

HON'BLE SRI JUSTICE R.SUBHASH REDDY

CIVIL REVISION PETITION No.1178 of 2015

ORDER :

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/defendant No.3 aggrieved by the order dated 09.03.2015 in I.A.No.211 of 2015 in O.S.No.79 of 2015 passed by the XII Additional District Judge, Vijayawada, Krishna District, directing defendant Nos.1 to 3 to furnish security for a sum of Rs.2.00 Crores with subsequent interest and incidental charges, failing which to attach the petition schedule property.

2 . The 1st respondent/plaintiff filed the aforesaid suit against the petitioner/defendant No.3 and respondent Nos.2 and 3 herein, who are defendant Nos.1 and 2, for recovery of an amount of Rs.1,75,48,800/- basing on the cheques issued by defendant No.1 through defendant No.2. Pending disposal of the suit, he filed I.A.No.211 of 2015 for conditional attachment of petition schedule properties, which are as follows:

Item No.1:

All the place and parcel of the portion of the converted undeveloped land with no civic amenities in land bearing Sy.No.109 (O.M.No.ALN SR (STO 61/2008-09, dt.31.3.2009) in all measuring 34 guntas situated at Singasandra Village, Beguru Hobli, Bangalore South Taluk, bounded on :

East : National Highway

South : Remaining portion of Sy.No.109

West : Remaining portion of Sy.No.109/1

North : Remaining portion of Sy.No.109

within the jurisdiction of the Hon'ble City Civil and Sessions Judge at Bangalore.

Item No.2 :

All the place and parcel of the portion of the converted undeveloped land with no civic amenities in land bearing Sy.No.109 (109/1) in all measuring 2 Acres and 5 guntas situated at Singasandra village, Beguru Hobli, Bangalore South Taluk, bounded on :

East : Remaining portion of Sy.No.109 (109/1)

South : Hanumappa's land

West : Santappa's land

North : Remaining portion of Sy.No.109 (109/1)

within the jurisdiction of the Hon'ble City Civil and Sessions Judge at Bangalore.

The Court below, after considering the material and the evidence on record, passed the impugned order dated 9.3.2015, directing defendant Nos.1 to 3 to furnish security for a sum of Rs.2.00 Crores with subsequent interest and incidental charges within 15 days, failing which to attach the petition schedule property and as the property is within the limits of City Civil and Sessions Judge, Bangalore, to follow the procedure under Section 136 of C.P.C., for attachment. Hence, the present civil revision petition.

3. Sri Yogesh Kumar Heroor, learned counsel for the petitioner/defendant No.3 contended that the impugned order is violative of the procedure contemplated under Order 38 Rule 5 of C.P.C. It is further contended that the petitioner/defendant No.3 is not concerned with the liability claimed by the 1st respondent/plaintiff against respondents Nos.2 and 3 herein. It is contended that as the petition schedule property is the exclusive property of the petitioner/defendant No.3 and defendant Nos.1 and 2 are only developers, merely because defendant Nos.1 and 2 hold the

development agreement, the petition schedule property is not liable for attachment.

4 . On the other hand, Sri P.R. Prasad, learned counsel for 1st respondent/plaintiff, submits that as there is a development agreement, pursuant to which, defendant Nos.1 and 2 hold 68% of share and the 1st respondent/plaintiff holds only 32% share after the development, as such, the said 68% of share of the developers, who are defendant Nos.1 and 2, has rightly been attached by the Court below.

5. Having heard learned counsel for the parties, I have perused the impugned order, including the schedule of properties filed along with the application.

6. From a reading of Order 38 Rule 5 of C.P.C., it is clear that, where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of the whole or any part of his property, or is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, is empowered to order attachment of the said property.

7 . From the above provision, as it is clear that the property of the defendants can be attached, the claim of the petitioner/defendant No.3 that the petition schedule property is his exclusive property and defendant Nos.1 and 2 are only developers and merely because defendant Nos.1 and 2 hold 68% share as per the development agreement, the petition schedule property cannot be attachment, is not considered by the Court below. Though there is no claim made by the 1st respondent/plaintiff against the petitioner/defendant No.3, the Court has proceeded and passed the impugned order attaching the petition schedule property. As various contentious issues are not considered by the Court below, this Court is of the view that it is a fit case to remand the matter for fresh consideration by the Court below.

8. For the aforesaid reasons, the impugned order dated 9.3.2015 is

set aside and the matter is remanded with a direction to the learned XII Additional District Judge, Vijayawada, to consider the matter afresh and dispose of I.A.No.211 of 2015 by passing appropriate orders, after giving an opportunity of hearing to all the parties, as expeditiously as possible, preferably within a period of two months from today.

9. This civil revision petition is allowed to the extent indicated above. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

02.04.2015.

Msr

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