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C.R.P. (PD) .No.4284 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4284 of 2022

and

C.M.P.No.22490 of 2022

A.M.Gopalan,
Managing Director,
Sree Gokulam Chit and Finance Company Pvt. Ltd.,
No.49, Arcot Road, Chennai.

.. Petitioner

Vs.

M/s.India Cements Capital Limited,
(Formerly known as M/s.India Cement
Capital and Finance Ltd.)
Rep. by its General Manager,
No.38, Sterling Road,
Nungambakkam, Chennai – 600 034.

.. Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the impugned order dated 23.09.2022 passed in I.A.No.1 of 2021 in O.S.No.8948 of 2019, pending on the file of IV Additional Judge, City Civil Court, Chennai, by allowing the present CRP.

For Petitioner : Mr.K.Bijai Sundar



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For Respondent

: Mr.S.Gopinath
for Mr.Gokul Krishnan

ORDER

This Civil Revision Petition arises against the order and decretal order dated 23.09.2022 of the learned IV Additional Judge, City Civil Court at Chennai in I.A.No.1 of 2021 in O.S.No.8948 of 2019. I.A.No.1 of 2021 was filed for rejection of plaint.

2.For the sake of convenience, the parties will be referred to as per their ranks in the suit. The defendant is the revision petitioner.

3.The plaintiff presented C.S.No.760 of 2009 on the file of this Court for recovery of a sum of Rs.57,63,134/- together with interest at the rate of 18% per annum from the date of the suit till its realisation. Originally, the plaintiff claimed that defendant had executed a Deed of Guarantee dated 07.02.1995 guaranteeing that one entity viz., M/s.Magnum News Publication Limited will repay its hire purchase loans.



4.Subsequently, on 03.10.1996, the defendant had informed the plaintiff that he had taken charge of the properties of one Mrs.Clara of the Magnum Group of Companies as a Counter Guarantee for his guarantee extended to the plaintiff. Since, the Magnum News Publication Limited defaulted in the repayment, the plaintiff called upon the defendant to honour his guarantee. The defendant resisted the same. This dispute ended in an Arbitration proceeding. Invoking the Arbitration clause, the case was referred to an Arbitrator. It was taken on file in Arbitration Case No.1 of 1999 and an award was passed on 12.07.1999 against the defendant.

5.Challenging the Arbitration award, an application was filed under Section 34 of the Arbitration and Conciliation Act, 1996, before this Court in O.P.No.816 of 1999. The Arbitral award was set aside by this Court on 26.09.2003. While discussing the issues involved before the Arbitrator, this Court framed the following issues:

- (i) Whether the petitioner stood as personal guarantor for the Hire Purchase Agreement dated 07.02.1995 and



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(ii) whether the petitioner is liable to pay any amount to the 1st respondent as guarantor under the Hire Purchase Agreement dated 07.02.1995?

6. On these two issues, the Court came to a conclusion that in the deed of personal guarantee, that was given on 07.01.1995, there exists a clear case of interpolation and therefore, the OP was allowed and the award in so far as the guarantee for the machineries was concerned was set aside.

7. This was put to in challenge by the plaintiff herein before the Appellate Court, which was taken on file in O.S.A.No.180 of 2004. The said appeal was dismissed on 28.11.2007. Thereby, the Court had concluded that the letter of guarantee that had been issued by the defendant in favour of the plaintiff on 07.01.1995 does not cover the transactions, which is the subject matter of the issue before the Arbitrator.

8. Subsequently, in so far as the guarantee towards the motor vehicles which was in the letter of guarantee dated 07.01.1995 is concerned, an application under Section 11(4) of the Arbitration and Conciliation Act, 1996



was filed before this Court. The said application in O.P.Nos.465 & 466 of 1999 was dismissed by this Court on 12.08.2015.

9.Mr.K.Bijay Sundar will project the orders passed in O.P.No.816 of 1999, O.S.A.No.180 of 2004, as well as the proceedings in O.P.No.465 & 466 of 1999 to argue that the issue has been settled by this Court and therefore, the plaintiff is not entitled to proceed as against the defendant. He would state that the Courts presiding over the said matter have already dealt with the same. Sections 11, 34 & 37 of the Arbitration and Conciliation Act, 1996, respectively and consequently the proceedings in C.S.No.760 of 2009 (renumbered as O.S.No.8948 of 2019) should be struck off.

10.The position of law in so far as the matters relating to rejection of plaint has been settled by the Supreme Court. A proceeding of rejection of plaint is a plea in demurrer. In such a plea, the averments made in the plaint and the documents filed thereon has to be taken to be true and thereafter the Court has to come to a conclusion that there is no cause of action.



WEB COPY 11. The entire case of the defendant is predicated on the previous proceedings before the Court. In fact, the plaintiff has not suppressed the previous proceedings while presenting the aforesaid civil suit. He has produced the previous orders passed by filing them as document No.25 to document No.33 along with the plaint. Therefore, in so far as the issue regarding the letter of guarantee dated 07.01.1995 is concerned, the matter has attained finality. However, I notice while going through the plaint, the following paragraph:

“7.The Plaintiff submits that during the course of periodical follow-up, the Defendant had sent a communication to the Plaintiff on 03.10.1996 wherein the defendant expressly informed that he contacted the various parties to whom he has given guarantee for the loan and one among them being M/s.Magnum News Publications Limited. The Defendant had also informed that he had taken a charge on the property belonging to Mrs.Clara of the Magnum Group of Companies as a Counter Guarantee for his guarantee extended to the Plaintiff. Therefore, this amply shows that the Defendant had extended his personal guarantee to the Plaintiff on the account of M/s.Magnum News Publications Limited.”



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12.This shows that the plaintiff is not relying merely on the letter of guarantee dated 07.01.1995 in order to fasten the liability on the defendant. He is also relying upon the letter that was issued on 03.10.1996 by the defendant stating that he had taken charge of the property of the principal debtor as a Counter Guarantor for his guarantee executed in favour of the plaintiff. It is pertinent to note that this letter dated 03.10.1996 was not the subject matter, either before the O.P. proceedings under Sections 34 & 37 or the proceedings under Section 11 of the Arbitration and Conciliation Act, 1996, initiated before this Court. Hence, I am not able to conclude that this is a suit which amounts to re-litigation of the issues decided by this Court.

13.Mr.K.Bijay Sundar, would submit that re-litigation is a ground on which this Court can interfere with vis-a-vis the suit. Unfortunately, re-litigation is not a ground for rejection of a plaint. It is not a ground under Order VI Rule 16 of CPC or to invoke the supervisory jurisdiction of this Court and seek for a prayer to strike off the proceeding by exercising the power vested in this Court under Article 227 of the Constitution of India.



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14.Since re-litigation not fall within the scope of Order VII Rule 11 of CPC, I am not able to accept with the request made by Mr.K.Bijay Sundar. I have no other option than to confirm the order passed by the learned IV Additional Judge, City Civil Court, Chennai, in I.A.No.1 of 2021 in O.S.No.8948 of 2019 dated 23.09.2022.

15.In the result, the Civil Revision Petition is dismissed. It is always open to the petitioner to move an application under Order VI Rule 16 of CPC and if such an application is filed, I am sure that it will be given the requisite attention that it deserves. Consequently, the connected Miscellaneous Petition is closed. No costs.

02.04.2024

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Index : Yes / No
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The IV Additional Judge,
City Civil Court, Chennai.



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V.LAKSHMINARAYANAN, J.
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