IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

CRP.No. 2743 of 2023
and
CMP.No. 16912 of 2023

Fazal Ahamed A. .. Petitioner

Versus

M/s. ICICI Bank Limited
Represented by its Manager,
Mr. Dhanasekar B.,
Having Office at
No. 1, Cenatoph Road
Teynampet,
Chennai-600 018. .. Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, prays to set aside the fair and decreetal order dated 27.06.2023 made in I.A.No. 1 of 2022 in O.S.No. 1167 of 2022 on the file of the XVII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.A. Thameem Mohideen

ORDER

This Revision has been filed seeking to set aside the fair and decreetal order dated 27.06.2023 made in I.A.No. 1 of 2022 in O.S.No. 1167 of 2022 on the file of the XVII Assistant Judge, City Civil Court, Chennai.

2. Heard the learned counsel for the petitioner and perused the records.

3. The respondent/Bank/Plaintiff has filed the suit in O.S.No. 1167 of 2022 before the XVII Assistant City Civil Court, Chennai, against the defendant for recovery of money. The petitioner/defendant has contested the suit by filing written statement denying all the averments made in the plaint. During the pendency of the suit proceedings, the petitioner/defendant filed IA.No. 1 of 2022 under Order VII Rule 11(a) and (d) of CPC., seeking to reject the plaint as it does not disclose the cause of action, the suit appears from the statement in the plaint to be

barred by law of limitation and striking off the entire pleading in the plaint. The said petition was dismissesd, and aggrieved by the said order present CRP is filed.

4. On perusal of the records, it is seen that the respondent/Bank filed the suit against the defendant for recovery of loan. When PW1 was cross examined, at that time, the petitioner/defendant has filed the above application to reject the plaint on the ground that the plaintiff has stated in the plaint, the total EMI period was 53 but as per Ex.A1 application, the tenure was only 48 months and also the interest was 13.01% per annum. It is totally contra to the Ex.A1 and it would also submit that the plaint had no cause of action as the acceptance and sanction of the loan in I.A.No. 1 of 2022 in O.S.No. 1167 of 2022 was not communicated to the petitioner. Therefore, the original suit itself is a vexatious one. It is also stated that the respondent has not paid lastly on 05.11.2020. Hence, the suit is hits by law of limitation. It is also stated that the claim made by the respondent/plaintiff is not in accordance with the statement of account filed by the Bank.

5. On the other hand, the application was resisted by the Bank contending that the tenure of the loan was extended due to COVID-19 and the petitioner/defendant was lastly paid on 05.11.2020 and the suit has cause of action and it is not barred by law of limitation.

6. It is seen from the above, the main points raised by the petitioner/defenant that the tenure of loan and the interest were wrongly calculated against the Ex.A1 i.e., 48 months instead of 53 months and the interest as 14.51%. The respondent/Bank has contended that due to Covid-19, the tenure was extended to 53. Whether the tenure was extended due to Covid-19 or not has to be decided after trial as it is the disputed facts. It is also seen that the petitioner/defendant had executed necessary documents and proof in favour of the respondent/Bank. The respondent/Bank has not filed any letter as to communication of acceptance and sanction of loan to the petitioner/defendant at present but the respondent/Bank had stated in the plaint that they have proof. The sanction letter is required to dispose of the case, the original suit can be decided only after full trial, as such, this is not the valid ground to reject the plaint.

7. On a further perusal of the records, it is also seen that the statement of accounts filed by the respondent/Bank are totally contra to the claim made in the suit. The statement of accounts which was marked as Ex.A3, it is stated that the balance as on 31.12.2021 was Rs.3,59,816/- and the claim made by the respondent/Bank in the suit was Rs.6,25,601/- and the said amount was restricted to Rs.4,76,736/-. Again the disputed facts as to the balance is concern and the same has to be decided after full trial only. The petitioner/defendant has not paid any amount on 05.11.2020. Therefore, the calculation made by the respondent/Bank for filing this suit was hit by law of limitation. It is settled principle that while deciding the application for rejection of plaint, the plaint alone, a needs to be taken into consideration. The respondent/Bank stated in their plaint that the petitioner/defendant has lastly paid on 05.11.2020 and it was disputed by the petitioner/defendant. The statement of accounts was marked as Ex.A3 in the suit and it would show that the amount was paid on 05.11.2020.

8. Taking into consideration of the above facts, all the points have

to be raised by the petitioner/defendant that the tenure of the loan, interest and claim amount was not properly calculated thereby there is no cause of action and he has not lastly paid on 05.11.2020 thereby hit by law of limitation and the suit is vexatious are all disputed facts and the same can be decided at the time of trial. Therefore, the trial Court has rightly dismissed the application filed by the petitioner/defendant. All the points have to raised before the trial Court. Hence, this Court do not find any reason to interfere with the impugned order passed by the trial Court.

9. Accordingly, the Civil Revision Petition is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

10.08.2023

Speaking order: Yes/No
Neutral Citation : Yes/No
Index : Yes/No
MSM

To

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

V.BHAVANI SUBBAROYAN, J.

msm

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