

Comp.A.No.1010 of 2015
in C.P.No.103 of 1993

RAJIV SHAKDHER, J.

1. This is application, whereby, the following substantive relief has been sought :

“..... b) this Hon'ble Court should not be pleased to grant leave to the applicants herein to file a suit before the Hon'ble High Court, Madras, against the Company M/s.Sethuraman Thiyagarajan Engineers Pvt. Ltd., (in liquidation) represented by the Official Liquidator, High Court, Madras, in respect of the property morefully described in the schedule hereunder”

2. During the course of argument, it is not disputed by the learned counsel for the applicant that an appeal is pending with respect to the subject property before a Division Bench of this Court, which is numbered as : O.S.A.No.222 of 2013.

3. As a matter of fact, the application discloses this very fact and also the factum of passing of an interim order, dated 29.05.2013 in O.S.A.No.222 of 2013, in paragraph 9 of the accompanying affidavit filed in support of the application, which reads as follows :

".... There shall be an order of interim stay in so far as the proceedings with respect to the personal property of the petitioner is concerned."

4. To be noted, the aforementioned appeal was preferred before the Division Bench by the late husband of applicant No.1 against the order dated 30.04.2013, passed in Comp.A.No.125 of 2011 in the instant Company Petition.

4.1. By the said order, my predecessor, had held that the validation sought by the late husband of applicant No.1 to the effect that the company in liquidation had transferred leasehold rights in his favour, was not bonafide.

4.2. Accordingly, the learned Company Judge, vide order dated 30.04.2013, held that the sale held qua the subject property in favour of the auction purchaser was not valid. It was consequently set aside.

5. The State Bank of India (in short SBI), which is a secured creditor, has filed an affidavit in opposition to the captioned application. In paragraphs 8 and 9 of the affidavit, the following

assertions have been made by the SBI :

"8. I submit that against the order passed in CA No.125 of 2011, the husband of the 1st petitioner had filed OSA No.222 of 2013 and in the stay petition, interim stay has been granted insofar as the petitioner's personal property is concerned. Accordingly the second respondent has moved the Recovery Officer, Debt Recovery Tribunal for demarcation of the property and bring the same for sale. It is submitted that the premises in question was in occupation of a tenant and the recovery officer was requested to attach the proportionate rent payable to the late husband of the first petitioner herein in respect of the property. The tenant had replied that they are shortly going to vacate the premises and are now adjusting towards the advance already paid and as such are not paying any rent as of now.

9. I submit that after the tenant had vacated the premises in question, the recovery officer has taken possession of the property. I submit that the second respondent had obtained the approval plan from the Chennai Metropolitan Development Authority for the 5th Floor built up area is proportionately available and accordingly for an extent of 354 square feet of land the proportionate build up the area comes to 2697 square feet. As

per the approved plan the present construction in the fifth floor regarding the disputed premises is 3972 square feet and a proportionately dividing the constructor the area in respect of 354 square feet of land and 167 square feet of land comes to an extent of 2697 square feet and 1275 square feet.”

6. A perusal of the aforementioned assertions of SBI would show that SBI has moved the Recovery Officer for demarcation of the subject property. SBI clearly asserts its rights in the land to the extent of 354 square feet and proportionate rights in the 5th Floor of the superstructure to the extent of 2697 square feet. In other words, SBI does not seek any right in the land to the extent 167 square feet and in the 5th Floor of the superstructure to the extent 1275 square feet.

7. In these circumstances, in my view, no purpose would be served in granting leave to the applicant to prefer a suit. The reason for the same is as follows :

(i) The issue as to whether in the entire land, the late husband of applicant No.1 had the interest, is pending adjudication before the Division Bench ;

(ii) In any event, SBI asserts its right only in a portion of the land and building, and SBI has stated that it has moved the Recovery Officer for demarcation, and if the same is carried out, it will serve the purpose of the applicant herein.

8. The application is disposed of accordingly.

9. Needless to say that in view of the assertion made by SBI before me, in the affidavit, as indicated above, the applicant would have to make appropriate representation before the Recovery Officer.

19.07.2016

RAJIV SHAKDHER, J.

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