A.No.1741 of 2020

and C.S.No.673 of 2018

P.T.ASHA. J.,

This application has been filed to pass a judgment on the basis of an admission made in the written statement by the defendant.

2. The plaintiff has filed the suit for specific performance directing the first defendant to execute and register the Conveyance Deed in favour of the plaintiff in respect of the suit scheduled property as per the deed of declaration dated 12.04.2013 and for permanent injunction restraining the defendants, their men, agents, assigns, or any person claiming through or under them or acting on their behalf, from in any manner interfering with possession of the plaintiff over the suit schedule property; or dealing, transferring, alienating or creating any encumbrances whatsoever upon the suit schedule property, belonging to the plaintiff and more fully described in the schedule hereunder.

3. The case of the plaintiff is that the defendant had borrowed a sum of Rs.5,75,00,000/- from the plaintiff in the year 2003 for

purchasing the suit schedule property. As a security for the loan, the defendant had executed a promissory note and also created an equitable mortgage in respect of the suit schedule property in favour of the plaintiff. The defendants with the financial assistance given by the plaintiff had purchased the suit property on 09.04.2008 under the sale deed registered as Document No.787 of 2008 on the file of the Sub Registrar, Mylapore. The defendant had also created a equitable mortgage by depositing the title deeds, in favour of the plaintiff on 16.04.2008, the defendant had initially paid interest regularly for a period of two years and thereafter, he had failed to pay the interest.

4. In the year 2013, a sum of Rs.9,44,74,340/- (Rupees nine crores forty four lakh seventy four thousand three hundred and forty only) was payable by the defendant to the plaintiff. To the sum equivalent to the value of the property, the plaintiff insisted the defendant to execute a sale deed in respect of the suit property in his favour. Thereafter, an affidavit of declaration dated 12.04.2013 was executed by the defendant admitting his liability to the tune of the aforesaid sum. The defendant also sold the property in favour of the plaintiff, subject to the condition that if the defendant repays the entire mortgage amount on or before 31.03.2014, the sale in favour

of the plaintiff would become void. The defendant had also agreed to execute a sale deed in favour of the plaintiff as and when demanded by the plaintiff. However, this assurance was observed in the breach, therefore, the defendant had come forward with the suit in question.

5. The defendant had filed a written statement, in which, he had admitted the financial assistance given by the applicant on 01.03.2008 and creation of the equitable mortgage by depositing the title deeds. He has also admitted the execution of the affidavit of declaration dated 12.04.2013 and its terms and had also admitted that the plaintiff was put in possession of the ground floor partition of the property.

6. In the light of the admission in the affidavit of declaration dated 12.04.2013, the plaintiff is entitled to the judgment and decree for specific performance. Therefore, the applicant had come forward with the present application.

7. In the Counter affidavit filed by the respondent dated 15.09.2020, once again the respondent has admitted the execution of

the affidavit of declaration dated 12.04.2013 and its terms. In paragraph No.7 of the counter affidavit, the respondent has stated as follows:

7. With respect to the averments made in Para 9, it is submitted that due to the insistence of the applicant the respondent had no other option but to submit an Affidavit of Declaration dated 12.04.2013 admitting his liability to pay the applicant a sum of Rs.9,44,74,340/- (Rupees nine crores forty four laksh seventy four thousand three hundred and forty only) and that the respondent agreed to transfer the suit schedule mentioned property to the applicant immediately but on condition that the sale would be void if the respondent repaid the entire loan amount in one year with interest at the rate of 18% per annum and thereby the respondent undertook to execute Sale Deed to register the title in favour of the applicant. The purpose for obtaining this document was stated as "Income Tax Purpose". The applicant has deceived me and is using the same to harass me. The allegations that the respondent had also started to avoid the applicant and did not come forward to execute sale deed in favour of the applicant is denied.

8. That he was liable to repay the said amounts has also been admitted in paragraph No.10 of the counter, where he would state as follows.

