

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 26TH DAY OF JULY 2018

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A.No.5625 of 2018

in

O.A.No.560 of 2018

in

C.S.No.388 of 2018

P.Rajaram

S/o. M.A.Ponnusamy Reddiar

No.10, Saradambal Street,

Gokulam Colony, T.Nagar,

Chennai 600 017.

...Applicant/Plaintiff
(in A.No.5625 of 2018 &
O.A.No.560 of 18)

Vs

1. Khimraj Sakariya

S/o. Late Misrimal

No.10/4, Barnaby Road,

Kilpauk, Chennai - 600 010.

2. Nishank Sakariya

S/o. Narendra Sakariya

No.36, Thambusamy Street,

Kilpauk, Chennai 600 010.

3. M/s. Nakoda Traders

Rep.by its Partner Ashok Kumar Jain

New No.336, Old No.349

Second Floor, Shop No.3, Mint Street,

Sowcarpet, Chennai 600 079.

4. Mahendar Bansali (HUF)

Rep.by its Karta Mr.Mahendar Bansali

E-504, 5th Floor, Roop Chambers

No.43 & 44, Erulappan Street,

Sowcarpet, Chennai 600 079.

5. Shikal A.Jain

D/o. Ashok Jain

No.16/9, Ekambareswarar Agraharam

Vittal Market,

Chennai 600 003.

6. Bhagyawanthi Bai

W/o. Shankarlal
No.10/3, Barnaby Road, Lane next to Aditya Hospital
Kilpauk, Chennai 600 010.

7. M/s. Ravi Enterprises
Rep.by its Proprietor Jayantilal
No.16/2, Narayana Mudali Lane,
Sowcarpet, Chennai 600 079.

8. Mrs.Indira Jain
W/o. Kishore Kumar
No.12/16, Ekambareswarar Agraharam
Park Town, Chennai 600 003.

9. M/s. Jineshwar Capitals
Rep.by its Partner Pramod Chorida
No.808 D, Poonamallee High Road,
Kilpauk, Chennai 600 010.

10. M/s. Balajee & Co.,
Auctioneer
No.160, Thambu Chetty Street
Chennai 600 001.

.... Respondents/Defendants

(in A.No.5625 of 2018 &
O.A.No.560 of 18)

Application praying that this Hon'ble Court be pleased to pass an most humbly prayed that this Hon'ble Court may be pleased to extend the time by 4 weeks to pay the sum of Rs.2,00,000/- (Rupees Two Crores Only) to the credit of above suit in C.S.No.388 of 2018 as per order dated 13.06.2018 in O.A.No.560 of 2018 in C.S.No.388 of 2018.

These applications coming on this day before this court for hearing the court made the following order:

The suit had been filed seeking redemption of the Mortgage dated 01.06.2016 registered as Document No. 1324 of 2016 in the office of the Sub Registrar, T.Nagar, Chennai, in respect of the suit schedule property on payment of a sum of Rs.5,22,33,787/- and for permanent

injunction restraining the defendants or anybody from proceeding against the suit schedule property in any manner whatsoever.

2. The schedule has been given in the plaint and it is follows:-

"Land and house situated at New Door No. 30, Old Door No. 27, North Boag Road, Thyagaraya Nagar, Chennai 600 017, comprised in R.S.No. 56/1 (Part) and R.S.No. 56/2 and Paimash No. 670, T.S.No. 4868/2 and New T.S.No. 8576/1 and New T.S.No. 8576/2, Block No.113 of T.Nagar Village, Mambalam - Guindy Taluk, Chennai District admeasuring 7255 sq.ft., (3 Grounds 55 sq.ft.,) or thereabouts."

3. Along with the suit, the plaintiff had filed O.A.No. 560 of 2018. The said application was filed since the auctioneer, who was impleaded as the tenth defendant had fixed the date of auction on 15.06.2018. The application was moved on obtaining permission for a lunch motion on 13.06.2018.

4. The plaintiff and the defendants, who had entered appearance through caveat, were represented by learned Senior Counsels. In the presence of the learned Senior Counsel, this Court had passed an order on 13.06.2018 that as a pre-condition, the plaintiff is to deposit a sum of Rs.2/- crores. The said condition had been imposed even though the plaintiff himself had stated that he is due and liable to a sum of Rs.5,22,33,787/-,

which even according to the statement of the plaintiff, has to be paid to the defendants before the mortgage can be redeemed. When the order to deposit Rs.2/- crores was passed, the learned Senior Counsel for the defendant stated that instructions had been given to the auctioneer to postpone the auction. Time was granted till 23.07.2018 and the matter was to be called on 24.07.2018 for 'reporting compliance'. The plaintiff did not deposit the amount of Rs.2/- crores.

5. On the other hand, he has filed the present application in A.No. 5625 of 2018 seeking further time of four weeks to pay the said sum of Rs.2/- crores.

6. In the reasons stated in the affidavit filed in support of the application, the plaintiff has stated that he has made all sincere attempts to raise funds. He has also stated that he had been allotted a few flats to his share in the development of the property, which had been entrusted on Joint Venture to a builder. He had more or less finalised the disposal of two flats for mobilising the sum of Rs.2/- crores. It had been stated that since orders have been passed by the High Court regarding alleged encroachment by the builder, third parties are hesitant to enter into the agreement and advance money. These statements make it clear that the defendants would never raise the amount of Rs.2/- crores. There is no possibility of disposing the flats and raise the amount of Rs.2/- crores.

7. Having himself admitted that he is due and liable to a sum of Rs.5,22,33,787/-, it should have been only just on the part of the plaintiff to come forward voluntarily and deposit the amount into Court before

seeking any further orders. The concession granted by directing deposit of a sum of Rs.2/- crores also has not been availed of.

8. The defendants had been served with this application and have also filed counter affidavit and they have specifically stated that the plaintiff has not furnished the details about the holding or the details about the extent of ownership and the flats allotted in the Joint Venture to the plaintiff. They have also stated that the orders of the High Court was only with respect to encroachment and the order was passed on 16.07.2018.

9. Very particularly, the plaintiff had not mentioned as to the steps, he had taken from 13.06.2018 to mobilise the amount. He only stated that he had tried to enter into agreements for sale of the two flats and in the same breath has also stated that such sale would not possible since vendors are not forthcoming.

10. In view of this, it is clear that the defendants will never pay the amount of Rs.2/- crores as directed by this Court. Consequently, the application seeking extension of time for a period of four weeks is dismissed.

11. A.No. 5625 of 2018 is dismissed. Since orders have been passed in A.No. 5625 of 2018 refusing to grant extension of time, in O.A.No. 560 of 2018 wherein condition was passed to deposit a sum of Rs.2/- Crores on or before 23.07.2018 and such condition had not been complied with, O.A.No. 560 of 2018 is also dismissed. The said application had been filed with reference to auction dated 15.06.2018, which date has also long passed by.

12. Office is directed to put up a note with respect to service of suit summons on each one of the defendants.

13. For putting up such a note by the Office, call the matter once again on 13.08.2018.

Sd/.C.V.K.J

26.07.2018

//Certified to be a true copy//

Dated this the day of 2018.

KY/26.07.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.