IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.07.2024

PRONOUNCED ON : 26.09.2024

CORAM

THE HONOURABLE **MR.JUSTICE BATTU DEVANAND**

C.R.P. No.2091 of 2021
&
CMP No.15902 of 2021

Sammunati Financial Intermediation & Services Private Ltd.,
rep. by its Authorised Signatory D.Vijayakarthi,
Having Office at Baid Hi-Tech Park,
No.129-B, 8th Floor, East Coast Road,
Thiruvanmiyur, Chennai-600 041. ... Petitioner/defendant

Vs.

1.M/s.Punya Dairy,
No.108, Akash Homes,
No.560/1, Dhanalakshmipuram,
Singanallur, Coimbatore-641 005
Also at
no.429/2, Savadipalayam,
Kethanur Village, Tiruppur-641 671

2.T.Narayanasamy
Partner in Punya Dairy

3.Sathiya Priya
Partner in Punya Dairy

4.Senthilkumar .... respondents
(Cause title accepted vide court order dated 23.08.2021 made in
CMP No.13175 of 2021 in CRP Sr.No.51013 of 2021 by GCSJ)

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to strike off the plaint in OS.No.1746 of 2019, on the file of the Principal District Munsif, Coimbatore.

For Petitioner : Mr.Nithyaesh

For Respondents : No appearance

****

ORDER

This Civil Revision Petition has been filed under Article 227 of the Constitution of India, praying to strike off the plaint in O.S.No.1746 of 2019 on the file of the Principal District Munsif Court, Coimbatore.

2. For the sake of convenience, the parties herein shall be referred to in terms of their ranking and status before the Trial Court.

3. The brief facts, which lead to the filing of the present Revision Petition are as follows:

(i) The petitioner herein is the defendant in a suit filed by the plaintiffs who are the respondents 1 to 3 herein, praying for mandatory injunction to direct the petitioner/defendant to return all the blank cheques specified in Annexure-A of the plaint and for permanent injunction to restrain the petitioner/defendant from encashing the said blank cheques by presenting into the bank and also to restrain the petitioner/defendant from disturbing the plaintiffs/respondents 1 to 3 doing their business in the suit property.

(ii) The above said suit has been filed by the plaintiffs/respondents 1 to 3 on the premise that they availed a loan of Rs.50,00,000/- from the petitioner/defendant and in terms of the said loan, the plaintiffs had opened an Escrow account with the petitioner/defendant company and the beneficiary collections of all invoices financed under the facility are required to be credited to this account from which, repayments under the facility will be adjusted as mutually agreed. Thereafter, the plaintiffs repaid a sum of Rs.18,97,937/-. The plaintiffs could not get sale consideration for the materials sold by them, which incurred heavy loss in the business and that was the prime reason for not making further payment to the petitioner/defendant. There was no willful default of payment, but it was because of non-availability of funds due to non-realization of sale at the plaintiffs' end. However, all of a sudden, the defendant and their men came to the plaintiffs' company and had forcibly obtained 4 blank cheques from the plaintiffs' company towards the security of the loan. Further, the plaintiffs had requested the defendant to give back the cheques which were taken illegally and forcibly, but the defendant refused to give the said cheques. In this regard, the plaintiffs also lodged a police complaint. However, the defendant presented one of the cheques for collection without intimating the same to the plaintiffs and sent a legal notice upon dishonour of the said notice dated 03.05.2019. The plaintiffs sent a reply notice dated 31.05.2019, stating that the cheques were obtained towards security and no cheque was given towards any legally enforceable liability. The defendant having illegal possession of the blank cheques, giving threats to the plaintiffs to present the cheques towards their unlawful gain and sending notices with false averments. The plaintiffs had taken earnest efforts to settle the matter amicably, which ended in vain since the defendant has not come forward for the terms of settlement and also refused to return the cheques. With these averments, the plaintiffs filed the suit.

