IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.01.2024

Pronounced on : 29.01.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Application Nos.3497 and 6465 of 2023
in
C.S.(Comm.Div.)No.178 of 2023

A.No.3497 of 2023

Mahalaxmi Inn Pvt. Ltd.,
Chennai. .. Applicant/plaintiff

vs.

The City Union Bank Limited,
Rep. By its Chairman & Managing Director,
Kumbakonam. And others .. Respondents/defendants

COMMON ORDER

The primary issue, that arises for consideration in these applications, is whether a borrower is entitled to independently file a civil suit against the bank and whether such a suit will be hit by Sections 18 and 34 of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to "DRT Act").

2. Section 18 of the DRT Act is a provision, which provides for a statutory bar of any other court or other authority from exercising jurisdiction in respect of matters specified under Section 17 of the DRT Act. Section 34 of the DRT Act stipulates that provisions of the DRT Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than DRT Act.

3. The suit has been filed by the plaintiff seeking for the following reliefs:-

(a) To declare that the unilateral cancellation of the Negotiated Settlement dated 29.12.2021 by the defendants 1 and 2 is illegal, void ab initio and non-est.

(b) To declare that the Negotiated Settlement dated 29.12.2021 is valid and binding on the defendants 1 and 2.

(c) To issue an order of mandatory injunction directing the defendants 1 and 2 to release the documents of title relating to suit schedule property and to discharge the said property from encumbrance by executing and registering a proper Deed of Discharge of Mortgage before the concerned office of the Sub-Registrar.

(d) To direct the defendants 1 and 2 to pay to the plaintiff a sum of Rs.1,01,00,000/- with interest thereon @ 18% per annum from the date of the suit till realization as damages/compensation for the loss suffered, opportunity lost and agony underwent by the plaintiff on account of deliberate breach of contract and falsification and inflation of charge due on the secured asset being the suit schedule property; and

(e) To direct contesting defendants 1 and 2 to pay to the plaintiff the costs of the suit.

4. For the sake of convenience and clarity, the parties are referred to by their respective ranks in the main suit.

5. The plaintiff and the defendants 3 to 5 are the borrowers and guarantors to the loan availed by them from the defendants 1 and 2/Bank.

6. The plaintiff is the applicant in A.No.3497 of 2023. The said application has been filed seeking for a direction to the defendants 1 and 2 to release the documents of title relating to suit schedule property and to discharge the said property from encumbrance by executing and registering a proper Deed of Discharge of Mortgage before the concerned Office of the Sub Registrar, pending disposal of the suit.

7. Application No.6465 of 2023 has been filed by the bank / defendants 1 and 2 seeking to strike off prayers 1 to 3 from the plaint, as, according to them, the said prayers are barred by lack of jurisdiction in terms of Section 11 of the Commercial Courts Act, 2015.

8. According to the plaintiff, several irregularities have been committed by the defendants 1 and 2 as they have made unauthorized debits. According to them, they have complied with the terms and conditions of One Time Settlement (OTS) offer given by the defendants 1 and 2 and they have paid the entire sum of Rs.20 crores as per the OTS dated 29.12.2021. But, however, according to them, the defendants 1 and 2 have not fulfilled their promise of releasing the title deeds, which

are the subject matter of the mortgages created in favour of the defendants 1 and 2. The details of the terms and conditions of the OTS have also been reproduced by the plaintiff in the affidavit filed in support of Application No.3497 of 2023.

9. However, on the other hand, the defendants 1 and 2, who are the applicants in Application No.6465 of 2023, would deny the contentions of the plaintiff and they would state that the plaintiff and other borrower/guarantors have paid only a sum of Rs.19,69,00,218.51/- instead of Rs.20 crores, which is the OTS offer, leaving a balance still due and payable. The details of payments made by the plaintiff and other borrowers/guarantors are disclosed in paragraph No.5 of the affidavit filed in support of A.No.6465 of 2023. Therefore, according to them, since the OTS offer given by the bank has not been complied with, the question of discharging the mortgage will not arise. Therefore, according to them, they cannot be directed to release the title deeds to the plaintiff and other borrowers as entire loan outstanding has not been repaid. It is also their contention that the one time settlement offer given by them has been rightly cancelled.

