

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 02ND DAY OF FEBRUARY 2017

THE HON'BLE MR. JUSTICE K.KALYANASUNDARAM

A.No.970 of 2015
in
C.S.No.106 of 2015

Mrs.Sandhya Mehta
Propertrix of Sandhya & Co,
Having office at No.12, Wallace Garden
Second Street
Nungambakkam
Chennai-600 034 ...Plaintiff

-Versus-

1.M/s.Gati Limited
Managing Director,
Laxmi Towers, IInd Floor,
27/5, Dr Radhakrishnan Salai,
Mylapore, Chennai-600 004

2.M/s.Gati Limited, rep by its Authorised Signatory
Dinesh Jaiswal,
Laxmi Towers, IInd Floor,
27/5, Dr Radhakrishnan Salai,
Mylapore, Chennai-600 004 ..Defendants

A.No.970 of 2015:

Mrs.Sandhya Mehta
Propertrix of Sandhya & Co,
Having office at No.12, Wallace Garden
Second Street
Nungambakkam
Chennai-600 034 ...Applicant/Plaintiff

-Versus-

1.M/s.Gati Limited
Managing Director,
Laxmi Towers, IInd Floor,
27/5, Dr Radhakrishnan Salai,
Mylapore, Chennai-600 004

2.M/s.Gati Limited, rep by its Authorised Signatory
 Mr.Dinesh Jaswal,
 Laxmi Towers, IInd Floor,
 27/5, Dr Radhakrishnan Salai,
 Mylapore, Chennai-600 004 ..Respondents/Defendants

Application praying that this Hon'ble Court be pleased to direct the Respondents/defendants to furnish security to the suit claim and on failure to order of attachment before judgment of the movable property mentioned hereunder lying at Lakshmi Towers, IInd Floor, 27/5, Dr Radhakrishnan Salai, Mylapore, Chennai-600 004 pending disposal of the suit.

This application coming on this day before this court for hearing the court made the following order:

The suit has been filed for recovery of money. Pending the suit, the present application has been filed seeking to direct the respondents/defendants to furnish security to the suit claim.

2.The case of the applicant is that the respondents approached the applicant during August, 2011 seeking loan of Rs.60 lakhs. After discussions, the applicant sanctioned loan of Rs.30 lakhs and it was paid by a cheque dated 28.08.2011 and at that time, the respondents agreed to repay the loan amount in six

instalments at the rate of Rs.5 lakhs per month and also issued post-dated cheques. When the said posted-dated cheques issued by the respondents were presented, they got dishonoured. According to the applicant, the respondents have repaid totally Rs.15 lakhs through RTGS on three instalments on 23.07.2012, 28.08.2012 and 11.10.2012; remaining amount has not been paid by the respondents. Hence, the suit has been filed.

3. In the affidavit filed in support of the application, it has been specifically alleged that the despite repeated demands, reminders and lawyer's notice, the respondents have not come forward to repay the balance amount; that the respondents with an intention to protract the proceedings and to deny their dues, attempt to dispossess the properties; that if they succeed in their attempt, the applicant could not realise the decree amount, in case, the suit is decreed.

4. Herad Mr.D.Senthilkumar, learned counsel appearing for the applicant and Mrs.Inthu Karunakaran, learned counsel appearing for the 1st respondent and perused the materials available on record.

5. Mr.D.Senthilkumar, learned counsel for the applicant would submit that the applicant has made a strong *prima facie* case for issuing direction to the respondents to furnish security to the suit claim.

6. Per contra, Mrs.Inthu Karunakaran, learned

counsel appearing for the 1st respondent would submit that the 2nd respondent, in collusion with the applicant, had borrowed money, without any proper sanction of the 1st respondent; that the 1st respondent is a running company; that in case, the applicant succeeds in the suit, she can very well recover the amount; that for ordering attachment, the applicant has not made out a *prima facie* case.

7.It is further submitted by the learned counsel for the 1st respondent that power under Order 38 Rule 5 of CPC is drastic in nature and it has to be exercised only sparingly. In support of her contention, she has also relied upon the decision of the Hon'ble Supreme Court in the case of **Raman Tech. & Process Engg. CO & anr Vs. Solanki Traders, Appeal (Civil) No.6171 of 2001, dated 20.11.2007.** In the said case, the suit was filed for recovery of money of Rs.99,200/-, but in the suit notice, the plaintiff therein demanded only Rs.24,487/- being the dishonoured cheque amount. Since there was no proper particulars in the plaint, the Trial Court had rejected the application; however, it was reversed by the High Court. In those factual aspects, the Hon'ble Supreme Court has held that the applicant in that case was not entitled for order under Order 38 Rule 5 of CPC.

8.But, in the case on hand, the respondents have
<https://hcservices.ecourts.gov.in/hcservices/>
 borrowed money through cheque dated 28.08.2011 and have

repaid a portion of the amount viz., Rs.15 lakhs on three occasions by RTGS. The suit is based on promissory note. In the above facts, this Court is of the opinion that the applicant has established a *prima facie* case. Hence, the 1st respondent is directed to furnish security for the suit claim, within a period of three weeks from today.

Post on 24.02.2017.

sd/.M.K.K.S.J

02.02.2017

//Certified to be a true copy//

Dated this the day of 2017

R.s/06.03.2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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