

Appl.No.234 of 2013
in
C.S.D.No.2826 of 2013

M.M.SUNDRESH, J.

Seeking to grant the leave to institute the present suit against the defendants 1 to 3, 5th and 6th defendants, who are carrying on business outside the territorial jurisdiction of this court, the applicant/plaintiff, has come up with this application.

2. A suit has been filed for recovery of money, pursuant to a consignment said to have been shipped from the sea port. Learned counsel for the applicant submits that the said transactions have been taken place, well within the jurisdiction of this Court.

3. Considering the submissions made by the learned counsel for the applicant and taking note of the averments made in the plaint, leave is granted.

22.09.2016

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Considering the submissions made, the

2.Learned counsel for the applicant submits that even as per the document signed by the second defendant, the suit claim is liable to be paid and as per the said document, the liability is not in dispute. The objection raised in the counter is that no credit has been given towards incentives and subsequent amount paid cannot be taken into account in the absence of the materials in respect of the same.

Learned counsel for the respondent submits that the very same document relied upon by the respondent itself is admitted. Therefore, the applicant not being the secured creditor, the application is referred to be dismissed.

By way of reply, learned counsel for the applicant submits that the property sought to be furnished as security is already the subject matter of a mortgage and pursuant to the failure of the respondent to make the payment, proceeding are pending before the Debts Recovery Tribunal. Therefore, sought for appropriate orders.

Prima facie, it appears that there is no contra materials to dispute the document filed on behalf of the applicant which shows the liability on the part of the respondent. Further, there is no ---- in the respondent to furnish security over the property. It is also mortgaged with the Axis Bank Ltd., which has been assigned to M/s. Pridhvi Reconstructions and Securitisation Co. Ltd.

Therefore, in the event of the said property being brought up for auction, after subsisting the claim of the petitioner and the concern which has been assigned in favour of the aforesaid concern, the suit claim will have to be deposited by the said concern on the file of this Court. If the property has already been sold even though the suit claim will have to be deposited by the concerned authority including the bank or assignee of the debt on the file of this Court. Similarly, if in the event of any settlement that has arisen between the assignee of the bank and the respondent herein with respect of the suit property, viz-a-viz, the claim made in this petition, the respondent No.2 shall not alienate or encumber the said suit property subject to the petition being passed.

This order is passed with the knowledge that the bank or assignee are not party to this application. As this would not prejudice them since their interest would be(had been) taken care of. This order is also passed giving liberty to the party including the respondent to file appropriate application seeking to verify or to move as the case may be. Further, the surplus amount to the extent of the suit claim will be deposited before this Court.

20.06.2016

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M.M.SUNDRESH, J.

A.No.796 of 2015
in
C.S.No.405 of 2014

20.07.2016