10. An objection has also been raised with regard to maintainability of the suit, in particular, according to the defendants 1 and 2, the prayers 1 to 3 made in the plaint as well as interim prayers sought for by the plaintiff, are barred by Section 18 of the DRT Act. It is further contended by them that the prayers 1 to 3 in the plaint are liable to be struck-off in terms of Section 11 of the Commercial Courts Act. According to them, the question of (a) whether there still remain any sum due and payable to the bank; (b) whether the mortgage has been extinguished by virtue of the alleged payments under the OTS; and (c) whether the OTS has not been adhered to and has been validly cancelled, thereby giving rise to the current claim of the bank, are all matters in the realm of the DRT, and therefore, they are barred under Section 18 of the DRT Act.

11. Heard Mr.T.M.Hariharan, learned counsel for the plaintiff/applicant in A.No.3497 of 2023; Ms.Ananda Gomathy, learned counsel for the defendants 1 and 2/applicants in A.No.6465 of 2023; and Mr.Manoj Menon, learned counsel for the defendants 3 to 5/respondents

in both the applications.

12. The learned counsel for the bank would reiterate the contents of the affidavit filed in support of Application No.6465 of 2023 as well as the counter affidavit filed in A.No.3497 of 2023. She drew the attention of this Court to Sections 18 and 34 of the DRT Act and would submit that since there is a statutory bar, the present suit is not maintainable. She would also submit that since the Bank has already filed a DRT proceeding against the borrowers/guarantors, the question of entertaining the present suit filed by a borrower will not arise. She would submit that if at all the borrower seeks for a relief against the Bank, the borrower is entitled to make a counter-claim in the DRT proceedings and separate suit filed by a borrower will not lie and is not maintainable. In support of her submissions, the learned counsel for the Bank drew the attention of this Court to the following authorities:-

(i) Anita International & others Vs. Tungabadra Sugar Words Mazdoor Sangh & Others [MANU/SC/0725/2016];

(ii) Allahabad Vs. Canara Bank & others

[MANU/SC/0262/2000];

(iii) Ghaziabad Zila Sahkari Bank Ltd. Vs. Addl. Labour Commissioner & Others [MANU/SC/7040/2007];

(iv) Nahar Industrial Enterprises Ltd. & Others Vs. Hong Kong and Shanghai Banking Corporation and Others [MANU/SC/1330/2009];

(v) Indian Bank Vs. ABS Marine Products Pvt. Ltd. [MANU/SC/2046/2006];

(vi) The Authorised Officer, State Bank of India Vs. Allwyn Alloys Pvt. Ltd. & Others [MANU/SC/0581/2018];

(vii) Swaraj Infrastructure Pvt. Ltd. Vs. Kotak Mahindra Bank [MANU/SC/0095/2019];

(viii) S.V.Subramaniam Vs. Cypress Semiconductor Technology India Private Ltd. & Ors. [MANU/TN/0132/2008]; and

(ix) Bank of Rajasthan Vs. VCK Shares & Stock Broking Services Limited [MANU/SC/1477/2022].

13. She would further submit that the decision rendered in VCK Shares (cited supra) will not apply to the facts of the instant case, as the relief sought for by the plaintiff, more particularly, relief Nos.1 to 3 are the reliefs, which can be granted only by the DRT and not by a Civil Court. Eventhough, according to her, an option is given for the borrower to either file a separate civil suit or make a counter-claim in the DRT proceedings initiated by the Bank, the nature of relief sought for in the prayers 1 to 3 in the plaint are the reliefs which can be granted only by the DRT as seen from Section 17 of the DRT Act. Therefore, according to her, the decision rendered in VCK Shares (cited supra) by the Hon'ble Supreme Court will not have any bearing to the facts of the instant case and therefore, she would once again reiterate that the present suit is not maintainable.

