

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-10-2015

(Judgment Reserved on 31-08-2015)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Civil Suit No.511 of 2011

M/s.Kothari Industrial Corporation Limited,
Rep. by its Managing Director,
Mr.Pradip D.Kothari,
No.114, Nungambakkam High Road,
Kothari Building, 4th Floor,
Nungambakkam, Chennai-600 034. ... Plaintiff

Vs.

1. HDFC Bank Ltd.,
Rep. by its General Manager,
No.40, Nungambakkam High Road,
Nungambakkam Branch, Chennai-600 034.
2. M/s.Bekey Properties Private Limited,
Rep. by its Director Mr.K.V.Bala,
No.603, Keshava, 6th Floor,
Bandra-Kurla Complex, Bandra(E),
Mumbai-400 051.
3. M/s.Subuthi Finance Limited,
Rep. by its Director,
No.114, M.G.Road, Nungambakkam,
Kothari Building, 4th Floor, Chennai-600 034.
... Defendants

Plaint filed and numbered as Civil Suit under Order 4 Rule 1 of the Madras High Court Original Side Rules, read with Order 34 Rule 7 of the Code of Civil Procedure, praying for judgment and decree:

(a) ordering redemption of the mortgage, dated 16.01.1996 in respect of the suit schedule property by directing the first and second defendants to accept a sum of Rs.5,13,62,532/- as the amount outstanding on the

equitable mortgage and execute a receipt discharging the mortgage, dated 16.01.1996;

(b) directing the first and second defendants to render a true statement of account pertaining to the equitable mortgage dated 16.01.1996 of the suit schedule property;

(c) directing the first and second defendants to bring to the Court all the original and other documents deposited by the plaintiff with the first defendant at the time of execution of the equitable mortgage in respect of the suit schedule property and deliver the same to the plaintiff, duly discharged;

(d) granting permanent injunction restraining the defendants, their men, agents, servants, representatives, assigns or any person claiming through them from in any manner taking possession, interfering, alienating, disturbing and dealing the property being the 2/3rd undivided share of land in the total area of 17.5 grounds, bearing Door No.114, Nungambakkam High Road, Kothari Building, Nungambakkam, Chennai-34, along with superstructure in the ground, the first, the fourth and fifth floors and the terrace, morefully described in the schedule hereunder, and

(e) directing the defendants to pay the costs of the suit to the plaintiff.

Schedule property

All that piece and parcel of the land being 2/3rd undivided share in land i.e. 11.64 grounds in the total area of 17.5 grounds, comprised in Old S.No.330, R.S.No.58/2 and 58/81, bearing Door No.114, Nungambakkam High Road, Nungambakkam, Chennai-34, along with total build

up area in the ground, first, fourth, fifth floors and the terrace in the Kothari Building, Collector's Certificate No.6557, Nungambakkam Village, Registration Sub-District of Thousand Lights in the District of Chennai.

For plaintiff : Mr.T.Mahendran

For defendants: Mr.T.Suresh for D-1

Mr.R.Thiagarajan for D-2

Mr.C.S.K.Sathish for D-3

JUDGMENT

The suit is filed for redemption of mortgage, dated 16.01.1996, rendition of accounts, for permanent injunction and to bring the documents in Court.

2. The learned counsel for the plaintiff has filed a Memo, dated 07.08.2015, stating that O.A.No.925 of 2000 filed before the DRT-1, Chennai is pending, that the plaintiff-Company decided to work out their remedies before the DRT-1, Chennai in the said O.A., that the plaintiff may be allowed to withdraw the suit and prayed for return of the Court fee paid on the suit.

3. The first defendant-Bank filed a Memo of Objections, dated 16.08.2015, the second defendant filed a Memo of Objections, dated 14.08.2015 and the third defendant filed a Memo of Objections, dated 13.08.2015,

objecting for withdrawal of the suit by the plaintiff, on various reasons, and the same are untenable and not sustainable in law.

4. Though it is trite law that the plaintiff is entitled to withdraw the suit filed by him/them, even without the leave of the Court, the power vested in the Court to permit the plaintiff to withdraw the suit, should not be taken advantage of by the plaintiff to defeat the existing right of the defendants.

5. It is the plaintiff-Company which has filed the suit and they are entitled to and has every right to withdraw the suit without showing any reason and the defendants, at the most, could only claim costs for the suit instituted against them. There is no valid objection raised in the said Memo of Objections of the defendants, for not permitting the plaintiff to withdraw the suit.

6. Accordingly, the suit is dismissed as withdrawn. The costs shall be paid by the plaintiff to the defendants. No leave is granted to institute a fresh suit for the same cause of action. The plaintiff is not entitled for refund of Court fee. Liberty is granted to the plaintiff and the defendants to raise their respective pleas before the DRT-1, Chennai in O.A.No.925 of 2000. The interim injunction

already granted in O.A.No.628 of 2011 is vacated and the same is closed.

Witnesses examined on the side of plaintiff:--Nil

List of documents marked on the side of plaintiff:-- Nil

Witnesses examined on the side of defendants:-- Nil

Documents marked on the side of defendants:- Nil

Court witness and Court document : Nil

sd/.G.C.J

27.10.2015

//Certified to be a true copy//

Dated this the day of 2016

R.s/18.04.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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