

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD)No. 2193 of 2018

and

C.M.P.No. 13836 of 2018

The Authorized Signatory,
Arihant Enterprises Limited,
C-18, SIPCOT Industrial Complex,
SIPCOT Post, Cuddalore - 5.

..Petitioner

Vs.

1.N.Kamaraj
2.M/s. Colix Beverages Ltd.,
C-18, SIPCOT Industrial Complex,
SIPCOT Post, Cuddalore - 5.

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, seeking to strike off the plaint in O.S.No. 159 of 2018 on the file of the District Munsif Court, Cuddalore.

For Petitioner : Mr. Jayesh Dolia

For Respondents : No Appearance

O R D E R

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The second defendant in O.S.No. 159 of 2018 has come up with this revision under Article 227 of the Constitution of India seeking to strike off O.S.No.159 of 2018, a suit for bare injunction from the file of the District Munsif Court, Cuddalore. Short facts leading to the filing of the revision are as follows:-

2. The first defendant in the suit namely, M/s. Colix Beverages Limited had borrowed monies from Industrial Development Bank of India. The said debt was assigned to Stressed Assets Stabilization Fund (Securitisation company). The said company took proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 and brought the movable properties for sale by public auction. The petitioner was declared as successful bidder in the auction that was held on 03.11.2017 and a certificate to that effect was also issued by the authorized officer of the Securitisation company on 19.12.2017. When the purchaser namely, the petitioner herein took steps to remove the assets, it met with several proceedings by third parties, who claimed to have an order of attachment over the properties etc. Those proceedings were terminated by an order of this Court in C.R.P.No. 1425 of 2018 dated 13.07.2018 in favour of the petitioner herein.

3. I am informed that the Hon'ble Supreme Court had also dismissed the SLP filed against the said order. While things stood thus, the petitioner was served with summon in O.S.No. 159 of 2018, suit for bare injunction restraining the petitioner from removing the machineries. This suit was laid by the first respondent Mr.N.Kamaraj claiming that the debtor namely, Colix Beverages Limited owed monies to him for work contracts done by him. Contending that he has a claim over the property, he sought for injunction restraining the petitioner herein from removing the machinery. Upon service of summons in the said suit, the petitioner has come up with this Civil Revision Petition.

4. In normal circumstances, I would have directed the petitioner to invoke Order 7 Rule 11 of the Code of Civil Procedure. I do not think, I will be justified to doing so in the case on hand. Section 34 of the SARFAESI Act (Securitisation Act) bars a suit or proceedings in respect of matters in which proceedings under the SARFAESI Act are initiated. Section 34(2) provides that a Civil Court shall not grant injunction. It is needless to point out that the present suit is directly within the ambit of Section 34 and as such it cannot be retained on file even for a moment. I also find that the suit itself is an abuse of process of Court. If at all, the plaintiff namely, the first respondent has got a money claim against the second respondent, it is for him to sue for recovery of money, he cannot seek an injunction decree restraining a third party, who is a purchaser in an auction conducted under a SARFAESI Act from removing the machinery.

5. In view of the above, this Civil Revision Petition is allowed, the suit in O.S.No.159 of 2018 is struck off from the file of the District Munsif Court, Cuddalore. No costs.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

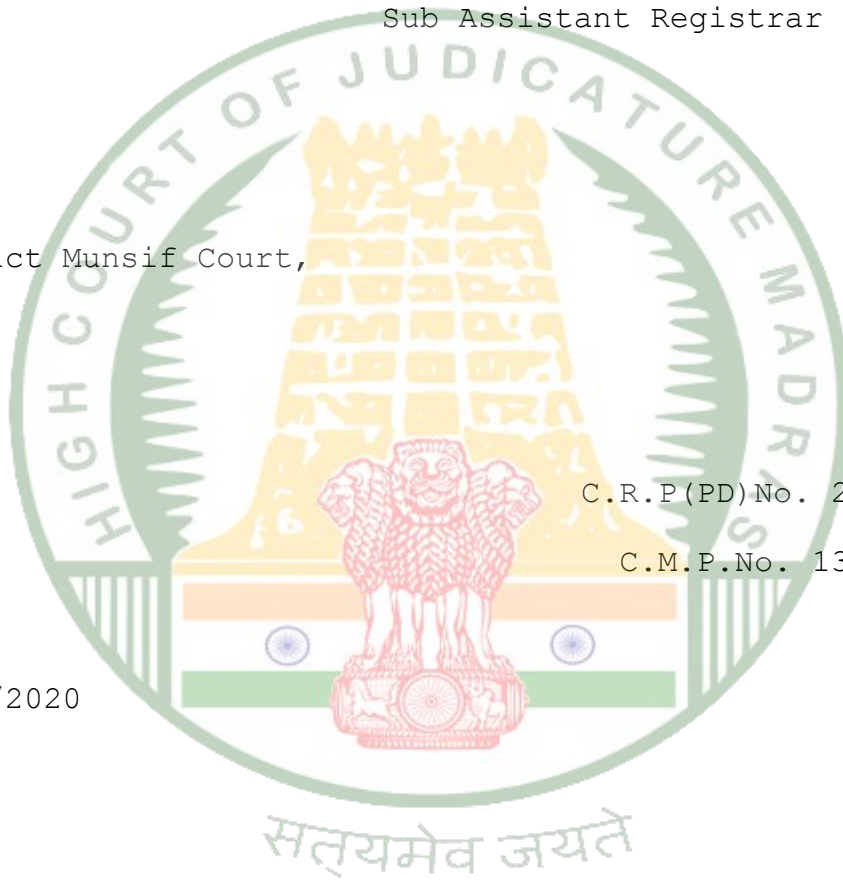
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To:-

The District Munsif Court,
Cuddalore.

C.R.P(PD)No. 2193 of 2018
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