

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(PD).No.1791 of 2006

and

M.P.No.2 of 2006

Bank of India
Rep.by its Manager Petitioner / 3rd Defendant

Vs.

1.Koil Pittchai
2.C.Natarajan
3.M/s.R.Radha Respondents / Plaintiff &
defendant 1 & 2.

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India aggrieved by the order dated 16.08.2006 in I.A.No.531 of 2006 in O.S.No.477 of 2006 on the file of the Sub-ordinate Judge, Coimbatore.

For Petitioner : Mr.V.Durga Rao for
M/s Sree Associates
For Respondents No.1 : Mr.T.Palani Selvaraj
Respondents Nos.2 & 3 : No appearance

O R D E R

The civil revision petition is filed challenging the order of the Sub Court, Coimbatore, dated 16.08.2006, in I.A.No.531 of 2006 in O.S.No.477 of 2006.

2. The petitioner is the third defendant in the suit in O.S.No.477 of 2006 filed by the first respondent herein. The suit was filed for recovery a sum of Rs.1,35,000/- along with interest from the first defendant and for permanent injunction restraining the defendants 1 to 3 from in any way dispossessing the plaintiff from the possession of the suit property.

3. The plaintiff filed I.A.No.531 of 2006 seeking an order of interim injunction under Order 39 Rules 1 & 2 and Section 151 C.P.C. The trial Court granted an interim order holding that there is a prima facie case in favour of the petitioner. The trial Court has not assigned reasons for granting interim order. Aggrieved by the

order, the present civil revision petition is filed.

4. Mr.V.Durga Rao, learned counsel for the petitioner submitted that the suit itself is not maintainable in law and the petitioner/bank had already invoked proceedings under Section 13(2) of the SARFAESI Act for taking possession of the suit premises. It is further contended that the first respondent / plaintiff cannot seek a prayer for permanent injunction against the bank from taking possession of the petition premises. It is further contended that the order is a non speaking one and on the sole ground, the order is liable to be set aside by this Court.

5. Per contra, Mr.T.Palani Selvaraj, the learned counsel for the first respondent submitted that the first defendant by producing documents, had obtained money from the plaintiff as well as the bank and the plaintiff is entitled for recovery of the amount from the first defendant. It is further contended that the suit is maintainable under Section 9 C.P.C.

7. It is settled law that while granting exparte interim injunction, the trial Court has to be satisfied with the requirements of Order 39 Rule 1 & 2 CPC. However, in the present case, the trial Court has not assigned any reason and on the sole ground, the order of the trial court is set aside. The matter is remanded back for fresh disposal. The learned Sub Judge, Coimbatore shall decide the application on merits after giving opportunity to the respondents.

Accordingly, the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

sms

To

The Sub-ordinate Judge, Coimbatore.

+1 CC to Mr. PALANISELVARAJ, Advocate, SR.No.8842.

+1 CC to M/s. SREE & ASSOCIATES, Advocate, SR.No.8812.

C.R.P.(PD).No.1791 of 2006

and

M.P.No.2 of 2006

17.02.2015

RRI (27/03/2015)