

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.387 of 2016

&

C.M.P.No.2081 of 2016

1.M.Arjunan

2.A.Sathya Moorthy

3.A.Mohan Raj

... Petitioner

vs.

1.Paraspara Sahaya Nidhi (Perambur) Limited

No.2, Bharathi Road

Perambur, Chennai – 600 011

2.Varma & Company

(Govt. Customs, Central Excise Bank, Nidhi

HC, OL, CFS, Rly Auctioners & Estate Agents)

3rd Floor, the Egmore Benefit Society Ltd., Building

New No.23 (Old No.13) Flowers Road

Chennai – 600 084

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 11.01.2016 made in C.M.P.No.53 of 2016 in C.M.A.No.1 of 2014 on the file of the Principal Judge, City Civil Court, Chennai insofar as imposing the condition of payment of Rs.5,00,000/- is concerned.

For Petitioner : Mr.N.Anand Venkatesh

ORDER

The petitioners herein are the mortgagors and the first respondent herein is the mortgagee. The mortgage deed contains a clause conferring right of sale on the mortgagee under Section 69 of the Transfer of Property Act. The scheme of repayment as provided in the contract was not adhered to by the petitioners/mortgagors after making payment of a particular number of installments. Since default was committed thereafter, the first respondent/mortgagee exercised its right of bringing the mortgaged property for sale under Section 69 of the Transfer of Property Act for the recovery of the entire amount remained unpaid as per the mortgage deed.

2. For the said purpose, the first respondent mortgagee engaged the second respondent auctioneer to notify the property for sale by public auction. At that point of time, the petitioners herein approached the trial Court by filing a suit in O.S.No.4168 of 2015. Along with the plaint, an interlocutory application I.A.No.10565 of 2012 was filed under Order XXXIX Rule 1 for interim injunction restraining the respondents from proceeding with the proposed auction. The said application was resisted by the first respondent by filing a counter. After hearing both sides, the learned trial Judge passed an order on 04.11.2015 dismissing the said application. The same was challenged before the lower appellate Court in C.M.A.No.1 of 2016.

Pending disposal of the said C.M.A, interim order of injunction was sought for by filing C.M.P.No.53 of 2016. In the said Civil Miscellaneous Petition, the learned lower appellate Judge passed an order granting interim injunction on condition that the petitioners should pay a sum of Rs.5,00,000/-, the admitted amount due as per the petitioner's own case, to the first respondent on or before 22.01.2016. It is as against the said order, the present Civil Revision Petition has been filed invoking the power of superintendence of this Court over the subordinate Courts under Article 227 of the Constitution of India.

3. Upon hearing the submissions made by Mr.Anand Venkatesh, the learned counsel for the petitioners and after going through the grounds of revision and the copies of the documents produced in the form of typed-set of papers, this Court does not find any defect or error, much less an error apparent on the face of the record or error in exercise of jurisdiction by the lower appellate Court. The order also cannot be termed to be shockingly harsh. The petitioners, who admit only a portion of the amount claimed by the first respondent to be due under the mortgage, have been directed to pay that admitted amount for granting interim injunction.

4. This Court does not find any substance in the challenge made to the order passed by the lower appellate Court. The revision petition filed under Article 227 of the Constitution of India does not even merit admission and

the same deserves to be dismissed. However, the time for payment of the amount stipulated in the impugned order of the lower appellate Court is extended till 22.02.2016. No costs. Consequently, the connected miscellaneous petition is closed.

12.02.2016

Index: Yes/No
Internet: yes/No
gpa

To

The Principal Judge
City Civil Court, Chennai

P.R.SHIVAKUMAR.J.,

gpa

C.R.P (PD) No.387 of 2016 &
C.M.P.No.2081 of 2016

12.02.2016