IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(PD)No.567 of 2013
and
M.P.Nos.1 and 2 of 2013

Logambal .. Petitioner

Vs.

1.The Tamilnadu Industrial Investment
Corporation Ltd.,
Rep. by its Branch Manager,
Special Loan Recovery Branch,
Nandhanam, Chennai – 600 035.

2.M/s.Link World System,
Rep. by its Proprietor K.Arumugam,
No.4, V.O.C. Street, II Main Road,
Kodambakkam, Chennai – 600 024.

3.Dhandapani .. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the judgment and decree of Subordinate Judge, Kanchipuram, dated 14.09.2012 in C.M.A.No.13 of 2010, order and decreetal order dated 25.07.2008 in I.A.No.273 of 2007 in O.S.No.82 of 2007, on the file of the District Munsif, Uthiramerur, which is confirmed by the Sub-Court, Kanchipuram, by its judgment and decree dated 14.09.2012 in C.M.A.No.13 of 2010.

For Petitioner : Mr.P.R.Thiruneelakandan

For Respondents : Mr.K.Magesh (for R1)

Mr.K.Sathish Kumar (for R3)

R2 – Given up

ORDER

The petitioner has filed this Civil Revision Petition to set aside Judgment and Decree of the learned Subordinate Judge, Kanchipuram, passed in C.M.A.No.13 of 2010 dated 14.09.2012, and order and decreetal order of the learned District Munsif-cum-Judicial Magistrate, Uthiramerur passed in I.A.No.273 of 2007 in O.S.No.82 of 2007 dated 25.07.2008 and allowed the I.A.No.273 of 2007 in O.S.No.82 of 2007, on the file of District Munsif cum Judicial Magistrate, Uthiramerur.

2.It is the case of the revision petitioner that she filed a suit against the respondent herein in O.S.No.82 of 2007, on the file of the District Munsif cum Judicial Magistrate, Uthiramerur, for declaration, (a) declaring that the plaintiff is the absolute owner of the suit 'A' schedule property and permanent injunction (b) declaring that the public auction held on 04.07.2007 at the Office of the 1st defendant in respect of suit 'A' schedule property is null and void and consequential permanent injunction restraining the 1st defendant from in any way confirming the sale held in the said public auction. The plaintiff, along with the said suit, filed two applications in I.A.No.273 of 2007 for interim injunction restraining the 1st respondent herein and every person claiming under 1st respondent to be the purchaser of the suit 'A' schedule property in the public auction held on 04.07.2007 from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit 'A' schedule property and I.A.No.275 of 2007 for temporary injunction, restraining the 1st respondent herein from any way confirming the sale held in public auction on 04.07.2007. The 1st respondent and 3rd respondent herein filed a detailed written statement. Further, 1st respondent herein also filed detailed counter affidavit and strongly opposed the above said interim injunction applications.

3.The learned District Munsif has considered the above said two application and passed a common order on 25.07.2008 by dismissing the I.A.No.273 of 2007 and allowing the I.A.No.275 of 2007. Aggrieved over the dismissal of I.A.No.273 of 2007, the revision petitioner filed appeal in C.M.A.No.102 of 2009 before the Sub Court, Kanchipuram. The learned Subordinate Judge upon considering the rival submission on either side dismissed the appeal filed by the revision petitioner by Judgment and Decree dated 19.09.2010. Against which the present civil revision petition is filed.

4.I have heard the arguments of Mr.P.R.Thiruneelakandan, learned counsel appearing for the petitioner and Mr.K.Magesh, learned counsel for the 1st respondent and Mr.K.Sathish Kumar, learned counsel for the 3rd respondent and perused the entire records.

5.It is the contention of the learned counsel for the revision petitioner that the petitioner is a bona fide purchaser for the valid sale consideration without notice regarding the alleged mortgage of the suit property in favor of the 1st respondent herein. The petitioner has been continuous possession and enjoyment over the suit 'A" schedule property as on today and the trial Court after considering the above said fact has granted interim injunction in respect of confirmation of sale in I.A.No.275 of 2007. The trial Court having allowed the above said I.A. ought not to have dismissed I.A.No.273 of 2007 which is filed for interim injunction in respect of possession.

6.The learned counsel further contented that the trial Court failed to consider the fact that the 1st respondent herein alleged to have taken symbolic possession of the suit property without following the procedure adumbrated under section 31 of the State Financial Corporation Act (herein after referred as SFC Act. The alleged symbolic possession is unsustainable in law and illegal.

