

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 30TH DAY OF SEPTEMBER 2019

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

A.NO.4322 OF 2019

IN

C.S.Diary No.18962 of 2019

M/S.ELECTROSTEEL CASTINGS LIMITED
HAVING REGISTERED OFFICE AT
RATHOD COLONY, RAJGANGPUR,
SUNDERGARH, ODISHA, 770017,
AND FUNCTIONING THROUGH ITS
ADMINISTRATIVE OFFICE AT
148/150 LUZ CHURCH ROAD, CHENNAI .. Applicant/Plaintiff

-vs-

1. UV ASSET RECONSTRUCTION COMPANY LIMITED,
704 DEEPALI BUILDING, 92,
NEHRU PLACE, NEW DELHI-110 019.

2. SREI INFRASTRUCTURE FINANCE LIMITED
HAVING ITS REGISTERED OFFICE AT NO.6A,
KIRAN SHANKAR ROY ROAD,
KOLKATTA-700 001
HAVING ITS BRANCH OFFICE AT
PETERS COLONY, ROYAPETTAH,
CHENNAI-6.

3. ELECTROSTEEL STEELS LIMITED,
801, UMA SHANTI APARTMENTS.
KANKE ROAD, RANCHI-834 008,
JHARKHAND

..RESPONDENTS/DEFENDANTS

Application praying that this Hon'ble Court be pleased
To grant leave to the Applicant to institute the above suit
against the Defendants before this Hon'ble Court.

This Application coming on this day before this court
for hearing and the Court made the following order:

The above Application has been filed seeking to grant leave to
the applicant to institute the above suit against the defendants.

2. The plaintiff in the suit is the applicant herein. The suit has
been filed seeking for the following reliefs:

(a) A declaration that the purported Assignment Agreement between the 1st and 2nd defendants dated 30.06.2018 is bad, invalid, illegal void *ab initio* and of no legal effect or consequence against the plaintiff, whatsoever, and for a consequential PERMANENT INJUNCTION restraining the defendants 1 and 2 from acting or, implementing or in any manner taking any action against the plaintiff on the basis of the Assignment Agreement dated 30.06.2018;

(b) A declaration that the 1st defendant and 2nd defendant do not have the right to retain the title deeds of the plaintiff detailed in Schedule B hereto and a consequential direction to the 1st defendant to return to the plaintiff the Specific Movable Property, namely the deeds of title more fully described in the Schedule B hereto; and

(c) direct the defendants to bear the costs of this suit.

3.1. The learned Senior Counsel for the applicant/plaintiff submitted that the 2nd respondent/2nd defendant had extended certain financial assistance to the 3rd respondent/3rd defendant and the applicant/plaintiff stood guarantee for such financial assistance, however, the 3rd respondent/3rd defendant was unable to discharge its liabilities as and when they fell due. Therefore, proceedings were initiated before the National Company Law Tribunal (hereinafter referred to as 'NCLT') under the provisions of the Insolvency and Bankruptcy Code. He would further submit that during the course of the insolvency resolution process, one bidder, M/s.Vedanta Limited submitted a resolution plan which involved the full discharge of all dues to all the creditors of the 3rd respondent/3rd defendant, by

(a) payment of an upfront Cash portion, and

(b) issuance of equity shares in Defendant No.3.

3.2. The learned Senior Counsel for the applicant/plaintiff would submit that the said arrangement was unequivocally accepted by all the lenders of the 3rd respondent/3rd defendant, including the 2nd

respondent/2nd defendant. Pursuant to the approval of the Resolution Plan by the Committee of Creditors and NCLT, M/s.Vedanta Limited discharged the liabilities of all the creditors of the 3rd respondent/3rd defendant, including the 2nd respondent/2nd defendant in full by payment of cash and issuance of equity shares.

