IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09 .2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP. No. 2620 of 2017

Ravikumar Dhandhania
...Petitioner

Vs.

1.M/s. Reliance Home Finance Limited,
Registered office at 3rd floor,
Rectifier House,
Naigaum Cross Road,
Next to Royal Industrial Estate, Wadala
Mumbai – 400 031.
2.M/s. Reliance Home Finance Limited
Branch Office at D.No.7/54, Ideal Garden Complex
Junction Main Road,
Salem 636 004.
...Respondents.

PRAYER : This Civil Revision Petition is filed under Section 115 of CPC, praying to set aside the fair and decreetal order dated 20.03.2017 in I.A No.112 of 2016 in O.S No. 134 of 2015 on the file of II Additional District judge, Salem.

For Petitioner : Mr.D.Shivakumaran

For Respondents : Mr.K.J.Parthasarathi

ORDER

This petition has been filed to set aside the fair and decreetal order dated 20.03.2017 in I.A No.112 of 2016 in O.S No. 134 of 2015 on the file of II Additional District judge, Salem.

2. The petitioner herein is the plaintiff who filed suit in O.S No. 134 of 2015 on the file of the II Additional District Judge, Salem, for the relief of recovery of money against the defendants/respondents herein.

3. The contention of the plaintiff is that he availed loan against the property from the defendants for the purpose of business and the said loan was repaid by him without any default upto 11th instalment thereafter the plaintiff foreclosed the loan. But the defendants debited a sum of Rs.9,69,009.89/- towards foreclosure charges, when the petitioner refused to pay the foreclosure charges, the second defendant denied to return the original deeds. So in order to get the original title deeds which was deposited in the defendants company while borrowing the loan. Hence, the petitioner was left with no other option than to pay the foreclosure charges and the entire loan amount including foreclosure charges were paid by him thereafter defendants returned the original title deeds. The contention of the petitioner

is that the defendants cannot levy foreclosure charges to the petitioner as such as clear contravention to the Rules of the Reserve Bank of India. Hence the petitioner filed the suit for recovery of money. Thereafter the petitioner issued a notice after receiving the same the defendants filed I.A No. 112 of 2016 in O.S No. 134 of 2015 stating that as per Section 8 r/w Section of 5 of the Arbitration and Conciliation Act, 1996, it is bar for filing of the suit in view of the arbitration clause and the Court means only the Civil Court having jurisdiction and such the Additional Court have no jurisdiction. Further as per clause 17 of the loan agreement dated 31.07.2013 if there is any dispute between the parties they have to approach the Arbitrator in spite of that the petitioner approached the Civil Court and prayed to dismiss the suit as barred.

4. Considering the submissions on either side, the Trial Court held that as per the clause 17 of the loan agreement both the parties subjected themselves to the Arbitration if any dispute or difference arises between them and held that only remedy available to the respondent is to approach the arbitrator and therefore the present suit is barred, Accordingly allowed the petition. Challenging the same the plaintiff preferred this civil revision petition.

5. The learned counsel for the petitioner submitted that the Trial Court failed to take note of the fact that the entire loan amount was paid by the petitioner hence claim in the suit is beyond the scope of arbitration clause instead of proceed the suit the Trial Court allowed the petition as such is unfair and liable to be set aside. Further, he submitted that dispute arisen between the parties is on account of contravention of the RBI regulation by the respondents herein via., the defendants in the suit and as such the subject matter viz., "whether the levy of foreclosure charges/prepayment penalty by the respondents is correct" cannot be construed as a matter within the scope of arbitration. Therefore he prays to allow this petition.

6. The learned counsel for the respondent submitted that even after closure of the loan if any dispute between the parties pertaining to levying any penalty or foreclosure the plaintiff should have invoke arbitration clause in spite of that filed civil suit as such is error and the same was rightly appreciated by the Trial Court.

7. Considering the submissions on either side, the facts reveals that

plaintiff availed loan from the first respondent, after paying 11 instalments he repaid the entire loan amount, for which the defendant levied the foreclosure charge and penalty which was around more than 9 lakhs. After obtaining foreclosure charges the defendant returned the original title deed to the plaintiff. According to the plaintiff, by violating norms of RBI the defendant levied penalty and foreclosure charges hence the plaintiff filed suit for recovery of money. Admittedly, there is no dispute with regard to availing and repayment of loan and also there is loan agreement existing between them. After foreclosure of loan, the defendants levied penalty and foreclosure charges thereafter the dispute arisen between the parties the main objection of the plaintiff is that defendants violated RBI norms. Hence they filed suit for recovery of money. As rightly pointed out by the learned counsel for the petitioner the dispute between the parties is beyond the scope of the arbitration clause which was not properly appreciated by the Trial Court. Therefore, the findings of the Trial Court is set aside.

1. As discussed above, this revision petition is allowed. Further the Trial

Court is directed to dispose the suit within a period of six months from the date of receipt of a copy of this order. No Cost.

2.

21.09.2023

pbl

T.V.THAMILSELVI,J.

Pbl

CRP. No.2620 of 2017

21.09.2023