O.A.Nos. 936 & 937 of 2014
in
C.S.No. 742 of 2014

R.SUBRAMANIAN, J.

These applications have been filed seeking order of injunction restraining the second respondent from handing over the documents of title deeds relating to the property situated at Old Survey No.28/2, Survey No. 28/2C2 as per Patta situated at No.52, Moulivakkam Vilage, Sriperumbudur Taluk, Kancheepuram to the first defendant and for the injunction restraining the first defendant from alienating or encumbering the property subject matter of the suit, till disposal of the suit.

2. The main original suit in C.S.No.742 of 2014 has been filed by the plaintiff seeking recovery of sum of Rs.1,82,40,877/- with future interest at the rate of 12% per annum on Rs.1,64,80,000/- being the amount repaid by the plaintiff as a guarantor to the second defendant bank.

3. According to the plaintiff, the first defendant, who is his brother had borrowed monies from second defendant bank by mortgaging the suit schedule property in favour of the second defendant bank. The plaintiff had guaranteed repayment of the said loan by the first defendant. The first defendant failed to honour the said commitment under the loan account and hence, the bank issued a notice to the plaintiff in his capacity as a guarantor requiring him to regularize

the accounts. Upon receipt of the notice, the plaintiff as a guarantor paid the balance due under the loan account namely, a sum of Rs.1,64,80,000/- on 29.11.2013. The same is evidenced by the statement issued by the State Bank of India, Pondy Bazaar Branch. Claiming that, upon such payment, the plaintiff had stepped into the shoes of the lender namely, State Bank of India and he is entitled to the rights of the creditor in terms of sections 140 and 141 of the Indian Contract Act and he has come forward with the present suit. Pending the above suit, the plaintiff has sought for injunction.

4. The first defendant would contend that the loan was not borrowed for his personal purpose but the same was borrowed for the joint business that was being carried on by the brothers till 01.01.2013. It is also the further contention of the first defendant that he has left his stocks worth about Rs.2,54,00,000/- when he left joint business and started his own business at Moulivakkam and Selaiyur from 01.01.2013. It is also contended that the plaintiff and the other brother T.P.Saravanan were allowed to sell the stocks and pay the first defendant the value of the stocks. Therefore, the first defendant would contend that whatever has been paid by the plaintiff is only in discharge of the joint debt. Even assuming that the debt is his personal debt, the stocks left in the custody of the plaintiff and other brother T.P.Saravanan would be sufficient to discharge the debts.

5. As regards the contention that the loan is not personal loan and it is availed for the purposes of joint business that was being carried on. Mr.S.Thangavel, learned counsel for the plaintiff would draw my attention to the reply notice issued by the counsel for the first defendant on 30.05.2013, wherein it is specifically stated that the property has been mortgaged for the personal loan of the first defendant. The relevant portion of the said notice reads as follows : -

> *"My client states that if T.P.Ganapathy's Kundrathur property is released from the mortgage it would cause enormous and undue strain on my client's Mugalivakkam property which is mortgaged in respect of his personal loan and also that of the company. If for some reason the Company fails to maintain OD A/C No.32019935685, Loan A/C No.31811742612, my client's property which is the subject matter of charge would be proceeded against, which in turn would affect my client's personal loan as he may be compelled to give additional or other security in respect of his personal loan 30317913260."*

When such is the stand taken by the first defendant in his reply notice even in the year 2013, it is not open to the first defendant to contend that the loan was borrowed for the joint business.

6. The learned counsel for the first defendant Mr.R.Chandrasekaran would rely upon the undertaking, which is said to have been given by one of the brothers namely, T.P.Saravanavel on 12.05.2013 in and by which, the said Saravanavel undertakes to sell the stocks for Rs.2,49,00,000/-, which were left behind by the first defendant and pay the proceeds to the first defendant. The said undertaking reveals that since Saravanavel is now running the shop in Pondy Bazaar, which was run by the first defendant and the first defendant had left stocks worth Rs.2,49,00,000/- had undertaken to sell the stocks and pay the value to the first defendant. The plaintiff has nothing to do with the said undertaking. The learned counsel would also draw my attention to so called undertaking given by the plaintiff to pay a sum of Rs.80,00,000/- to the first defendant. The said undertaking appears to have been entered into in the presence of the Police Officials. It is a true copy issued by the Inspector of Police, Law and Order, S-15 Selaiyur Police Station. The learned counsel for the plaintiff would submit that the said agreement was obtained by force and therefore, it is not enforceable. It is for the first defendant to seek appropriate remedy based on the said undertaking.

7. In view of the above, I find that the plaintiff has made out a *prima facie* case for grant of injunction as prayed for. Balance of convenience is also in favour of the plaintiff. Hence, A.No.937 of 2019 is allowed, the order of

injunction granted on 17.11.2014 is made absolute.

8. The learned counsel appearing for the second defendant/State Bank of India would submit that the entire dues under the loan account have not been settled and hence, they are entitled to retain the securities. The said statement is recorded. In view of the said statement, no further orders are necessary in A.No. 936 of 2019 for the present.

19.06.2019

kkn

R.SUBRAMANIAN, J

kkn

O.A.Nos. 936 & 937 of 2014
in
C.S.No. 742 of 2014

19.06.2019

18.06.2019