3.3. Despite having received the entirety of the agreed outstandings in full in terms of the Resolution Plan the 2nd respondent/2nd defendant took an unscrupulous position that it still had outstandings from 3rd respondent/3rd defendant, and assigned the same to the 1st respondent/1st defendant, along with the right to recover from the applicant/plaintiff under the terms of the guarantee issued by the applicant/plaintiff to secure the 3rd respondent's/3rd defendant's payment obligations. Hence, the applicant/plaintiff has filed the present suit for declaration that the so called Assignment Agreement dated 30.06.2018, executed by 2nd respondent/2nd defendant in favour of 1st respondent/1st defendant, is fraudulent and void and for consequential injunction not to enforce the same.

3.4. The learned Senior Counsel for the applicant/plaintiff would contend that the suit is not a suit for land, but is a suit on contract and out of the three respondents/defendants, the 2nd respondent/2nd defendant has its place of business in Royapetta, Chennai. He would further contend that on 19.06.2019, the 1st respondent/1st defendant issued a Possession Notice to the applicant/plaintiff under Section 13(12) of the Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'SARFAESI Act'). Hence, left with no other alternative, the applicant/plaintiff filed the present Application seeking for the relief stated *supra*.

3.5. The learned Senior Counsel for the applicant/plaintiff would argue that the applicant/plaintiff received the said Possession Notice from the 1st respondent/1st defendant, at its factory, which is within the jurisdiction of this Court. Apart from that the 2nd respondent/2nd

defendant is also having the place of business at Chennai, which is also within the jurisdiction of this Court. He would further argue that suit is not for land but it has been filed only to declare the Assignment Agreement dated 30.06.2018, as null and void since the possession is remain with the applicant/plaintiff. The major part of cause of action arose within the jurisdiction of this Court and that the suit is certainly maintainable before this Court. He therefore prayed that the present Application may be allowed.

3.6. The learned Senior counsel for the applicant/plaintiff would submit that the 1st respondent/1st defendant is disputing this Application by raising the following contentions:

(a) Actions taken by the 1st respondent/1st defendant can only be questioned under SARFAESI Act.

(b) Liability of guarantor is independent to the principal borrower;

(c) This Court has no jurisdiction to entertain the present suit as there is a bar under Section 34 of the SARFAESI Act r/w. its applicable rules and regulations.

(d) This is a suit for land and that this Court has no jurisdiction.

4. The main contention of the applicant/plaintiff is that the Debts Recovery Tribunal (hereinafter referred to as 'DRT') cannot adjudicate or go into the question of granting the relief sought for by the applicant/plaintiff in the present suit since the proceedings under Section 13(4) of the SARFAESI Act, can only be challenged before the Tribunal constituted under the SARFAESI Act. Moreover, the applicant/plaintiff herein filed an Appeal under Section 17 of the SARFAESI Act, before the DRT at Chennai and while the DRT felt competent to adjudicate upon the legality of the Possession Notice, stated that it cannot adjudicate the relief of declaration with respect to the rights under the Assignment Agreement sought for by the applicant/plaintiff in the present suit. Accordingly, the DRT rejected

the SARFAESI Appeal vide Registry Endorsement dated 02.08.2019. Therefore, the present suit is certainly maintainable.

5. The 2nd respondent/2nd defendant has filed the counter affidavit, wherein, they have stated that no cause of action of the suit has arisen within the jurisdiction of this Court and that the leave may not be granted to the applicant/plaintiff to institute the present suit.

6. The learned counsel appearing for the 1st respondent/1st defendant submitted that no cause of action arose within the jurisdiction of this Court, in fact, the loan was also sanctioned outside the jurisdiction of this Court. When such being the case, any decision touching upon the Assignment Agreement dated 30.06.2018, would certainly relate to the title and possession of the land in question. He further submitted that the suit cannot be maintainable before this Court and the leave may not be granted to the applicant/plaintiff.