14. On the other hand, the learned counsel for the plaintiff as well as other borrowers, after drawing the attention of this Court to the alleged irregularities committed by the defendants 1 and 2 by unauthorizedly and wrongfully debiting certain sums of money, would

submit that the plaintiff/borrower is having the option of either making a counter-claim in the DRT proceedings or filing a separate civil suit for recovery of the loss suffered by the borrower from the Bank on account of unauthorized debits made by the Bank. According to them, the borrowers have paid excess money and they are not liable to pay any further sum as claimed by the Bank in the DRT proceedings. Having paid the entire sum of money as per the OTS letter issued by the Bank, the learned counsel for the borrowers/guarantors would submit that the borrowers/guarantors are entitled for discharge of the mortgage and for release of title deeds, which were the subject matter of mortgage.

15. The learned counsel for the plaintiff also drew the attention of this Court to the affidavit of undertaking dated 09.01.2024 filed before this Court by the plaintiff and would submit that the plaintiff is willing to furnish a Fixed Deposit to the extent of the claim of Rs.90,43,700.59/- made by the defendants 1 and 2 before the DRT-III, Chennai, in O.A.No.163 of 2023 to substitute and release the title deeds of property belonging to the plaintiff created under the Memorandum of Deposit dated 22.02.2021 and morefully set out in Schedule to Application

No.3497 of 2023. In the same affidavit of undertaking, the plaintiff/defendants 3 to 5 have expressed their willingness to furnish a fixed deposit for Rs.95,00,000/- favouring Registrar General of this Court to the credit of this suit and they have undertaken to keep the Fixed Deposit alive till the present suit is finally disposed of by this Court.

16. The learned counsel for the borrowers/guarantors would submit that since the claim of the Bank before the DRT is being fully secured by furnishing a Fixed Deposit as stated supra, no prejudice would be caused to the Bank if the mortgage is discharged and substituted by a Fixed Deposit receipt for a sum of Rs.95,00,000/- and the Bank may be directed to return the title deeds, which were the subject matter of the mortgage.

DISCUSSION:

17. A three-judge bench of the Hon'ble Supreme Court in ***VCK Shares (cited supra)*** has now resolved the conflict regarding the position of a suit instituted by a borrower against the Bank while the claim of the

Bank is pending before the DRT. Since there were varying judicial views, a reference was made to a three-judge bench of the Hon'ble Supreme Court. The following questions were framed by the Hon'ble Supreme Court in the aforesaid decision:-

> “(a). Whether an independent suit filed by a borrower against a Bank or Financial Institution, which has applied for recovery of its loan against the plaintiff under the RDB Act, is liable to be transferred and tried along with the application under the RDB Act by the DRT ?
>
> (b). If the answer is in the affirmative, can such transfer be ordered by a court only with the consent of the plaintiff?
>
> (c). Is the jurisdiction of a Civil Court to try a suit filed by a borrower against a Bank or Financial Institution ousted by virtue of the scheme of the RDB Act in relation to the proceedings for recovery of debt by a Bank or Financial Institution?”

18. The Hon'ble Supreme Court, after considering the provisions of the DRT Act and the Code of Civil Procedure, 1908 (CPC), answered the reference in the following manner:-

(a) There is no provision in the DRT Act by which the remedy of a civil suit filed by a borrower in a claim by the bank is ousted. The borrower may file a counter-claim in the DRT proceedings or initiate proceedings before the Civil Court.

(b) The Legislature did not contemplate exclusion of jurisdiction of the Civil Court in respect of a claim filed by a borrower against the Bank nor has contemplated any amendment to enhance the powers of the DRT in this respect.

(c) The expanse of the reliefs the borrower may claim in a suit proceeding can certainly go beyond mere adjustments of the amounts of claim, which the DRT would not have any power to adjudicate.

(d) The Hon'ble Supreme Court further held that there is no power in the Civil Court to transfer an independent proceeding instituted by a borrower to be tried along with a recovery proceeding before the DRT. The Hon'ble Supreme Court further held that the suit can be transferred or directed to be filed in another Court only as mandated as per the provisions of CPC and not in any other manner.

