

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

O.S.A.No.226 of 2018
and
C.M.P.No.11306 and 12640 of 2018

1.Exertion Technology Private Ltd.,
No.17, Club Road,
Chetpet, Chennai 600 031.

2.N.Jayasankar
3.V.S.M.Mohan
4.G.Vimal Raj

... Appellants

Vs

1.N.Sharadha
2.N.Jaikumar

... Respondents

PRAYER : Appeal against the Fair and Decreetal order dated 08.06.2018 made in Appl. No.8542 of 2017 in C.S.No.68 of 2016 on the file of Original side of this Court.

For Appellants : Mr.S.Vasudevan

For Respondents: Mr.P.V.Balasubramani
For Mr.T.Mahendran

J U D G M E N T

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

The appeal has been filed against the order of issuance of warrant passed by the learned single Judge for not furnishing the security as ordered by the learned single Judge in Application No.8542/2017 in C.S.No.68/2016 by order dated 04.04.2018 by dismissing the application filed by the appellant on 08.06.2018 by which a property, which was already mortgaged to a bank was sought to be shown as security.

2.Suit is for recovery of money. Since the money Suit has been filed, application has been taken out for attachment before judgment in application No.8542 of 2017 and security was directed to be furnished by order dated 20.02.2018 to the value of the suit claim. Thereafter, the security was not furnished by the appellants and therefore, a non bailable warrant was issued on 04.04.2018. Subsequently on 20.04.2018, the appellants' counsel appeared and took time till 08.06.2018 to furnish security as per order dated 04.04.2018 and till such time, warrant was stayed. Thereafter, the appellants filed an affidavit furnishing security in the name of software being KINETICS AND SHIPSMART SOFTWARE, which is worth about Rs.20 crores. However, the learned counsel for the respondents pointed out that the property was already hypothecated to a bank for obtaining a loan. Further, the said bank initiated proceedings by issuance of sale notice as early as on 09.05.2014. Therefore, this Court rejected the said affidavit and issued a warrant. The said warrant is being challenged before this Court.

3.During the pendency of the O.S.A., two different properties viz., Door No.117, Flat No.7A, Second Floor, Sri Ganesh Flats, Vaniyar Street, Choolaimedu, Chennai 94 and Plot no.5, 5/4, Natesan Nagar West Street, Virugambakkam, Chennai 92, shown as security and the original documents had also been deposited before the original side of this Court. The learned counsel for the respondents would also confirm the same. The consent affidavits of the owners have also been filed. Therefore, the interest of the respondent has been sufficiently safeguarded till the disposal of the suit. Therefore, the warrant issued by the learned Single Judge is recalled and the matter is directed to be posted for filing written statement before the learned single Judge.

Accordingly, the appeal is allowed. Consequently, connected miscellaneous petitions are closed. No costs.

sai

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

To

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

+1cc to Mr.T.Mahendran, Advocate, S.R.No.87722
+2cc to Mr.S.Vasudevan, Advocate, S.R.No.86848

O.S.A.No.226 of 2018

KJI (CO)
KAK (21/01/2019)



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