7. To retain the title deeds and the consequential permanent injunction, the suit is proceeded *inter alia* since the debts of the 3rd respondent/3rd defendant has been discharged by the Insolvency Resolution Process. The Assignment Agreement dated 30.06.2018, executed by the 2nd respondent/2nd defendant in favour of the 1st respondent/1st defendant, outside the jurisdiction of this Court is not valid and the same indicates that the parties of the said Assignment Agreement are residing outside the jurisdiction of this Court viz., the 2nd respondent/2nd defendant is having its Registered Office at Kolkata and the 1st respondent/1st defendant is in New Delhi. Moreover, a Letter dated 04.03.2019, issued by the applicant/plaintiff to the respondents/defendants 1 & 2 also shows that 1st respondent/1st defendant is in New Delhi and the Registered Office of the 2nd respondent/2nd defendant is situated at Kolkata. All other communications produced by the applicant/plaintiff clearly reflects that the applicant/plaintiff is holding its Head Office at Kolkata, which is outside the jurisdiction of this Court and having its factory premises in Chennai are situated in Elavur and Gummidipoondi, which are, outside

the jurisdiction of this Court.

8. It is really pertinent to quote Clause 12 of the Letters Patent Appellate & Original Side Rules:

12. Original jurisdiction as to suits – And We do further ordain that the said High Court of Judicature at Madras, in exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try and determine suits of every description if, in the case of suits for land or other immovable property, such land or property shall be situated, or, in all other cases, if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court: or if the defendant at the time of the commencement of the suit shall dwell or carry on business or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause at Madras, in which the debt or damage, or value of the property sued for does not exceed one hundred rupees.

9. Admittedly, in the present suit, the properties are situated outside the jurisdiction of this Court. If the suit is for land, and if the property is situated outside the jurisdiction of the High Court, even if, the part of cause of action arose within the jurisdiction of the High Court, the High Court cannot entertain the suit. It is to be noted that the proceedings already initiated under Section 4 r/w. Section 13(4)(a) of the SARFAESI Act and in the case, where the symbolic possession is already with the assignee, any suit filed challenging the Assignment Agreement is certainly includes the right and possession of the property. In the present suit, such being the position and therefore, this suit squarely falls within the ambit of 'suit for land'. In the cases

of similar nature, the Honourable Apex Court and this Court have held as follows:

- ***Sumer Builders Private Limited Vs. Narendra Gorani*** reported in **(2016) 2 SCC 582**

"14. In *Adcon Electronics*, the two-Judge Bench referred to the divergence of opinion in *Moolji Jaitha*, the Full Bench decision of the High Court of Madras in *P.M.A.Velliappa Chettiar v. Saha Govinda Doss*, the Division Bench judgement of the Calcutta High Court in *Debendra Nath Chowdhury v. Southern Bank Ltd.* and ruled thus: (*Adcon Electronics* case, SCC p. 704, para 15)

"15. From the above discussion it follows that a 'suit for land' is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable property. Whether a suit is a 'suit for land' or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein: where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property, it will be a 'suit for land'. We are in respectful agreement with the view expressed by *Maharajan, J.*, in *Moolji Jaitha* case." "

- ***K.Kathirvel Vs. Phoenix Asset Reconstruction Company Pvt. Ltd., Rep. By its CEO Mr.Eshwar Karra Mumbai & Others*** reported in **CDJ 2018 MHC 1526**

"48. Material on record discloses that when the writ petitioner had challenged the deed of assignment dated 30.01.2010, in S.A.No.328 of 2014, the Tribunal seemed to have dismissed the same, on the grounds of maintainability. According to the petitioner, the Tribunal has failed to consider the loan stood discharged by

payment of OTS.

49. According to the petitioner, the Tribunal has erred on facts. Dismissal on the grounds of maintainability and facts, could have been raised before the appellate forum and that the petitioner has failed to do so. Instead, when the petitioner has prayed to set aside the assignment deed, on the submissions extracted supra, we have answered accordingly. There are no merits in the writ petitions and accordingly, the same are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.”

