

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE S.BASKARAN

O.S.A.No.366 of 2018
and
C.M.P.No.15769 of 2018

G.R.Ravichandran

..Appellant

Vs.

1.Central Bank of India,
ARM Branch,
Rep. by its Chief Manager,
48/49, Montieth Road,
Egmore, Chennai 600 008.

2.P.K.Radhakrishnan

..Respondents

PRAYER: Appeal filed against the Decree and Judgment dated 03.04.2018 in Application No.6920 of 2017 against Application No.5820 of 2016 in E.P.No.253 of 2014.

For Appellant : Mr.G.Veerapathiran

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J.)

This appeal has been preferred by the Decree Holder/plaintiff, as against the allowing of application filed by the third party/bank to raise an order of attachment made in the EP filed by the appellant/Decree Holder to execute the decree passed in his favour in the suit for recovery of money to the tune of Rs.1,28,00,000/- in C.S.No.677 of 2013 on the file of this Court.

2.The facts of the case are as follows:

The appellant is said to have advanced loan to the 2nd respondent to the tune of Rs.1,00,00,000/-. Subsequently, the 2nd respondent is said to have issued the following cheques:

S.No.	Cheque Date	Cheque No.	Cheque amount	Cheque favouring
1	25/12/2012	000014	Rs.7,50,000/-	Plaintiff
2	25/12/2012	000013	Rs.8,00,000/-	Plaintiff
3	25/12/2012	000012	Rs.8,00,000/-	Plaintiff
4	20/01/2013	000036	Rs.17,00,000/-	Plaintiff
5	20/01/2013	000035	Rs.13,50,000/-	Plaintiff
6	25/02/2013	000039	Rs.8,00,000/-	Plaintiff
7	25/02/2013	000040	Rs.8,00,000/-	Plaintiff
8	29/02/2013	000032	Rs.10,00,000/-	Plaintiff
9	29/02/2013	000033	Rs.10,00,000/-	Plaintiff
10	29/02/2013	000034	Rs.10,00,000/-	Plaintiff

The 2nd respondent further offered property situated at G-19, Second Main Road, Ambattur Industrial Estate, Ambattur, Chennai to the appellant. Thereafter, the 2nd respondent failed to pay the amount which compelled the appellant to file C.S.No.677 of 2013 on the file of this Court for recovery of amount along with 24% interest.

3.In the attachment application filed by the appellant, the 2nd respondent entered appearance and gave an undertaking that he would not alienate the property and the said undertaking has been recorded by order dated 08.04.2014 and an order was passed. Since the 2nd respondent admitted the claim of the appellant to the tune of Rs.31,00,000/- in Application No.3562 of 2014, which was filed to pass a decree to the extent of Rs.31,00,000/-, on the admission of the 2nd respondent, a decree was passed to the tune of Rs.31,00,000/- on 01.07.2014. To execute the said decree only, EP No.253 of 2014 was filed by the appellant. Since in the Execution Petition, the attachment passed by the Court continued, in the mean while, the 1st respondent/bank filed third party Application No.5820 of 2016 to raise the order of attachment stating that the bank is a secured creditor and the encumbrance is also revealed in the Encumbrance Certificate. Moreover, the bank contended that since there was a failure on the part of the 2nd respondent borrower to pay the amount to the tune of Rs.51,18,14,564.94/-, SARFAESI proceedings had been initiated and the suit property had already been sold in auction to third parties. Since the possession has to be handed over to the third party/purchaser by the bank, the bank has approached the Court.

4.After contest, the learned Master dismissed the application filed by the bank holding that the bank is a third party and a third party cannot seek raising of the order of

attachment against which the bank preferred an appeal by way of Application No.6920 of 2017 before the learned Single Judge of this Court. The learned Single Judge of this Court held that the bank is a secured creditor and the rights over the property is secured for the loan granted by the bank and therefore, raised the order of attachment by allowing the application holding that all the questions including question relating to title, right or interest in the property attached, shall be adjudicated upon in the application filed for raising the attachment. The said order passed by the learned Single Judge raising the order of attachment is being challenged before this Court.

5.Mr.G.Veerapathiran, learned counsel appearing for the appellant would submit that when the 2nd respondent gave an undertaking and an attachment order before judgment was already passed by the learned Single Judge of the Court, the Master has got no power to either vary, set aside or review the order of attachment and, therefore, the application to raise the attachment should not have been filed before the Master and therefore, application filed before the Master is not maintainable and consequent order passed in the application by the learned Single Judge, challenging the dismissal order of the Master in the application to raise the attachment has to be set aside. The prime contention is that the order passed by the learned single Judge cannot be raised by the Master. Hence, the application itself is not maintainable. As per Order XXI Rule 58 of the CPC, which state that any claim or objection made to the attachment of any property attached in the execution of decree shall be decided only by the Court and not by Master and therefore, he seeks to set aside the order passed by the learned Single Judge and seeks an order to the effect that the application for raising attachment before the Master is not maintainable.

6.Heard Mr.G.Veerapathiran, learned counsel appearing for the appellant in detail. The argument appears to be appealing that the order passed by the learned Single Judge cannot be raised or varied by the learned Master. However, once the decree has been passed, the order of attachment passed pending disposal of the suit gets merged with the decree. To execute the decree passed by the learned Single Judge, the power is only vested with the Master and therefore, the application has been rightly filed before the Master, especially, in the EP filed to execute the decree. When the attachment order got merged already with the suit decree, there is no question of pleading that the order of attachment was passed by the learned single Judge and that is sought to be varied or changed by the Master. Therefore, rightly the learned single Judge allowed the application to raise the order of attachment. Therefore, the appeal is liable to be dismissed.

7.Mr.G.Veerapathiran, learned counsel appearing for the appellant would seek liberty to attach or to proceed with any of the properties available or belonging to the Judgment Debtor. As per law, it is always open to the Decree Holder to proceed against the property of the Judgment Debtor, provided it is not already encumbered with prior to the claim of the appellant.

With the above observation, this Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Assistant Registrar,
Original Side, High Court,
Madras.
2. The Sub Assistant Registrar,
Judicial Side,
High Court,
Madras.

O.S.A.No.366 of 2018

NRI (CO)

rrs 23/10/2018

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