

(2017) 09 BOM CK 0177

BOMBAY HIGH COURT

Case No: 42 of 2017

Indiabulls Housing
Finance Limited

APPELLANT

Vs

Smt. Suman Wd/o
Vithalrao Ikhankar

RESPONDENT

Date of Decision: Sept. 21, 2017

Acts Referred:

- Code of Civil Procedure, 1908, Order 7 Rule 11, Section 9A -
- Contract Act, 1872, Section 28 - Agreements In restraint of legal proceeding

Citation: (2017) 09 BOM CK 0177

Hon'ble Judges: S.B. Shukre

Bench: SINGLE BENCH

Advocate: Shyam D. Dewani, S.P. Bodalkar

Final Decision: Allowed

Judgement

1. Heard.

2. Rule. Rule made returnable forthwith.

3. Heard finally by consent.

4. This application challenges the legality and correctness of the order dated 22/07/2016, passed by 3rd Joint Civil Judge (Sr.Dn.), Nagpur in R.C.S. No. 220/2011, thereby finding that plaint could not be rejected on the ground of lack of jurisdiction. By this order, two applications, one filed at Exh.19 and other filed at Exh.74 by the revision applicant, original defendant no.1, respectively filed under Section 9A of the Civil Procedure Code (in short, "C.P.C.") and under Order 7 Rule 11 of C.P.C., have been rejected.

5. The suit in the present case has been filed by the respondent against the present applicant and two more parties. This suit, being R.C.S. No. 220/2011 seeks various declarations, the main declaration being that the mortgage deed executed by the respondent of house property, bearing Corporation House No. 304, Gokulpeth, Nagpur, is an outcome of forgery and fraud played by the revision applicant and its officers, and therefore, it is not binding upon the respondent. There are other declarations also, which declarations, basically flow from the main declaration. These declarations have been sought on the basis of the terms and conditions of the loan agreement executed between the respondent and the present applicant. In other words, suit filed by the respondent against this applicant and two others, is based upon the loan agreement executed between them. There is also no dispute about this fact. On appearance of the applicant in the civil suit, applicant filed an application under Section 9A of C.P.C. praying for framing of a preliminary issue on the question of jurisdiction of the civil court at Nagpur and deciding it as such. Later on, the applicant also filed another application at Exh.74 under Order 7 Rule 11 of the C.P.C. seeking rejection of the plaint. In the application at Exh.19, it was contended by the applicant that in view of the provisions of Sections 34 and 17 of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (in short, "Securitization Act), the civil court's jurisdiction was barred and that a specific remedy was also provided for redressal of the grievance, such as the one involved in the present suit. The application vide Exh.74 was moved on the grounds that in the loan agreement, there is an arbitration clause and that the parties submitted themselves only to the jurisdiction of the courts at Delhi. However, these applications were rejected by the trial court by the impugned order and this is how the present civil revision application has been filed by the applicant, the original defendant no.1.

6. Shri Dewani, learned counsel for the applicant, submits that an Arbitrator has already been appointed and the respondent has also appeared before the Arbitrator. He further submits that under the loan agreement, the Courts at Delhi only have been conferred with the jurisdiction to entertain the dispute arising out of the loan agreement. In support, he invites my attention to the relevant clauses in the loan agreement and also the findings recorded in this regard by the learned District Judge in M.C.A. No. 148/2012 on 11/04/2013, which now have attained the finality. He also points out that these aspects of the matter have not been dealt with in any manner in the impugned order. But according to him, the fact remains that there is already a finding recorded by the learned District Judge, which goes to show that only Delhi Courts would have jurisdiction in the matter. Thus, he prays for quashing of the impugned order.

7. The learned counsel for the respondent, original plaintiff, submits that there were three proceedings initiated by the applicant itself in the year 2009 and 2010 before the District Judge, Nagpur and those proceedings were Revenue Case Nos. 25/2009 and 18/2010 and S.A. No. 50/2010. He submits that these proceedings arose from the dispute between the parties, based upon the loan agreement and initiation of such proceedings at

Nagpur only indicates that the applicant waived his right in respect of the jurisdiction of Delhi Courts and submitted himself to the jurisdiction of Nagpur Civil Court. He also points out that a fraud has been played upon the respondent by the applicant and as the issue of fraud is involved, Nagpur Court, would have the jurisdiction in the matter.

8. I would have accepted the argument of the learned counsel for the respondent, had there been no conclusion of the issue regarding exclusive jurisdiction of Delhi Courts finally in the present case. There is no dispute about the fact that whatever has been sought in the present suit arises out of the loan agreement executed between the respondent and the applicant. Therefore, it has to be seen as to what the applicable clauses in the agreement say about the jurisdiction of the court and the manner of resolution of the disputes between the parties.

