



C.R.P.(PD)(MD)No.2513 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2025

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD)No.2513 of 2022

and

C.M.P(MD)No.12352 of 2022

Sai Kesuri,
Head Legal - Retail Assets & Debt Management of
HDFC Bank Limited,
Represented through his power of Attorney,
N.Maharajan ...Petitioner/Petitioner/1st Defendant

Vs.

S.Madasamy ...Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the Fair and Decretal order, dated 16.08.2022 made in I.A.No.5 of 2022 in O.S.No.211 of 2018 on the file of the Principal District Munsif Court, Tirunelveli.

For Petitioner : Mr.Shek Abdullah
for M/s.Ajmal Associates

For Respondent : Mr.S.Velrajan

* * * * *



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ORDER

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The first defendant in O.S.No.211 of 2018, on the file of the Principal District Munsif Court, Tirunelveli, is the revision petitioner herein.

2.The plaintiff had filed the above said suit for the relief of mandatory injunction, directing the first respondent to furnish “No Objection Certificate” after closing the loan account of the plaintiff. The plaintiff has further prayed for recovery of a sum of Rs.25,000/- from the defendants 3 and 4 along with interest. The first defendant had filed his written statement on 04.12.2018. The present application in I.A.No.5 of 2022, has been filed by the first defendant on 06.04.2022 under Order 7 Rule 11(d) of CPC. to reject the plaint.

3.A perusal of the affidavit of I.A.No.5 of 2022 reveals that as per clause 31 of the loan agreement between the parties, in case of any dispute, the parties have to be settled the issue under the Arbitration and Conciliation Act. According to the first defendant, the present suit is barred under the said Act and therefore, the plaint has to be rejected.

4.The trial Court after going through the agreement found that only some portions of the agreement have been placed before the Court. The Court has



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further found that the signature of the plaintiff is not found in the document.

There is a specific observation on the part of the trial Court that the document in full was not filed before the Court. The trial Court has further found that the trial Court is in advanced stage and had proceeded to dismiss the application. Challenging the same, the present revision petition has been filed.

5. According to the learned Counsel appearing for the revision petitioner, in view of the availability of an Arbitration clause in the loan agreement, the present suit is clearly barred under Order 7 Rule 11(d) of C.P.C. and the trial Court ought to have rejected the plaint.

6. Per contra, the learned Counsel appearing for the respondent/plaintiff had contended that the plaintiff has submitted himself to the jurisdiction of the Court by filing a written statement on 04.12.2018 and when the suit is posted for evidence of the defendant, the present application has been filed.

7. I have considered the submissions made on either side and perused the materials available on record.



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8.If the first defendant had wanted to stop the suit, he should have filed an application only under Section 8 of the Arbitration Act and he cannot file an application for rejection of the plaint under Order 7 Rule 11 of C.P.C. As per Section 8(2) of the Arbitration Act, he should have filed the original Arbitration agreement or a duly certified copy along with the application. In the present case, as per observations made by the trial Court, the full agreement has not been placed before the Court. Only a part of the agreement has been placed on record before the trial Court. Therefore, the condition under Section 8(2) of the Arbitration Act has not been satisfied.

9.The application under Section 8 has to be preferred before filing of the written statement by the defendant. In the present case, the defendant has filed the written statement on 04.12.2018 and the present application for rejection of the plaint has been filed on 06.04.2022, when the suit was posted for evidence of the defendant.

10.Therefore, this Court is of the considered view that, viewed from any angle, the application filed by the revision petitioner is not maintainable. The trial Court has rightly dismissed the application. There are no merits in the



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revision petition. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

13.02.2025

Internet: Yes/No
Index: Yes/No
RJR

To

The Principal District Munsif Court, Tirunelveli.

Copy to:-

The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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R.VIJAYAKUMAR, J.

RJR

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