HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL MISCELLANEOUS APPEAL No.720 of 2016

JUDGMENT: (ORAL)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present appeal, the appellant herein, who is the respondent/defendant in I.A.No.87 of 2016 in O.S.No.70 of 2016 on the file of the XI Additional Chief Judge, City Civil Courts, Hyderabad, is aggrieved by the order dated 21.06.2016 passed in the aforesaid I.A.

2. The aforesaid I.A., was filed by the respondents herein under Order 39 Rules 1 & 2 read with Section 151 CPC seeking interim injunction, restraining the appellant-bank and its men from selling or transferring the petition schedule shares in favour of any person including legal entity, body corporate or otherwise pending disposal of the main suit.

3. It is an admitted fact that the shares in question were not the collateral security for the loan advanced qua Courtyard project, Hyderabad. It is not in dispute that Chennai project has already been settled between the parties and the total amount settled under One Time Settlement has already been paid by the respondents herein to the appellant-bank. In that view of the matter, the shares in question were not the collateral security for the loan advanced qua Courtyard Project, Hyderabad. Therefore, if the appellant-bank is holding shares

of the respondents for courtyard project, which are the collateral security for the loan advanced qua Chennai project, the same is in violation of Section 12 of the Depositories Act, 1996, which reads as under:

> *"12. Pledge or hypothecation of securities held in a depository. —*
> *(1) Subject to such regulations and bye-laws, as may be made in this behalf, a beneficial owner may with the previous approval of the depository create a pledge or hypothecation in respect of a security owned by him through a depository.*
> *(2) Every beneficial owner shall give intimation of such pledge or hypothecation to the depository and such depository shall thereupon make entries in its records accordingly.*
> *(3) Any entry in the records of a depository under sub-section (2) shall be evidence of a pledge or hypothecation."*

4. Moreover, the issue raised in the appeal is no more *res integra* as has been decided by the High Court of Madras in **P.N. Krishna Pattar v. Kannambra Nayar Veettil Valia Amma Kutti Neithiar's son Kunhunni Nayar and Ors.**[1], whereby a learned single Judge of the Madras High Court has held as under:

> *"Therefore a deposit of a share certificate would not confer any interest or property in the shares pledged because if default in payment is committed and the pledgee chooses to enforce the right of sale, he would not be in a position to transfer the title in them to the vendee. In order to constitute a valid delivery the pledgee must be put in control of the thing*

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[1] **AIR 1941 Mad. 394**

pledged so that he may effectively exercise the power of sale. In this connection I should like to refer to the decision in Lola Jyoti Prakash Nandi v. Lala Mukti Prakash Nandi (1916) 22 C.W.N. 297, where it was held that a mere deposit of Government securities cannot constitute a valid pledge. During the course of the judgment the learned Judges observed as follows:

It is difficult to apply the law relating to pawns as contained in the Contract Act to pledges of all classes of documents. Take the case of title deeds. What can the pawnee sell? There is no equitable mortgage even created by their delivery or deposit as collateral security outside presidency towns. They may be "goods" in the sense of being pieces of parchment or paper, but what value are they as such? Mere delivery of Government securities gives no property in them for purposes of negotiation or sale without endorsement."

5. In addition to the above, in **Pushpanjali Tie Up Pvt. Ltd., v. Renudevi Choudhary and Ors.**[2], a Division Bench of the Bombay High Court, held as under:

"For a pledge to be valid, it is mandatory that the pawnor creates it in the manner prescribed by the Depositories Act and the Regulations. This is clear from the words in section (2) of Section 12 : "Every beneficial owner shall give intimation of such pledge.....".

In the circumstances, the appeal is disposed of by the following order:

(i) The appeal against respondent No.3 is dismissed.

(ii) The appeal against respondent Nos.1 and 2is disposed of by appointing the Court Receiver of this Court as Receiver of the

[2] 2014(6) Mh.L.J. 124

said shares or any accretions thereto in the possession of respondent Nos.1 and 2.

Liberty to the parties to apply to the trial court in the event of there being a fluctuation or a SRP 43/45 APPL92.14.doc likelihood of a fluctuation in the price of the said shares.

Till the Court Receiver takes possession of the shares, respondent Nos.1 and 2 are restrained from disposing of, alienating, encumbering and/or creating any third party rights and/or interest in any manner whatsoever in the said shares or any accretions thereto.

Mr. Daver, the learned counsel appearing on behalf of the appellant seeks a stay of this order, insofar as it concerns respondent No.3, for a period of eight weeks. He states that the value of the shares is twice the amount of the third respondent's claim against respondent Nos.1 and 2. Mr. Chagla, on instructions, states that the value is about one and a half times the third respondent's claim against respondent Nos.1 and 2. In view thereof, the interim order shall continue upto and including 10th August, SRP 44/45 APPL92.14.doc 2014. Liberty, however, to the respondent No.3 in the meantime to apply to have this order modified in the event of there being a fluctuation or a likelihood of a fluctuation adverse to the interests of respondent No.3.

There shall, however, be no order as to costs."

6. In view of the admitted position, viz., shares in question are not the collateral security for the loan advanced qua Courtyard project, Hyderabad, and holding of the same is not in consonance with Section 12 of the Depositories Act, 1996, we hereby find no merit in the present appeal. Accordingly, the same is liable to be dismissed.

7. However, as it is agreed by the learned counsel for the appellant-bank that the appellant-bank shall not dispose of the

schedule shares, alienate or create any third party interest over the same till the disposal of the suit.

8. Since, the issue is in a narrow compass between the parties, we hereby direct the XI Additional Chief Judge, City Civil Courts, Hyderabad, to dispose of the suit, i.e., O.S.No.70 of 2016 within six (6) months from the date of Presiding Officer, presiding over the said Court.

9. We also make it clear that the observations made in the order dated 21.06.2016 passed in I.A.No.87 of 2016 in O.S.No.70 of 2016 shall not come in the way and the suit shall be decided on merits, uninfluenced by observations, if any, made in the aforesaid order.

10. It is needless to observe that schedule shares will be released subject to the outcome of the suit.

11. The appeal stands dismissed with the above observations. No order as to costs.

As a sequel, miscellaneous petitions if any pending stand closed.

SURESH KUMAR KAIT, J

GUDISEVA SHYAM PRASAD, J

April 27, 2017
MRR