4. Now, the petitioner/defendant, seeking to strike off the plaint, has come forward with the present revision petition.

5. Mr.Nithyaesh Natraj, learned counsel appearing for the petitioner/defendant would submit that the plaintiffs availed a loan of Rs.50,00,000/- by executing deed of hypothecation, personal guarantee agreement dated 22.11.2017 and demand promissory note dated 23.11.2017 and also given cheques towards security. However, the plaintiffs committed default and failed to repay the outstanding amount of Rs.60,52,645/- as on dated 01.03.2021, which prompted the defendant in presenting one of the cheques for enacashment, which was dishonoured at the instance of the plaintiffs and the defendant was constrained to issue notice under Section 138 of the Negotiable Instruments Act, 1881.

6. The learned counsel would also submit that the plaintiffs filed the suit with frivolous and baseless averments, which is a clear abuse of process of Court since the plaintiffs have given the cheques towards security for the loan in the event of failure of repayment on their part, however, they cleverly drafted the plaint with an illusion of a cause of action as if the defendant forcibly and illegally obtained the cheques from the plaintiffs. He would also submit that only with an intention to frustrate the proceedings initiated under Section 138 of N.I.Act by the defendant, the plaintiffs have

filed the suit, which is liable to be rejected at the threshold. He would also submit that if at all the plaintiffs' version that 'no cheque was issued towards legally enforceable liability' is true, the plaintiffs can very well prove the same during the course of proceedings to be initiated by the defendant under Section 138 of the N.I.Act and absolutely, the suit is not maintainable and the trial Court ought to have rejected the plaint without entertaining the same.

7. The learned counsel for the petitioner/defendant, in support of his contentions, relied upon the decisions of the Hon'ble Apex Court reported in "***T.Arivanandam versus T.V.Satyapal and another***" reported in 1977 (4) SCC 467 and "***M/s.Frost International Limited versus M/s.Milan Developers and Builders (P) Ltd. and another***" (Civil Appeal No.1689 of 2029, dated 1.4.2022). With these contentions, the learned counsel for the petitioner/defendant would urge this Court to strike off the plaint in O.S.No.1746 of 2019 on the file of the Principal District Munsif Court, Coimbatore.

8. Heard the learned counsel for the petitioner and perused the entire materials available on record. In spite of service of notice, there is no representation for the respondents.

9. Though it is contended on behalf of the defendant that the cheques were given by the plaintiffs for the purpose of security of the loan transaction that had taken place, the plaintiffs filed the suit contending that the said cheques were forcefully taken from them. However, there is no denial from the plaintiffs to prove their contention that the cheques were forcefully taken from them.

10. The learned counsel for the petitioner has placed a copy of the judgment dated 13.04.2022 in Commercial OS.No.7 of 2022 on the file of the Principal Judge City Civil Court, Chennai. On perusal of the same, it appears that the petitioner herein filed a commercial suit in OS.No.7 of 2022 against the respondents herein and the same was decreed with costs. Thereby directing the respondents herein jointly and severally to pay the petitioner a sum of Rs.60,52,645/- together with interest at the rate of 30% from the date

of plaint till the date of decree and thereafter at the rate of 6% p.a. till the date of realization.

11. In the light of the said judgment, it is clear that the respondents availed a loan of Rs.50,00,000/- from the petitioner and a partial repayment of Rs.18,97,937/- was made by them. As seen from the above, the respondents having not denied their liability with regard to the contention of the petitioner in the commercial suit. The contention that the petitioner herein is trying to blackmail the third respondent and harassing her has no basis and accordingly, the Principal Judge, City Civil Court, Chennai has opined that such allegation is vague and bald. Considering all aspects, the Commercial OS.No.7 of 2022 was decreed by a reasoned order.

