

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

Civil Revision Petition No.2649 and 2022 of 2016

ORDER :

Heard both sides and perused the grounds of both the revisions and respective impugned orders in I.A.No.567 and 568 of 2015 in O.S.No.347 of 2013 dt.22.06.2016 passed by the lower Court and other material on record.

2. The self-same revision petitioner is the plaintiff who aggrieved by the orders of the lower Court in I.A.Nos.567 and 568 of the 2015 supra filed by the on the application of the D.6 seeking to strike off his name from the array of the suit and to dismiss the suit against him.

3. Coming to the facts, the revision petitioner as sole plaintiff maintained the suit against the D.6 saying late Hastimal Bhawarlal Jain-father of D.1 to 4 and husband of D.5, a family friend of plaintiff since her father's time, borrowed Rs.16,50,000/- on 18.07.2010 with undertaking letter in acknowledgment of the same to pay with the stipulations therein and failed to pay including the agreed rate of interest amounts despite demands by vain promises and he passed away later on 13.02.2013 and after that the D.1 to D.5 even postponing on one pretext or the other without payment and the property which is the joint family property of late Bhanwar Jain supra, his sons and daughter and wife-the D.1 to D.5, which is in their hands is liable for recovery of the suit amount of the plaintiff to a tune of Rs.27,19,000/- in seeking to pass a decree for recovery of said amount

against the D.1 to 5 and to direct the D.6-M/s.India Bulls Housing Finance Limited supra to consider the offer of plaintiff to pay the suit amount by D.6 by adding of the claim of the plaintiff from D.6 of any recovery of the amounts due to them against the D.1 to D.5 therefrom and to pass such other just orders.

4. The two applications filed by D.6 in the wake of above facts in seeking to delete the array of D.6 and dismiss the claim against the D.6 saying there is no privity of contract between the plaintiff and the D.6 and the D.6 no way liable to the suit claim and the D.6 being a secured creditor to the D.1 to 5 and the property in their hands of late Bhanwarlal Jain is entitled under the Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(for short, 'the SARFAESI Act') also and the prayer sought in the plaint against the D.6 by plaintiff is unsustainable and thereby the D.6 is neither necessary nor proper party to the suit for any of the suit reliefs in favour of plaintiff

5. Here pursuant to the above and the impugned orders respectively passed by the lower Court, dt.22.02.2016 saying the D.6 being the secured creditor of late Bhanwarlal Jain whose wife and children are the D.1 to 5, having first charge over the property which in their hands and got right to be sought by the plaintiff for attachment if at all for any amounts left after realization of the secured debt by the D.6 on the surplus and not otherwise and having regard to the above, the D.6 is neither necessary nor proper party to the suit and plaintiff is not entitled to the claim against the D.6 in dismissal of the same.

6. The contentions in the grounds of revisions vis-à-vis the oral submissions of the learned counsel for the plaintiff-the revision petitioner are that the impugned orders are unsustainable and outcome of non application of mind and beyond the scope of law in deciding the application and thereby liable to be set aside.

7. Whereas, the D.6 supported the order of the lower Court in all respects, leave about the other defendants not chosen to make any specific contest in the revision.

8. From perusal of the material and hearing of both sides in the facts supra which no way requires repetition, whether plaintiff is entitled to any relief sought as clause 2 of the relief portion in the plaint, is a matter to be decided in the suit. Once undisputedly, the D.6 is a secured creditor of the property of the D.1 to 5 and the deceased Banwarlal Jain including any joint family properties to have among those to the extent covered by any secured debt after satisfying secured debt even from the impugned order of the lower Court, the petitioner-unsecured creditor also entitled to recover from the defendants of the estate in their hands left, leave about the plaintiff otherwise entitled in the event of decree against the D.1 to 5 and the property in their hands, as the case may be, to proceed to recover said decree debt subject to satisfaction of the secured debt of the D.6 and in that sense also if not necessary at least D.6 is a proper party and thus the deletion of the D.6 from the array in the suit lies by dismissal of suit against the D.6 by the lower Court is unsustainable.

9. Accordingly and in the result, both the revisions are allowed however it is made clear that the array of the D.6 will not take away any of his defence of not liable for personal decree or to submit any relief to the plaintiff by the D.6 is a matter of defence to raise before the lower Court if any written statement not filed, at least to file within one week from the date of receipt of the order for the Court to formulate appropriate issues and decide the lis.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

Dt.22.01.2018.

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Dr. B. SIVA SANKARA RAO, J

