



C.R.P.(PD).No.3653 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.09.2024

CORAM

THE HONOURABLE Mr. JUSTICE

V.LAKSHMINARAYANAN

C.R.P.(PD).No. 3653 of 2024

&

C.M.P.No. 19858 of 2024

1.M/s.Tristar Accomodations Limited,
represented by its Managing Director
Mr.Rashmirajan Kapoor,
Tristar Tower, D.No.657, Avinashi Road,
Coimbatore – 641 037.

2.Padmini Rajan

3.Uma Rajan

4.Rashmi Rajan Kapoor

...Petitioners

Vs.

Vathsala Jaganathan

...Respondent



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C.R.P.(PD).No.3653 of 2024

Prayer: Petition filed under Article 227 of the Constitution of India against the order of the III Additional District Court, Coimbatore, dated 17.04.2024 in I.A.No.3 of 2023 in O.S.No.487 of 2013.

For Petitioner : Mr. M.Sricharan Rangarajan
Senior Counsel
For Mr. S.V.Pravin Rathinam.

ORDER

This Civil Revision Petition is filed against the order passed by the III Additional District Judge, Coimbatore, in I.A.No.3 of 2023 in O.S.No.487 of 2013 dated 17.04.2024.

2. O.S.No.487 of 2013 has been presented for cancellation of the sale deed executed by the 1st defendant as a power of attorney of the plaintiff in Doc.No.2330 / 2009 dated 23.07.2009; for permanent



injunction restraining the defendants from alienating or encumbering the property; for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property and for restraining the 3rd defendant from entertaining any documents for registration presented, through and on behalf of defendants with respect to suit property.

3. The case of the plaintiff is that she had entered into a memorandum of agreement with the 1st defendant on 12.11.2008. Pursuant to the memorandum of agreement, the plaintiff had also executed general power of attorney on the same date authorising the 2nd defendant to deal with properties and to develop the same. Alleging that the 2nd defendant did not proceed with the project as agreed upon, she had approached the other developers and applied for encumbrance certificate of her properties so as to invite other developers to deal with the properties.



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4. It was at that stage she came to know that the 2nd defendant had misused the power of attorney executed by the plaintiff in his favour and had, in collusion with the Bank Officials, raised a loan for a sum of Rs.9,00,00,000/- with the property as security. Such raising of loan was without the plaintiff's consent or knowledge. On the account of this fact, the plaintiff alleges that she cancelled the power of attorney on 02.11.2010 and had intimated the same to the 2nd defendant. When the plaintiff started making arrangements for construction over the suit property, she was shocked to find out that the defendants had acted in a manner which amounts to cheating, misrepresentation, fraud etc., Hence, she presented the suit for the aforesaid reliefs.

5. The defendants entered appearance and filed a detailed written statement, running into several pages.

6. The defendants denied the allegations of fraud,



misrepresentation etc., and the fact that the plaintiff was not aware of transactions entered into between the 2nd defendant and the 1st defendant. The plea is that he had agreed to put up construction in terms of the Memorandum of Understanding that had been entered into between them on 12.11.2008. He added that he got to know that the plaintiff is trying to cheat him and prevent him from developing the property by approaching the other developers. Hence, he pleads that the suit deserves to be dismissed.

7. The suit was filed in the year 2013. It is pertinent to point out that the written statement, though filed in the year 2017 on the merits of the case, did not raise a plea that the suit is barred by the existence of the “*arbitration*” clause in memorandum of agreement dated 12.11.2008. In the meantime, the 2nd defendant passed away and his legal representatives were brought on record as defendants. It is on record that other suits have also been initiated and the same are said to be pending.



8. After the suit had been pending for over a decade and more, the defendants took out an application in I.A.No.3 of 2023 seeking for rejection of plaint. The grounds on which the plaint was sought to be rejected was that :

(i)The suit lacks cause of action.

(ii)The suit is barred by limitation and

(iii)There is an arbitration clause existing between the parties and therefore civil suit is not maintainable and the remedy is only to approach an arbitrator as contemplated in the said agreement.

9. A detailed counter was filed by the plaintiff to the said application.

10. After hearing both the parties, the learned III Additional Judge, Coimbatore, came to the conclusion that the application does not deserve any consideration and dismissed the same. Hence, the



revision.

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11. Heard Mr.M.Sricharan Rangarajan learned senior counsel for the civil revision petitioners.

12. Mr.M.Sricharan Rangarajan urges that the suit lacks cause of action as it had not been filed within 3 years from the date of acquiring the knowledge of the sale deed by the plaintiff and hence it is barred by limitation. He also argues that since there is an arbitration clause in the Memorandum of Understanding dated 12.11.2008, the plaintiff cannot invoke the jurisdiction of the Civil Court. He relies upon a Judgement of the Delhi High Court in ***Sharad P.Jagtiani Vs. M/s.Edelweiss Securities Ltd., - 2014 SCC Online Del 4015.***

13. Insofar as the cause of action for the plaint is concerned, the



entire plaint has to be read as a whole and only thereafter, a Court must conclude that the suit does not have a cause of action to proceed.

In the facts of the present case, the fact that the plaintiff and defendants 1 and 2 had entered into agreement on 12.11.2008 is not in dispute. The plaintiff alleges that the defendants had not done enough to develop the property pursuant to the Memorandum of Understanding. The defendant pleads that steps had been taken pursuant to the Memorandum of Understanding and it was on account of the reticent attitude of the plaintiff that the project could not be completed.

