



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **27.06.2018**

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**
C.R.P. (MD) No.2287 of 2013

and
M.P. (MD) No.1 of 2013

1. The State Bank of India,
Woraiyur Branch,
Tiruchirappalli,
represented by its Branch Manager.

2. The Chief Manager-cum-Authorised Officer,
State Bank of India,
Bharathiar Salai,
Tiruchirappalli.

... Petitioners

vs

1.Shanthi

2.Ganesh Babu

3.Mohandoss

(R3 has been impleaded vide order
dated 09.12.2013.)

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 20.06.2013 passed in I.A.No.21 of 2013 in O.S.No.40 of 2011 on the file of the Additional Sub-Court, Kumbakonam.

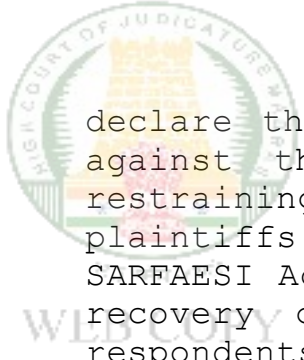
For Petitioners	: Mr.V.Meenakshisundaram
For R1	: Mr.K.S.Shangar Murali
For R2	: Mr.N.C.Ashok Kumar
For R3	: No appearance

ORDER

This civil revision petition has been filed to set aside the fair and decreetal order dated 20.06.2013 passed in I.A.No.21 of 2013 in O.S.No.40 of 2011 on the file of the Additional Sub-Court, Kumbakonam.

2.The petitioners are the defendants in the suit in O.S.No.40 of 2011 on the file of the Additional Sub-Court, Kumbakonam.

3.The first respondent in this civil revision petition is the plaintiff in the suit in O.S.No.40 of 2011 and filed the suit to

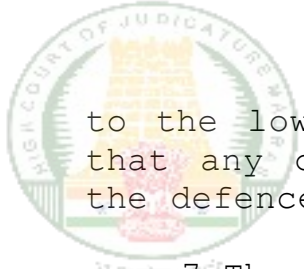


declare that the plaintiff's liability as a surety is discharged against the defendants 3 and 4 and for permanent injunction restraining the defendants 3 and 4 from proceeding against the plaintiffs in respect of the suit property by invoking the SARFAESI Act and for return of the original sale deed and also for recovery of a sum of Rs.75,000/- illegally collected by the respondents 3 and 4.

4.The case of the plaintiffs is that the first defendant wanted to pursue his higher education at United Kingdom. Since the defendants 1 and 2 approached the third defendant bank for availing financial assistance for first defendant's higher education, the third defendant bank accorded sanction of the higher educational loan of Rs.12,00,000/- but insisted the defendants 1 and 2 to immovable property as security. It is further stated that the third defendant bank insisted the defendants 1 and 2 to offer immovable property as collateral security for due repayment of the higher educational loan despite the circular issued by the Reserve Bank of India not to get any security for educational loan.

5.He further stated that after getting the property from the second defendant in respect of his House property, the second defendant, who is employed in BHEL, was also asked to give personal guarantee. Since the bank insisted further security, the defendants 1 and 2 approached the plaintiff to offer her document of title as collateral security. Since sufficient security is given by defendants 1 and 2, plaintiff states that she obliged. Later, it appears that the House property offered by second defendant was released without the knowledge of plaintiff fraudulently with an intention to make the plaintiff's property liable for the loan. Hence, it is stated that her liability as guarantor and mortgagor for the debt cannot be enforced. The plaintiff stated in the plaint that the plaintiff is entitled to the release of the document during pendency of suit, the petitioners filed an Interlocutory Application in I.A.No.21 of 2013 under Order XIV Rule 2 (12) r/w Section 151 CPC., to decide the issue, whether the civil Court has got jurisdiction to try the suit in view of the express provisions of Securitisation Act. Though the third respondent bank raised that the preliminary issue before the commencement of the trial, the same was dismissed by the trial Court holding that the civil Court has jurisdiction *prima facie* and that the preliminary issue can be decided along with other issues as the questions raised by the plaintiffs in the suit is regarding fraud. It is therefore, the trial Court observed that the suit can be disposed of along with all issues after considering the entire evidence on record.

<https://hcservices.courtsofmadras.in/hcservices> 6.The learned counsel appearing for the petitioners fairly conceded that the Civil Revision Petition can be disposed of without going into the merits of the case by issuing a direction



to the lower Court to dispose of the suit. It is further stated that any observations made in this application shall not affect the defence raised by the petitioners in the suit.

7. The respondents in this civil revision petition have no objection and hence, the above Civil Revision Petition is disposed of with a direction to the learned Additional Sub-Court, Kumbakonam, to dispose the suit in O.S.No.40 of 2011 as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order. It is made clear that any observation and decision of the lower Court as well as this Court in this petition, shall not affect the contentions put forth by the respective parties. The suit shall be disposed of on merits uninfluenced by this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

The Additional Subordinate Judge,
Kumbakonam.

+ 1 cc TO Mr.D.Nallathambi , Advocate in SR No. 70154
+ 1 cc TO Mr.K.S.Shangar Murali , Advocate in SR No. 70159
+ 1 cc TO Mr.N.C.Ashok Kumar , Advocate in SR No. 70029

mm

AE/SV/SAR3/17.07.2018/3P/5C

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27.06.2018