9. Clause nos.21 and 22 are relevant in the context of jurisdiction of courts. Clause 21 is to the effect that if any dispute or difference arises on any matter relevant to or arising out of the present agreement, it shall be regard to the sole arbitration of an Arbitrator to be appointed by the applicant, whose decision shall be final and binding upon the parties. It also says that sole Arbitrator shall conduct the arbitration proceeding at New Delhi/Delhi. Clause 22 is on the jurisdiction of the Court and it lays down that the Courts at Delhi shall have exclusive jurisdiction (subject to the arbitration proceedings which are also to be conducted at Delhi) over any or all disputes arising out of this agreement and the parties hereby submit themselves to the jurisdiction of such Courts and/or Tribunals.

10. One of these clauses has been interpreted by a District Court at Nagpur. The clause is no.22. In respect of this clause, in M.C.A. No. 148/2012, decided by the Principal District Judge, Nagpur on 11/04/2014, which was an application filed under Section 14(1) of the Arbitration and Conciliation Act, 1996 by the respondent seeking termination of the mandate of the Arbitrator appointed in the present case, the learned District Judge found that Section 28 of the Indian Contract Act did not come in the way when the parties agreed to confer jurisdiction on the Courts at New Delhi and that the applicant could not have been said to have submitted to the jurisdiction of Courts at Nagpur. These findings attained their finality when Writ Petition No. 3444/2015 preferred by the partnership firm of the respondent challenging them, was disposed of as withdrawn by the learned Single Judge of this Court on 16/09/2015. After withdrawal of this petition, there can be no doubt that the finding so recorded by the learned District Judge regarding exclusive jurisdiction of Delhi Courts in the present matter has attained finality. So, now it would not be open for the respondent to say that even the Courts at Nagpur would have jurisdiction in the present case.

11. The other argument that the applicant had waived it's right in respect of the jurisdiction of Delhi Courts and submitted itself to the jurisdiction of Nagpur Courts, I must say, also loses it's force after disposal of the writ petition by this Court on 16/09/2015. In fact, this argument was also considered by the learned Principal District Judge and

rejected by him. This finding of the learned District Judge has also attained finality now after disposal of the aforesaid writ petition by this Court.

12. A perusal of the impugned order discloses that these facts and aspects of the matter have not been considered at all by the trial court. In normal course, I would have preferred to remand the matter to trial court for a decision afresh in such a case. But, the peculiar facts and circumstances of the case hold me back on adopting such a course. The reason is obvious. Once it is found that the issue of exclusive jurisdiction of Delhi Court has been conclusively decided and has attained finality, there is no point in relegating the parties to the trial court for getting something which is already manifest on record.

13. In view of above, I am of the opinion that the impugned order to the extent it finds Nagpur Civil Court has jurisdiction, cannot be sustained in law and it deserves to be quashed and set aside, keeping the other issues open for argument and adjudication.

14. By this order, I have only found that as the parties have submitted themselves to the exclusive jurisdiction of Delhi Courts, the parties have to be kept bound to what they have already agreed between themselves and nothing more. I do not wish to record any finding in respect of all other objections as regards the arbitrability or otherwise of the dispute and bar of jurisdiction of the civil court by virtue of the provisions of Sections 34 and 17 of the Securitization Act, for, that is not necessary. These issues have to be left open to be adjudicated upon by the appropriate forum.

15. The learned counsel for the respondent has placed his reliance upon the case of A.V.M. Sales Corporation Vs Anuradha Chemicals Pvt. Ltd. (2012) 2 Supreme Court Cases 315, wherein it is held that, parties cannot contract against statute. This law has been considered by the larger Bench which decided the case of Swastik Gases Pvt. Ltd. Vs Indian Oil Corporation Ltd., (2013) 9 Supreme Court Cases 32 and it has been observed (para 27) that when two Courts at two different places have the jurisdiction to try the suit and that there is an exclusivity clause in the agreement, the jurisdiction of that court which has been excluded by the agreement executed between the parties, would stand ousted. So, this law, I would say does not support the case of the respondent, rather supports the case of the applicant.

16. In the circumstance, the Civil Revision Application is allowed.

17. The impugned order is hereby quashed and set aside to the extent it holds that Nagpur Civil Courts have jurisdiction.

18. The application at Exh.74 is allowed on the ground that only Delhi Courts have exclusive jurisdiction in the matter.

19. All other issues are kept open for argument and adjudication.

20. The plaint be returned to the respondent for being presented to the appropriate forum.

21. Parties to bear their own costs.