10. In the case of **K.Kathirvel Vs. Phoenix Asset Reconstruction Company Pvt. Ltd., Rep. By its CEO Mr.Eshwar Karra Mumbai & Others** reported in **CDJ 2018 MHC 1526**, this Court has held that when the writ petitioner challenged the Assignment Deed dated 30.01.2010, in S.A.No.328 of 2014 before the Tribunal, the same was dismissed by the Tribunal, on the grounds of maintainability. Similarly, in the present suit, the applicant/plaintiff is seeking for declaring that Assignment Agreement dated 30.06.2018, executed between the respondents/defendants 1 & 2 as invalid, illegal and void *ab initio* and for a consequential permanent injunction to restrain the respondents/defendants 1 and 2 from acting or, implementing or in any manner taking any action against the applicant/plaintiff on the basis of the said Assignment Agreement.

11. In the light of the judgment passed by this Court in **K.Kathirvel Vs. Phoenix Asset Reconstruction Company Pvt. Ltd., Rep. By its CEO Mr.Eshwar Karra Mumbai & Others** reported in **CDJ 2018 MHC 1526** and also taking note of the fact that this is a suit for land and the suit property is also situated outside the jurisdiction of this Court, this Court is of the opinion that the present

suit is not at all maintainable and therefore, the same cannot be entertained by this Court. Therefore, this Application is dismissed. However, liberty is granted to the applicant/plaintiff to approach the Tribunal.

Sd/- N.S.K.J.

30.09.2019

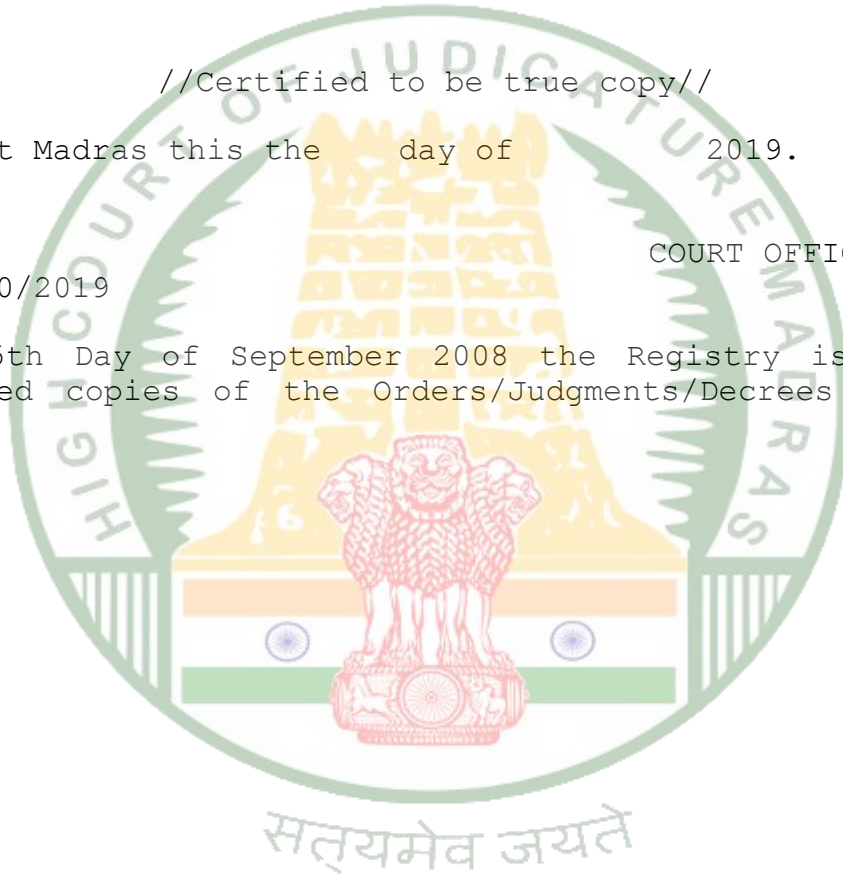
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Dated at Madras this the day of 2019.

COURT OFFICER(O.S.)

Su.25/10/2019

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