IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 25th DAY OF JANUARY 2019

THE HON'BLE MR. JUSTICE M.GOVINDARAJ

A. No.7465 of 2017

In the matter of Arbitration & Conciliation Act, 1996
And
In the matter of Loan-cum-Hypothecation Agreement No.HP-5771 dated 31.03.2011 and disputes between

M/s.Indo Asia Finance Limited,
No.15, New Giri Road,
T.Nagar, Chennai-600 017
rep. by its Sr.Manager (Legal),
Mr.G.Santhanakrishnan ... Applicant

-Versus-

1. Mr.R.Selvaraj,
S/o.Rajasigamani,

2. Mrs.Alice Rajasigamani,
W/o.Rajasigamani,

3. Mrs.Angelen Selvaraj,
W/o.Selvaraj,
1 to 3 are residing at
Old No.4, New No.37,
Mahalakshmi Street,
T.Nagar, Chennai-600 017
Presently at Plot No.105,
House No.39, Defence Officer's
Colony 1st Avenue, Ekkattuthangal,
Chennai-600 032. ... Respondents

4. Tamilnad Mercantile Bank Ltd.,
Chennai-T.Nagar Branch,
No.25, Venkatanarayana Road,
T.Nagar, Chennai-600 017. ... Garnishee

Application praying that this Hon'ble Court be pleased to issue a prohibitory order prohibiting the respondent/ garnishee 4 from making any payment to the respondents 1 to 3 and prohibit the respondents 1 to 3 from receiving any funds from the garnishee and direct the garnishee 4 to deposit a sum of Rs.2,00,21,077/- (Rupees two crores and twenty one thousand and seventy seven only) approximately lying in their hands to the credit of the above application.

This application coming on this day before this court for hearing, the court made the following order:-

This application prays for issuing a prohibiting order prohibiting the respondent/garnishee 4 from making any payment to the respondents 1 to 3 and prohibit the respondents 1 to 3 from receiving any funds from the garnishee and direct the garnishee 4 to deposit a sum of Rs.2,00,21,077/- approximately lying in their hands to the credit of the above application.

2. It is seen that the respondent No.4 Bank has filed its counter stating that the Bank has primary charge over the property in view of the subsisting mortgage which was executed by the respondents 1 and 2 in the year 2008.

3. It is the contention of the learned counsel for the 4th respondent that the borrowers/respondents 1 and 2 have executed mortgage deed in respect of all the properties for various loans secured by them in favour of the 4th respondent Bank.

4. It is further contended that as on 31.12.2017, a

sum of Rs.3,52,93,187.66 is due under the loans after selling the immovable property and the bank while initiating SARFAESI measures also simultaneously initiated recovery proceedings before DRT-II, Chennai. The amount realised through the sale of the mortgaged property should be adjusted against the O.A.Claim.

5. It appears that the 4th respondent Bank proceeded against the respondents 1 and 2 before the Debt Recovery Tribunal under SARFAESI Act and sold the property, but the sale proceedings did not satisfy the loan accounts of 1st and 2nd respondents pending with the 4th respondent.

6. When there is a a primary charge with the 4th respondent in respect of the property , the prohibition order to be passed by this Court shall not stand in the way of enforcing the rights of the 4th respondent.

7. It is seen that the applicant Finance Company has only a second privilege over the property.

8. In view of the pendency of the proceedings between the respondents/borrowers and 4th respondent Bank who is the primary charge holder, this Court is of the considered opinion that the order to be passed by this Court t will prevail over the right of the primary charge holder. Hence, it is open to the applicant to raise all these pleas before the concerned Forum.

9. With the above observation, this application is closed.

Sd/-M.G.R.J
25/01/2019

//Certified to be true copy//

Dated at Madras this the day of 2019.

COURT OFFICER(O.S.)

JJ 22/07/2019

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.