7.The learned counsel further contended that the 1st respondent herein being a credit agency under Section 9 of the Tamil Nadu Patta Pass book Act, 1983, ought to have mandatory and statuary duty to cause necessary entry in Patta Pass Book relate to suit property for giving financial assistance and the charge created by the owner in respect of suit property.

8.Per contra, the learned counsel for the 1st respondent submitted that the 1st respondent financial corporation sanctioned a loan of Rs.10.90 Lakhs to the 2nd respondent herein on 27.09.1995 for the purchase and erection of color offset machinery. For the said loan availed by the 2nd respondent herein, the 3rd respondent herein offered his immoveable properties namely the suit 'A' schedule property. The 3rd respondent has created mortgage on 27.12.1995 in favor of 1st respondent by depositing the original title deeds. Since the 2nd respondent committed default in repaying the loan amount, the 1st respondent brought the suit 'A' schedule property for action sale by following due process of law and the suit 'A' schedule property was also sold in the public action sale held on 04.07.2007. The mortgage was created by the 3rd respondent herein much prior to the sale transaction and therefore the corporation has got powers to proceed with the auction sale to recover the amounts payable by the borrowers and sureties. After the public auction sale, the 1st respondent herein has taken symbolic possession of the suit 'A' schedule property and therefore the revision petitioner is not entitled to seek for interim injunction against the 1st respondent.

9.The 3rd respondent herein filed counter affidavit before this Court and he has supported the case of the revision petitioner at paragraphs 7 and 8 which are extracted hereunder:

> "7. I submit that, when I had inspected the Court records I found someone impersonated me and forged my signature and affixed the some one photograph as if my photograph and executed the forged 'Deposit of Title deed'. When there fraudulent Transaction came to my knowledge immediately, I preferred a police complaint before the CCB, Chennai and the same was registered as Crime No.129 of 2012 and during the police investigation the aforesaid records i.e. 'the deed of deposit of title deed' sent for forensic examination by the investigation officer, and then it reveals that my signatures are forged one and my photograph also impersonated".
>
> 8. I submit that I had given to understand that the officers of the 1st respondent had colluded with the 2nd respondent swindle huge amount of the public, and on my enquiry I also came to know that there was no such a

company in the name of the 2nd respondent; address mentioned in the case; and also there is no such a person in the name of Arumugam. Therefore it appears that the entire loan transaction is fixtious and fraudulent one. The 1st respondent officials who were in service at that point of time had colluded with the 2nd respondent committed such a irregularity".

10.The main contention urged on the side of the revision petitioner is that the 3rd respondent herein stood as security and the suit property was given as security for the loan obtained by the 2nd respondent herein. As per Section 31 of the State Financial Corporation Act the surety will be proceeded, not under Section 29 of State Financial Corporation Act as held by the Hon'ble Supreme Court. In the present case, the 1st respondent herein proceeded with the suit property which was mortgaged by the 3rd respondent herein under Section 29 of the State Financial Corporation Act and the same is not maintainable in Law in view of the dictum laid down by the Hon'ble Apex Court in the following Judgments:

1. ***2008 (5) SCC 176***, wherein it is held that "the

term guarantee is meant to be furnished by the State Financial Corporation in favor of the 3rd party for the benefit of industrial concern. It is not a guarantee given in favour of the corporation for the said benefit.

2. ***2014 STPL (web) 530 SC***, wherein the Hon'ble Apex Court held as follows:

"11. However, the appellant before us is the purchaser of the property sold under Section 29 of the Act, who parted with the money in order to purchase the property. He is a victim of an illegal procedure adopted by the Orissa State Financial Corporation. The law regarding the authority of the State Financial Corporations to invoke the provisions of Section 29 with respect to properties other than those belonging to defaulter industrial concern is clearly declared by this Court in Karnataka State Financial Corporation (supra) by its judgment dated 30th March, 2008 whereas the sale in question before us is dated 9th February, 2009, almost a year later. The authorities of the 9th respondent Corporation sold the properties to the appellant herein in flagrant violation of the settled position of law. We, therefore, direct the 9th respondent to refund the amount of Rs.10,09,000/- (rupees ten lakhs nine thousands) to the appellant with interest calculated at the rate 12% per annum. However, it is open to the Orissa State Financial Corporation to recover the amounts either from the defaulter - industrial concern or from such other third party against whom the Corporation has a legal right to proceed. in a judgment of Punjab-Haryana reported in Civil Unit Petition No.7446 of 2011 dated 06.02.2012 wherein it is held as follows Accordingly, the matter was referred to a Full Bench of this Court and the conclusion reached by the Full Bench is that the clause in the agreement between the parties conceding their rights to the Financial Corporation to act against the guarantor under Section 29 of the Act would not be available as it would be akin to conferring jurisdiction on the Financial Corporation under Section 29 of the Act by taking over possession of the assets of the guarantor".

