) For declaration that the defendants have committed unfair trade practice, deficiency in service and mal-practices and for consequential relief of directing the defendants to pay a sum of Rs.4,00,000/- as compensation/damages for the financial loss, hardship and loss of reputation caused to the plaintiffs,

G) Award costs of the suit, and

H) Grant such further or other reliefs as the Hon'ble Court may deem fit and proper in the nature and circumstances of the case and thus render justice."

3. The petitioners had filed the suit claiming that they had cleared the claims of the respondent-Bank despite which, the defendants were making claims. The defendants had filed a written statement refuting the said claim. Thereafter, the suit was posted for framing of issues. While so, the petitioners/plaintiffs would contend that they had received a letter dated 02.04.2019 from the 5th defendant referring to the disputes in the suit and informed them that an amount of Rs.2,43,00,000/- belonging to the 1st petitioner in its current account, which has been maintained with the 5th defendant-Bank, would be put on hold towards the dues of the plaintiffs. The plaintiffs would submit that the demand by the Bank was totally misconceived, as the plaintiffs did not owe any money to the defendants, much less a sum of Rs.2,43,00,000/-. Since, this action of withholding the amount had taken place after the filing of the suit, the plaintiffs have sought for an amendment to include the relief of recovery of a sum of Rs.2,43,52,601/-. The amendment that was required to be made has been set out in detail in the affidavit filed in support of the application.

4. The 5th defendant-Bank had filed a counter denying the averments and contending that the plaintiffs had not kept up with the assurance made by them. The learned Judge had dismissed the said application stating that the plaintiffs were setting up an entirely new cause of action and the relief claimed by way of an



amendment run totally contrary to the original prayer wherein, the plaintiffs had sought for a declaration that they did not owe any money to the defendants. The learned Judge had relied on the judgment in **M.S.Karuppusami vs. Saravana Devei alias Vasanthamani and others** reported in **(2002) 1 MLJ 758** and held that the Court cannot allow the plaintiffs to take divergent pleas. Challenging the same, the plaintiffs/revision petitioners are before this Court.

5. Heard the learned counsels on either side.

6. The original suit has been filed for a declaration that the plaintiff does not owe any money to the Bank. In Paragraph No.34 of the plaint, which sets out the cause of action, the plaintiffs have clearly stated as follows:-

"34. ... in as much as the fact that the entire financial arrangements had been discharged in full by the first plaintiff and on 24.08.2017 when the 5th defendant had written a letter to the 1st plaintiff on false, baseless and untenable allegations claiming untenable and baseless amounts towards Right to recompense Clause and had sought for an imaginary and atrocious sum of Rs.2,50,00,000/- without providing any explanation whatsoever for releasing the security documents of the plaintiffs ..."

Thereafter, the plaintiffs, in the affidavit filed in support of the impugned application, contended that on 02.04.2019, the Bank informed the plaintiffs that they had withheld a sum of Rs.2,43,00,000/-. The observation of the learned Judge that the amended prayer is contrary to the original prayer is incorrect for the reason that the plaintiffs have come forward with the suit stating that they do not owe any money to the Bank. The amendment they seek to have is for refund of the money, which has been withheld by the Bank. The reason for seeking the refund of the money is only on account of the fact that the plaintiffs have settled all the dues to the Bank. Therefore, the relief now sought for by way of amendment is not contrary to the original relief, but is only complimentary and consequential to the same. Therefore, this Court is of the view that the learned I-Additional District Judge, Tiruchirappalli, has clearly misdirected himself and consequently, the Civil Revision Petition is allowed and the order dated 19.12.2019 made in I.A.No.2 of 2019 in O.S.No.25 of 2018 is set aside. No costs. Connected miscellaneous petition is closed.

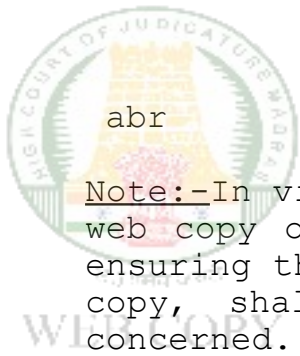
Sd/-

Assistant Registrar (W)

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Sub Assistant Registrar(CS)



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Note:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

The I-Additional District Judge (PCR),
Tiruchirappalli.

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-3007[F] dated 31/01/2022)

C.R.P. (PD) (MD) No.659 of 2020

Dated: 28.01.2022

RD(16.02.2022) 5P 3C