



C.R.P.(MD)No.3248 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.12.2023

Pronounced on : 22.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.3248 of 2023

1. S.Smilin

2. Jaya Cashews
represented by Jaya Balies

... Petitioners/
Petitioners

Vs.

The Branch Manager,
Bajaj Finance Limited,
Nagercoil Branch
No.85, 1st Floor, Sidel Towers,
WCC Road, Opp. WCC College,
Nagercoil & Post,
Agasteeswaram Taluk,
Kanyakumari District.

... Respondent/
Respondent

Prayer : This Civil Revision Petition filed under Article 227 of Constitution of India, to direct the District Judge, Kanyakumari at Nagercoil to number and take the case on file the PCEIOP Filing



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No.OP/1008/2023 on the file of District Judge, Nagercoil, Kanyakumari District and dispose of the same on merit and in accordance with law.

For Petitioners : Mr.S.Titus

ORDER

The Civil Revision Petition is directed against the order returning the application filed under the Tamil Nadu Prohibition of Charging Exorbitant Interest Act Filing No.OP/1008/2023 on the file of the Principal District Court, Kanyakumari District at Nagercoil and for directing the Principal District Judge, Kanyakumari District at Nagercoil to take the case on file.

2. The revision petitioners have filed the application under Sections 5 and 8 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 (Tamil Nadu Act 38 of 2003) claiming the reliefs for recording full satisfaction of loan of the revision petitioners in loan Account No. 549LAP35904963 of the respondent-Finance Company and for an order directing the respondent-Finance Company to return the excess amount of Rs.18,45,000/- to the revision petitioners.



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3. Admittedly, one Sundara Balies was the proprietor of Jeya Cashew Industries and the said Sundara Balies along with his wife Jaya Balies and his son Smilin borrowed a loan of Rs.1,24,00,000/- from the respondent-Finance Company for the Jeya Cashew Industries.

4. The case of the revision petitioners is that the proprietor Sundara Balies expired on 12.08.2020, that due to Covid-19 lockdown and loss in business transactions, their cashew industries went in great loss, that the interest stated in the loan agreement is 10.75% per annum simple interest, but the respondent-Finance Company had calculated interest and interest on interest in an exorbitant manner, that the revision petitioners had paid Rs.1,81,87,878/- to the respondent-Finance Company till the filing of the above application as per the statement of account issued by the respondent-Finance Company dated 14.06.2023, that the loan period is to expire only on 05.02.2033, but the respondent-Finance Company had made the loan as non performing asset against the rules of Reserve Bank of India and compelled the revision petitioners to remit huge amount, that the respondent-Finance Company had also initiated proceedings under SARFAESI Act illegally and issued possession notice and approached the



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Chief Judicial Magistrate Court, Nagercoil and obtained orders illegally to vacate the revision petitioners and their family members from their residential house, that the revision petitioners had paid Rs.18,45,093/- to the respondent-Finance Company more than the due amount and eligible interest as per their calculation and that therefore, the respondent-Finance Company is duty bound to return the excess amount collected from the revision petitioners and they have no right to proceed under the SARFAESI Act.

5. The learned Principal District Judge has returned the application initially with the following returns:

1. *As per doct No.6 Arbitration proceedings is pending hence how this petition is entertainable to be explained.*
2. *As per Sec. 34 of SARFAESI Act 2002, how this petition is liable to be entertained to be explained, since as per Doc. No.8 to 14 SARFAESI Act proceedings initiated against the petitioner.*
3. *Loan agreement made between the proprietor of Jaya Cahsew Industries and respondent and hence how this petition is filed. This petition to be explained.*
4. *Other proprietor is the company not added as party.*



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6. The revision petitioners have re-presented the application by answering to the queries raised. Thereafter, the Court not satisfied with the re-presentation endorsement has again returned raising an additional query as to under which provision of the PCEIA the revision petitioners are claiming refund of the excess amount allegedly paid by them and as to how the relief of refund of the excess amount is entertainable. The revision petitioners have re-presented again by making an endorsement that the application under the PCEIA for refund of the excess amount is maintainable under the Code of Civil Procedure.

7. As rightly observed by the learned Principal District Judge, the revision petitioners have produced a document in Doct. No.6 arbitration proceedings of the respondent-Finance Company, but the revision petitioners have not whispered anything about the same in the application, but in the re-presentation endorsement, have stated that the said document was only an acceptance letter for appointment of an Arbitrator at Pune, Maharashtra State and that the revision petitioners had not accepted the same.



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8. A cursory perusal of the application filed by the revision petitioners before the Principal District Court would reveal that the above application has been filed only to stall the SARFAESI proceedings initiated by the respondent-Finance Company. The main aspect that is canvassed in the present application is that the revision petitioners have already discharged the loan due to the respondent-Finance Company and if that be their case, then it is only for the DRT to consider and decide the same.

9. Though a specific return was made by the learned Principal District Judge as to under what provision of PCEIA refund of the excess amount is claimed and the maintainability of such application before the concerned Court, the revision petitioners have simply made an endorsement that the same are maintainable under the Code of Civil Procedure. Considering the above, even according to the revision petitioners, there is no provision in the Tamil Nadu Prohibition of Charging Exorbitant Interest Act for claiming the refund of the excess amount, if any paid.



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10. Considering the above, the impugned orders of return made by the learned Principal District Judge cannot be found fault with. Hence, the revision petitioners are at liberty to re-present the application with proper explanation, if any and on such representation, the learned Principal District Judge, Kanyakumari District at Nagercoil is directed to consider the same in accordance with law.

11. With the above direction, this Civil Revision Petition is disposed of. No costs.

22.12.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

Note : Registry is directed to return the original papers to the revision petitioners, after getting necessary acknowledgment.

To

1. The Principal District Court,
Kanyakumari District at Nagercoil.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
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Dated : 22.12.2023