11.In a yet another judgment of this Court in a case of ***M.Deivamani Vs. The Branch Manager, the Tamil Nadu industrial Investment Corp. Ltd. & Others*** made in W.P.No.271 of

2007 dated 30.06.2009, wherein it is held that under the State Financial Corporation Act, a financing company can proceed against the property of the guarantor by invoking Section 31 and they cannot bring the property of the guarantor by invoking Section 29.

12.From the above settled legal proposition of law it is made clear that the financial corporation could proceed against a surety only in terms of Section 31 of the SFC Act and not under Section 29 of the Act. But in the present case on hand, the respondent herein proceeded against the suit property by invoking Section 29 of the Act itself is void in the eye of Law. Therefore the 1st respondent herein could be restrained in any way interfering into the petitioner's peaceful possession and enjoyment of the suit 'A' schedule property.

13.As discussed above and also in the light of the judgments referred above, under Section 29 of the Act action could be taken against defaulted industrial concern i.e. the 2nd respondent herein, but not against the sureties or guarantees, the 3rd respondent herein. The Hon'ble Apex Court in the above Judgment reported in ***2008 (5) SCC 176*** has clearly held that for recovery of the amount in favour of the Corporation by proceeding against a surety only in terms of Section 31 of the Act and not under Section 29 of the Act. But the lower appellate Court without considering the above said legal aspect involved in the case has erroneously held that the small lapse committed by the 1st respondent is not consigned to decide the entire case in favor of the revision petitioner. In the considered opinion of this Court the above said finding of the lower Court is totally arbitrary and unsustainable in law and the same is liable to be set aside.

14.That apart, with regard to possession of the suit property the revision petitioner filed exhibits A-27 to A-36 and all those documents would clingingly prove the possession and enjoyment of the petitioner with respect of suit 'A' schedule property. But both the Courts below have not considered any of the above said documents, while deciding the issue of possession of the revision petitioner. Apart from that even assuming that the 1st respondent herein had taken symbolic possession of the 'A' schedule property, it remains only in paper and the actual physical possession and enjoyment is with the revision petitioner which could be seen from the above said documents namely exhibits A-27 to A-36. Therefore in my view, the revision petitioner has proved his possession and enjoyment over the suit 'A' schedule property and he is having a prima facie case to get an order of adinterim injunction and the balance of convenience is also in favor of the revision petitioner. Hence, the revision petitioner is entitled for the relief of temporary injunction.

15.In the result:

(a) this Civil Revision Petition is allowed by setting aside Judgment and Decree of the Subordinate Judge, Kanchipuram, passed in C.M.A.No.13 of 2010 dated 14.09.2012, and order and decreetal order of the learned District Munsif cum Judicial Magistrate, Uthiramerur passed in I.A.No.273 of 2007 in O.S.No.82 0f 2007 dated 25.07.2008, and allowed the I.A.No.273 of 2007 in O.S.No.82 of 2007 on the file of District Munsif-cum-Judicial Magistrate, Uthiramerur, is hereby allowed;

(b) the learned District Munsif-cum-Judicial Magistrate, Uthiramerur, is hereby directed to take up the suit on day to day basis, without giving any adjournment to either parties and dispose of the suit within a period of two months from the date of receipt of a copy of this order. Both the parties are hereby directed to give their fullest cooperation for early disposal of the suit. No costs. Consequently, connected miscellaneous petitions are closed.

06.03.2017

Note:Issue order copy on 14.09.2017

Index:Yes

Internet:Yes

vs

To

1.The Sub Court, Uthiramerur.

2.The District Munsif, Uthiramerur.

3.The Sub Court, Kanchipuram.

M.V.MURALIDARAN, J.

vs

Pre-Delivery order made in
CRP(PD)No.567 of 2013
and
M.P.Nos.1 and 2 of 2013

06.03.2017