

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.01.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE N. AUTHINATHAN

O.S.A.No.120 of 2013
and M.P.No.1 of 2013

1. Ponnussamy Antoine Valmy
2. Mrs.Philomena RaniAppellants/Plaintiffs

Vs

1.A.V. Uthaykumar
2.Mrs.U. Purnima

3.Standard Chartered Bank,
rep by its Chairman/Manager,
No.58, Armenian Street,
Chennai - 600 001

4. Standard Chartered Bank,
represented by its Power of Attorney/
Associate Manager/Authorised Officer,
Secured and SME Collections,
No.58, Armenian Street,
Chennai - 600 001

5. Mrs.Leema RajuRespondents/Defendants

Appeal filed Under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of Letters Patent against the fair and decreetal order of the learned Single Judge dated 11.04.2011 in A.No.1548 of 2011 in C.S.No.182 of 2011. Application Praying that this Hon'ble Court be pleased to pass Interim direction, directing the Respondents 3 and 4 to remove the seal and lock, affixed on 24.01.2011 at No.4 (old No.19) Kamarajar Avenue, Sri Devi Garden, Valasaravakkam, Chennai-600 087, Pending disposal of the above suit.

For Appellants : Mrs.S. Hemalatha
For R.1, R.2 & R.5 : No appearance
For R.3 and R.4 : Mr.V. Jayachandran

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellants filed a Civil Suit in C.S.No.182 of 2011, wherein, the appellants have claimed that they are the absolute owners of the property. It appears that the suit property has been mortgaged with the respondents 3 and 4 herein and proceedings have been initiated under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(SARFAESI Act) and the property, in question, has also been attached. That being so, an application in A.No.1548 of 2011 has been filed praying for an interim direction, directing the respondents 3 and 4 to remove the seal and lock, affixed on 24.01.2011 at No.4 (Old No.19), Kamarajar Avenue, Sri Devi Garden, Valasaravakkam, Chennai - 600 087 and an Original application in O.A.No.244 of 2011 has been filed praying for an interim injunction restraining the respondents 3 and 4 from alienating the same property.

2. The learned Single Judge, by Order dated 11.04.2011 has passed the interim order, granting relief to the appellants, on condition that the appellants shall deposit a sum of Rs.32,00,000/- (Rupees thirty two lakhs only) without prejudice to their contentions in the plaint, with the third respondent-Bank and the said amount shall be kept by the third respondent-bank, without any lien over the same, as a simple deposit intended to secure their claim in the event of the suit of the plaintiffs getting dismissed.

3. The Court further directed that if the appellants herein succeed in getting a decree, the third defendant/third respondent shall refund the deposit to the plaintiffs/applicants together with the rate of interest as applicable as on date to long term fixed deposits. The appellants are aggrieved over the said order. That is how, they have come with this appeal.

4. We have heard the learned Counsel for the appellants and the learned counsel for the respondents 3 and 4 and we have also perused the records carefully.

5. At the outset, we should say that there is no merit in this appeal. Our reasons are many. First of all, the order passed by the learned Single Judge is a conditional order, which, the appellants have not obeyed. Secondly, the learned counsel for the appellants submitted that since the plaintiffs have got independent title in the property, the order of the learned Single Judge directing the appellants to deposit the amount is not proper. We find no force at all in the said argument.

6. The question, whether the appellants have got independent right or title in the property, is a matter to be decided in the suit. Now, without that stage being reached, we cannot hold that the plaintiffs have got independent right and therefore, they need not deposit the amount. In such view, the learned Single Judge was right in directing the plaintiffs to deposit the amount as a condition for enjoying the other reliefs sought for. In the order of the learned Single Judge, we do not find any infirmity, warranting interference.

7. Above all, in respect of the attachment of the property and possession taken by the authorities under SARFAESI Act, the remedy for the appellants lie before the Debts Recovery Tribunal. Thus, the appellants are not entitled for any relief and we do find any merit in this appeal. The appeal fails and the same is dismissed. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sr

To

The Sub Assistant Registrar,
(Original Side),
High Court, Chennai.

+1cc to Mr.Hemalatha, Advocate, S.R.No.1055
+1cc to Mr.Jayachandran, Advocate, S.R.No.1118

PK(CO)
RS(03/02/2017)

O.S.A No.120 of 2013