12. On perusal of the judgment of the Apex Court in ***M/s. Frost International Limited vs. M/s. Milan Developers and Builders (P) Limited and another***, relied on by the learned counsel for the petitioner, it appears that it is squarely applicable to the facts of the present case. The relevant paragraphs of the judgment of the Apex Court is extracted hereunder:

"35. On a holistic reading of the plaint and on consideration of

the reliefs sought by the plaintiff, we find that the said reliefs are barred by law inasmuch as no plaintiff can be permitted to seek relief in a suit which would frustrate the defendants from initiating a prosecution against plaintiff or seeking any other remedy available in law. In fact, the attempt made by the plaintiff to seek such a declaratory relief is, in substance, to seek a relief of injunction against the defendants, particularly defendant no.1, but framed it in the nature of a declaratory relief. In other words, the plaintiff has sought an injunction against defendant no.1 from seeking remedies in law on account of the cheque issued by the plaintiff for a sum of Rs. 56 lakhs being dishonoured.

.....

.....

37. Moreover, the right of defendant no.1 to prosecute the plaintiff owing to the dishonour of the cheque issued by the plaintiff for a sum of Rs. 56 lakhs cannot be frustrated by seeking a declaration that the said cheque was handed over as a security. Such a declaration cannot be ex facie granted as it would be contrary to the provisions of the N.I. Act and particularly Section 118(a) thereof. If the plaintiff is aggrieved on account of breach of the terms and conditions of the MoU committed by defendant no.1 then it could seek appropriate reliefs in accordance with law. Whether the plaintiff was not liable to issue the cheque for Rs. 56 lakhs to *defendant no.1 under the terms of the MoU is a matter which has to be considered in an appropriate proceeding to be initiated by defendants on account of dishonour of the said cheque under Section 138 of the N.I. Act. The plaintiff can always prove that it had no legal liability or debt to be discharged vis-a-vis defendant no.1 under the terms of the MoU, if any proceeding is to be initiated by defendant no.1 on account of the dishonour of the said cheque. Further, if defendant no.1 is to seek any relief for the nonsupply of 3876 MT of iron ore fines by the plaintiff under the very same MoU then the plaintiff is entitled to take appropriate defences as are available in law. If the plaintiff has a grievance against the defendants and particularly defendant no.1, arising from the MoU, such prayers have not been sought by the plaintiff. Such reliefs could have been sought by the plaintiff inasmuch as there is no prayer seeking recovery of Rs. 21.50 lakhs from defendant no.1 which according to the plaintiff is due to it.*

38. In the circumstances, we hold that while the plaintiff has certain grievances arising from the MoU, against the defendants which may give rise to seek appropriate remedies in law, the aforesaid three declaratory reliefs sought in the plaint are barred by law. Hence, the plaint is liable to be rejected in exercise of jurisdiction under Order VII Rule 11 CPC. In our view, the revisional court was justified in rejecting the plaint but the High Court has erroneously set aside the order of the *revisional court without appreciating the facts and circumstances of the case and has simply remanded the matter to the revisional court to reconsider the revision afresh on the premise that the revisional court did not have the jurisdiction to reject the plaint under Section 115 of the CPC.*

39. In the result, the impugned Order of the High Court is set aside and the Order of the revisional court passed in C.R.P. No.5 of 2012 dated 23.02.2013 is restored. The plaint in C.S. No. 1065 of 2009 is rejected. This appeal is accordingly allowed."

13. In view of the above, this Court holds that if the plaintiffs have any grievance against the defendant, they can seek appropriate remedies in law, but the reliefs sought in the plaint are barred by law. Hence, the plaint is liable to be rejected.

14. Accordingly, the Civil Revision Petition is allowed.

No costs.

Consequently, connected miscellaneous petition is closed.

15. However, it is made clear that the rejection of the plaint would not

come in the way of the plaintiffs for seeking appropriate reliefs in accordance with law in appropriate Forum, if so advised.

26.09.2024

dn/pvs
Index : Yes / No
Internet : Yes / No

To
The Principal District Munsif, Coimbatore.

BATTU DEVANAND.J.,

pvs

C.R.P. No.2091 of 2021

26.09.2024