IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 2.11.2020

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Application No.A.No.1950 of 2020
in C.S.No.598 of 2019

ICICI Bank Ltd.
Rep. by its Authorized Officer
Arihan Insight, 2nd Floor,
East Wing, DSMG,
Ambattur Industrial Estate,
Ambattur, Chennai 600 058. ... Applicant

Vs.

1 P.Rajaram
2 Bhargavi Reddy
3 S.Ravindranathan ... Respondents

PRAYER : Application filed under Order XIV Rule 8 of O.S.Rules R/W Order XXXVIII Rule 9 and read with Section 151 of C.P.C. to raise/removal the order of attachment passed in O.A.No.7534 of 2019, dated 31.10.2019 aainst the secured asset by this Court to enable the applicant to conduct auction sale of the secured asset scheduled on 8.4.2020.

For Applicant : Mr.S.Parthasarathy
For Respondents : Mr.D.Bharatha Chakravarthy

******

<u>O R D E R</u>

This application has been filed to raise the order of attachment passed by this Court in O.A.No.7534 of 2019, dated 31.10.2019 to enable the applicant to conduct auction sale of the secured asset scheduled on 8.4.2020.

2. Originally, the suit has been filed for recovery of a sum of Rs.10 Crores. In the suit, inter alia contended that originally, the plaintiff was a tenant in the suit premises and therafter, entered into an agreement to purchase the suit property for a sum of Rs.9 Crores and paid a sum of Rs.8,99,73,500/-. It is also specifically avered in the plaint that except a sum of Rs.40 lakhs, sale consideration has been paid either by cheques or RTGS transaction. In the meanwhile, the present application has been filed by the secured creditor, third party to the suit, to raise the order of attachment on the ground that the subject property has already been mortgaged in favour of the applicant bank on 18.4.2014.

3. The contention of the applicant Bank is that the suit itself is a collusive nature to thwart all the action taken by the secured creditors. The

plaintiff being the tenant would not have been given such huge amount that itself clearly indicates that there is a collusion between the plaintiff and the defendants to non suit the applicant. It is the contention of the applicant Bank that unless attachment is raised, the property will not fetch fair price in a public auction.

4. The learned counsel appearing for the applicant mainly contended that the suit itself is a collusion between the plaintiff and the defendants. As the plaintiff being the tenant is already aware of the deposit of the title deed with the applicant bank in the year 2014 itself. Further, payments of more than Rs.38 lakhs by cash is also unbelievable and that itself clearly indicates that there is collusion between the plaintiff and the defendants. It is further contended by the applicant bank that the plaintiff has already filed a suit for permanent injunction against the secured creditor before the City Civil Court and the same was dismissed.

5. The learned counsel appearing for the respondents submitted that except Rs.48 lakhs out of Rs.9 Crores, payments are made only through bank transaction. Therefore, the allegation that there is collusion is unsustainable.

Further, the order of attchement passed by this Court will not take away the right of the secured creditor. In the event of any degree passed, same would be subject to the right already created in favour of the secured creditor. Hence, the order of attachment passed by this Court cannot be raised.

6. On perusal of the plaint shows that an unregistered sale agreement entered into between the plaintiff and the defendant in the year 2016 for a total sale consideration of Rs.9 Crores for sale of the suit properties and out of Rs.9 Crores as shown in the sale agreement, substantial sale consideration has been paid through bank transaction. Except a sum of Rs.48 lakhs, payment of more than Rs.8 Crores were paid through bank transaction. The applicant is a prior mortgagee i.e. the secured creditor has a first charge over the suit property. If at all, the sale agreement is believable and the sale transaction is accepted, any right created subsequently over the subject property, is always subject to the right of the prior mortgagee.

7. Having regard to the nature of payment made through bank and substantial amount is also paid through bank, the order of attachment passed by

this Court cannot be raised at this stage. Any attachment order passed by this Court based on the above transaction is always subject to the prior right already created in favour of the secured creditor. Mere such attachment will not take away the right of the secured creditors, to proceed under the SARFAESI Act to bring the subject matter of the property for sale by way of public auction. Therefore, apprehension of the secured creditor that the attachment will hinder the sale process is unwaranted. Any legal right created in favour of the plaintiff herein, the same is subject to the prior right already created in favour of the secured creditor. Therefore, the attachement order passed by this Court, dated 31.10.2019 cannot be raised.

8. Accordingly, the application is dismissed. Post the suit on 27.11.2020.

2.11.2020

Index : Yes/ No
Internet : Yes/No
Speaking/Non-speaking Order
Note : Issue order copy on 4.11.2020
vaan

N.SATHISH KUMAR, J.

vaan

**A.No.A.No.1950 of 2020
in C.S.No.598 of 2019**

Dated: 2.11.2020