IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(PD) NO.1055 OF 2015
AND M.P.NO.1 OF 2015

Angamuthulingammal ... Petitioner

Vs.

Mohankumar ... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order of the II Additional District and Sessions Judge, Tirupur, dated 05.03.2014 in I.A.No.1102 of 2013 in O.S.No.656 of 2010.

For Petitioner : Mr.P.Valliappan

O R D E R

This Civil Revision Petition is directed against the order dated 05.03.2014 passed in I.A.No.1102 of 2013 in O.S.No.656 of 2010 by the learned II Additional District and Sessions Judge, Tirupur.

2.The petitioner is the second defendant in O.S.No.656 of 2010.

The respondent herein had instituted the suit against the petitioner and two others for recovery of a sum of Rs.18,00,000/-, with interest at the rate of 12% per annum, from the date of suit till the date of realization; for declaration to declare that the settlement deed dated 23.08.2007 executed by the first defendant in favour of the second defendant as null and void and for other relief.

3.The case of the plaintiff is that the first defendant is the friend of the plaintiff and the second defendant is the mother of the first defendant, who is carrying on business in the name and style of Kavin Garments from the year 1990. The first defendant availed loan of Rs.3,00,000/- from Indian Bank, Tiruppur and in order to repay the said loan, the first defendant had deposited his title deed, namely partition deed dated 10.03.1997, thereby creating mortgage for the loan. It is further averred that the first defendant could not repay the said loan amount and sought for another loan to the tune of Rs.5,00,000/- from the same Bank. While seeking fresh loan for the business carried on by him under the name and style of Mouriya Fashions, the first defendant promised and agreed to close the earlier loan due from the said Kavin Garments from and out of the new loan amount. While so, the bank authorities demanded the first defendant to furnish security for repayment of the said loan.

4.At that juncture, the first defendant sought the help of the plaintiff to furnish his property as a guarantor to the Indian Bank for repayment of the second loan. The first defendant has promised that he will take steps to release the document of title pertaining to the immovable property of the plaintiff after settling the due payable to the first loan and release the plaintiff's property from the liability. It is further alleged that the believing the representation and promise made by the first defendant as a friend, the plaintiff has offered his property as security, but the first defendant has not repaid the loan. The Bank had initiated proceedings in O.A.No.397 of 2004 for recovery of the amount. The Bank instead of proceeding against the property of the first defendant, who is the principal borrower, started proceedings against the property of the plaintiff, which necessitated the plaintiff to pay the sum of Rs.18,00,000/- to the Indian Bank for settling the balance amount. The plaintiff has further alleged that the first defendant fraudulently transferred his property in favour of his mother by virtue of the settlement deed dated 23.08.2007 and the document has been created only for the purpose of defrauding the plaintiff. With the above allegations, the plaintiff has laid the suit.

5.The petitioner filed an application in I.A.No.1102 of 2013 under Order VII Rule 11 of the Civil Procedure Code contending that the suit filed by the plaintiff is not maintainable, as he has not settled the entire loan amount to the Bank. The property settled under document dated 23.08.2007 in favour of the second defendant is no way related to the loan transaction of M/s.Maurya

Fashions. The application was resisted by the respondent stating that the cause of action discloses that the transaction took place in pursuance of the act of collusion practiced by the petitioner with the first defendant. The first defendant without even getting the title deed / parent document from the Bank has executed the settlement in favour of the petitioner. It is further stated that the issue relating to fraud and collusion cannot be decided at this stage and can be decided only after full fledged trial.

6.The Trial Court having observed that the plaint discloses cause of action against the petitioner and at the stage of Order VII Rule 11, the Court has to take into consideration the averments in the plaint and the plaint cannot be rejected on the basis of the allegations made by the defendants in their written statement. The Trial Court following the judgment of the Supreme Court in ***MAYAR (H.K) LTD. AND OTHER VS. OWNERS & PARTIES VESSEL M.V. FORTUNE EXPRESS AND OTHERS [AIR 2006 SC 1828]*** and a judgment of this Court in ***N.RAVINDRAN VS. V.RAMACHANDRAN [2011 (3) CTC 153]*** dismissed the application vide order dated 05.03.2014. Challenging the same, the present Civil Revision Petition is filed.

7.Heard the submissions made by Mr.P.Valliappan, learned counsel for the petitioner and perused the materials available on record.

8.In the light of the judgments of the Supreme Court and this Court cited supra, the contention of the petitioner cannot be considered at this stage. In my view, the Trial Court rightly dismissed the application, which does not warrant interference by this Court.

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

19.03.2015

Index : Yes
Internet : Yes
TK

To

The II Additional District and Sessions Judge
Tirupur.

K.KALYANASUNDARAM, J.

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