14. The plaintiff further alleges that the sale deed had been executed in favour of the 1st defendant by the 2nd defendant as power of attorney and the said execution was without her knowledge and consent. She further adds that having obtained sale deed, the 1st defendant went on to mortgage the property with the Nationalised Bank and raised a loan of nearly Rs.9,00,00,000/-. She states that on



account of this, SARFAESI proceedings had been initiated and challenging the same, proceedings are pending before the Debt Recovery Tribunal, Coimbatore. She also pleads that defendants 1 and 2 had colluded with the Bank Officials in order to deprive her of her property. If these allegations are accepted to be true, then certainly the suit will have cause of action.

15. At the stage of rejection of plaint, I am not concerned with the defense that might be taken by the defendant or with the documents on which they rely upon. I have to be guided entirely by the averments made in the plaint and I have to take it to be true for the purpose of proceeding further. Rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure is a plea in demurer and when such a plea is raised, the Court should take the pleadings in plaint to be true. From a reading of the plaint as it is I find that there is a cause of action. Therefore, the submissions of Mr.M.Sricharan Rangarajan on this point cannot be entertained.



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16. Insofar as the second aspect of limitation is concerned, the plaintiff specifically reads that the plaintiff got to know about the sale deed when she applied for the Encumbrance Certificate of the property so as to approach other developers who might be interested in developing the property. In paragraph No.9 of the plaint, it is specifically pleaded that the plaintiff came to know about the fraud that had been played by defendants 1 and 2 together with the Indian Bank Officials only after applying for the Encumbrance Certificate. She states that she had cancelled the power of attorney granted on 12.11.2008 in favour of the 2nd defendant on 02.11.2010. If I were to take that day as the day she gained knowledge of the plaintiff, the suit presented on 07.10.2013 is certainly in time.

17. Mr.M.Sricharan Rangarajan pleads that the date on which the Encumbrance Certificate was issued should be treated as the date on which the plaintiff gained knowledge of the transaction and



therefore he pleads 02.11.2010 cannot be the date of knowledge. As pointed above, I have to take into consideration the averments made in the plaint alone for the purpose of rejection of the plaint. Paragraph No.IX of the plaint states that power of attorney was canceled on 02.11.2010. If the date is taken as the date on which the plaintiff come to know about the date, the limitation would expire only on 02.11.2013. The suit having been filed on 07.10.2013, it would be certainly in time. Therefore, the plea of limitation also stands rejected.

18. The plea of arbitration raised by Mr.M.Sricharan Rangarajan is very inviting. However, for the reasons I am going to adduce later, I am not inclined to accept the said plea.

19. A perusal of the Memorandum of Understanding shows that both the parties in Clause 10 of agreement agreed that the matter will be referred to one Mr.V.Gopala Krishnan, who would decide the



matter as per Arbitration and Conciliation Act and the proceedings will be conducted at Coimbatore. However, no application was filed under Section 8 of the Arbitration and Conciliation Act soon after the plaint was served. A perusal of the written statement shows that nowhere has the plea of the suit being barred by virtue of the Arbitration and Conciliation Act had been raised.

20. It is pertinent to note that under Section 8 of the Act, if a party seeks Judicial Authority to refer the matter arbitration he should do so *“not later than the date of submitting his statement on the substance of the dispute”*. In the facts of the present case, the defendant had entered appearance, filed his written statement on the merits of the case and it is only thereafter he had taken out an application under Order VII Rule 11 of the Code of Civil Procedure stating that the suit is barred by the virtue of the Arbitration and Conciliation Act.



21. Unlike Section 45 of the Act, which gives discretion to the Court if plea of arbitration is raised by the defendant at the earliest point of time, then a Court has no other option but to refer parties to arbitration. However, this bar does not operate when the parties have merrily filed a written statement on merits of the case and have kept the suit pending for nearly decade and thereafter seeks for rejection of the plaint under the said head.

22. Mr.M.Sricharan Rangarajan submits that in ***Sharad P. Jagtiani Vs. M/s.Edelweiss Securities Ltd.***, the Delhi High Court had taken a view that there need not be a formal application for the purpose of referring the parties to arbitration. He points out that even if the written statement is filed, the Court is duty bound to take note of the said fact and refer the parties to mediation.

23. A careful perusal of the said Judgement shows that in the



said case, the defendant had specifically pleaded that the High Court will not have jurisdiction to entertain the suit on account of the fact that there was a specific agreement between the parties for resolving the dispute between them by arbitration. It was on that specific plea in the written statement that the learned Judges came to the conclusion that the written statement is in the nature of preliminary objection and therefore the Court has to suo motu take notice of the same and it cannot insist upon the formality of filling application under Section 8 of the Act. This Judgement in my view will not apply to the facts of the present case. My reading of the written statement does not show that the defendant had taken a plea that the suit is barred by virtue of clause 10 of the Memorandum of Understanding dated 12.11.2008.

24. The learned counsel for the petitioner submits that this Court should take the date of knowledge of the plaint as 22.10.2010 and not as 02.11.2010. Even if I were to agree with him, the earlier



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date, namely 22.10.2010 as the date of knowledge, the plaint would still be on time because the suit was filed in 07.10.2013 i.e., before 21.10.2013 when the period of 3 years lapsed.

25. In the light of the above discussion, I do not find any merits in the revision. The view of the learned III Additional Judge, Coimbatore dated 17.04.2024 only requires order of confirmation. It is accordingly confirmed. This discussion of mine is confined only to the rejection of the plaint. It is always open to the parties to raise all these issues before the Trial Court and request the Court to give finding on those issues.

26. In the result, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

10.09.2024

Index : Yes/No
Internet : Yes/No



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To

The III Additional District Court,
Coimbatore.



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V.LAKSHMINARAYANAN, J.

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