(e) On the issue of whether consent is required for transfer of a suit, the Hon'ble Supreme Court held that once there is no power of transfer in the Civil Court, the consent or absence of it is not something which would lend such power to the Civil Court. The Hon'ble Supreme Court further held that the process envisaged under the DRT Act ought not to be impeded in any manner by filing of a separate suit. The suit would take its own course while a petition before the DRT would take its own course.

(f) Ultimately, the Hon'ble Supreme Court answered the reference by holding that the decisions rendered in Abhijit Tea Co. (cited supra) and Ranjan Chemicals Ltd. (cited supra) by the Hon'ble Supreme Court earlier did not lay down the correct legal proposition. The decisions rendered in Indian Bank (cited supra) and Nahar Industrial Enterprises (cited supra) by the Hon'ble Supreme Court were held to be correct except to the extent that they allow the transfer of a suit from the Civil Court to the DRT.

19. In view of the decision rendered in ***VCK Shares (cited supra)*** by the Hon'ble Supreme Court, it is now well settled that option is given to the borrower to either make a counter-claim in the existing DRT proceedings filed by a Bank or file a separate civil suit, in case the borrower has suffered any loss or is seeking for discharge of the mortgage and return of title deeds on account of borrower's claim that they have fully settled the dues to the Bank.

20. It is also to be noted that the plaintiff has filed an affidavit of undertaking dated 09.01.2024 before this Court stating that without prejudice to their rights and contentions they will fully secure the claim of the Bank before the DRT-III, Chennai, in O.A.No.163 of 2023 by furnishing a Fixed Deposit favouring Registral General of this Court for a sum of Rs.95,00,000/- to the credit of this suit, which shall be kept alive till the final disposal of this suit. Therefore, the claim of the Bank before the DRT will be fully secured if the mortgage created for availing the financial facilities is substituted by a Fixed Deposit receipt for a sum of Rs.95,00,000/- favouring Registrar General of this Court. It is also to be noted that even, according to the Bank, namely, defendants 1 and 2,

the borrowers have paid to the Bank a sum of Rs.19,69,00,218.51/- out of a total sum of Rs.20 crores, which was the OTS offer given by the Bank. Mortgages are created only to secure the loan. Fixed Deposit to be created by the plaintiff in lieu of discharge of mortgage and release of title deeds also carries interest, which secures the claim filed by the Bank before the DRT-III, Chennai, in O.A.No.163 of 2023.

21. Since the Hon'ble Supreme Court in ***VCK Shares (cited supra)*** has considered all the decisions relied upon by the learned counsel for the Bank and only thereafter, has come to the conclusion that there is no statutory bar for the borrower to initiate a separate suit of the nature filed before this Court despite the fact that the Bank has already initiated DRT proceedings, there is no necessity for this Court to consider separately each of the other decisions relied upon by the learned counsel for the Bank.

22. For the foregoing reasons, Application No.3497 of 2023 filed by the plaintiff is allowed, subject to the condition that (a) the applicant/plaintiff shall furnish a Fixed Deposit for a sum of

Rs.95,00,000/- favouring Registrar General, Madras High Court, Chennai, A/c. C.S.No.178 of 2023, within a period of one week from the date of receipt of a copy of this order.

(b) The said Fixed Deposit together with accrued interest shall be renewed periodically, till the final disposal of this suit. If the Fixed Deposit is not renewed periodically, the defendants 1 and 2/Bank are entitled to encash the Fixed Deposit with accrued interest and appropriate the proceeds towards its dues.

(c) On furnishing of Fixed Deposit as stated supra within the stipulated time, the defendants 1 and 2/Bank are directed to discharge the mortgage relating to the suit schedule property by executing and registering a proper Deed of Discharge of Mortgage before the concerned Office of the Sub-Registrar and return the title deeds to the mortgagors within a period of two weeks thereafter.

(d) Consequently, Application No.6465 of 2023 filed by the defendants 1 and 2/Bank seeking to strike-off prayers 1 to 3 from the plaint is dismissed, since the suit filed by the plaintiff is maintainable before this Court.

Post the matter for filing of written statement by the defendants on 12.02.2024.

29.01.2024

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
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ABDUL QUDDHOSE, J.

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Application Nos.3497 and 6465 of 2023
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29.01.2024