

A. No.5708 of 2016
in
C.S.No.823 of 2016

K.KALYANASUNDARAM, J.

Pending the suit filed for recovery of money, the present application has been filed, seeking an order prohibiting the second respondent/garnishee from releasing any payment from Account Nos.20011321332 and 60020302499 standing in the name of the first respondent and to direct the second respondent/garnishee to deposit a sum of Rs.2,94,46,341.92 to the credit of the suit.

2. This court, by order dated 04.11.2016 had granted a prohibitory order against the second respondent/garnishee prohibiting it from paying any amount to the first respondent, till 02.12.2016 and subsequently it was extended till 19.12.2016.

3. The second respondent has filed a counter stating that they had sanctioned cash credit Hypothecation limit of Rs.500 lakhs to the 1st defendant namely M/s.Gemini Enterprises and the same was increased to Rs.700 lakhs on 16.10.2014. The 1st defendant had executed necessary

loan documents in favour of the 2nd respondent and the 2nd respondent is a secured creditor. As on date, the 1st defendant owes a sum of Rs.7,08,04,687.81 in Cash Credit A/c.No.20011321332 and Rs.300 Lakhs in A/c.No.60020302499. There is no amount lying in the account of the 2nd defendant and on the other hand, he is liable to pay about Rs.10 Crores to the 2nd defendant.

4. Mr.T.Ravichandran, learned counsel appearing for the 2nd respondent/defendant, by relying upon the decisions of this Court in ***1996 (1) LW 455 [Jawad A.J. vs. State Bank of Bikaner and Jaipur rep by its Chief Manager & others]*** would submit that the application is not maintainable.

5. In ***1996 (1) LW 455 (cited supra)***, a Division Bench of this Court has observed that Garnishee is a person who is bound to pay certain amount to the defendant or one who is in possession of money belonging to the defendant. Liability to pay the debit due to the defendant is necessary.

6. The counter filed by the 2nd defendant would reveal that the amount of the 1st defendant is not lying with the 2nd defendant. So, in view of the decision cited supra, the interim order is liable to be vacated and accordingly the same is vacated.

7. In the result, this application is dismissed.

12.01.2017

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