> *"It is submitted that the applicant had malafide intentions to acquire the Suit Schedule mentioned property from the very beginning. The applicant had not only refused to grant time for settling dues, but vehemently insisted that the respondent should convey the same to the applicant immediately."*

9. Heard both counsels and perused the papers.

10. In the written statement filed by the respondent, the respondent has made the following admissions:

> *5. The 1st defendant submits that he was keen on investing in an immovable property, and had identified the suit schedule mentioned property. As the Managing Director of Gemini Communication, the 1st defendant had taken several loans on behalf of the said company for its business needs. Hence, the*

1st defendant was unable to mobilise the funds required for meeting the payment of the sale consideration. Since the proposal relating to the purchase of the suit schedule mentioned property in the 1st defendant's name had to be completed within a short duration, he approached the plaintiff herein known to him, who agreed to grand the financial assistance subject to the condition that an equitable mortgage should be create over the suit schedule mentioned property in favour of the plaintiff and the plaintiff assured that this is only done for giving comfort to his wife and not for enforcing against the 1st defendant. Accordingly, the 1st defendant after acquiring the said property had deposited the original title deeds pertaining to the suit schedule mentioned property with the plaintiff and created an Equitable mortgage of the suit schedule mentioned property on 16.04.2008, with the intent to create a security over the same towards repayment of the principal amount borrowed by me from him and also the interest.

10. The 1st defendant submits that plaintiff insisted that I should execute an affidavit to confirm his liability to repay the then outstanding dues. The plaintiff and the 1st defendant signed an agreement with a rider that if the 1st defendant repays the *entire loan amount together with interest at 18% per annum the sale would be void.*

13. The 1st defendant submits that the plaintiff is well aware of the fact that the 1st defendant has special reasons to acquire the suit schedule mentioned property and there is an understanding that once the 1st defendant repays the money that the 1st defendant had borrowed from the plaintiff, he would give up his claim on the suit schedule mentioned property. The 1st defendant states that the suit schedule mentioned property belonging to me is currently valued at Rs.15 Crores, however, the plaintiff is attempting to knock away the suit schedule mentioned property at a throw away price, merely on account that the 1st defendant has not been able to repay the borrowings made on the security of the suit schedule property.

14. The 1st defendant therefore most respectfully submit that the plaintiff's suit for specific performance is premature and the same is liable to be dismissed. This defendant therefore submits that the suit as laid by the plaintiff is devoid of merits and is liable to be dismissed.

11. By the statement, the defendant has clearly established the execution of the affidavit of declaration dated 12.04.2013 and that he has not complied with the terms contained therein. As per this affidavit of declaration dated 12.04.2013, the respondent has not only acknowledged that a sum of Rs.9,44,74,340/- (Rupees nine crores forty four lakhs seventy four thousand three hundred and forty only) was due to the plaintiff but he has also agreed that if the mortgage money was not paid within a period of one year, he would execute a sale deed in favour of the plaintiff, which if he repays the money in a year would become void. There is also letter dated 15.09.2016, wherein, he has confirmed that he had not repaid the entire mortgage amount as undertaken in the affidavit of declaration and consequently, had put the plaintiff in possession of the ground floor of the house property. Even, in the written statement, the defendant has admitted that he has not acted in terms of the affidavit of declaration. However, he would contend that the suit is premature, since the plaintiff was not giving them time to repay the amount. As already stated the time for repayment was one year from the date of the affidavit of the declaration on or before 11.04.2014. This fact is also reiterated in the counter filed. Therefore, in the light of the categoric admission both in the written statement filed by the

defendant and his counter statement, there shall be a judgment and decree on the admission made in the written statement. Since first relief in the suit in C.S.No.673 of 2018, is for specific performance of the terms of the deed of declaration dated 12.04.2013, the defendant in no uncertain terms has admitted the same, there shall be a judgment and decree in respect of the prayer (a).

12. This application is allowed and the suit is decreed in respect of prayer (a).

18.09.2020

Internet : Yes/No
Index :Yes/No
Speaking / Non-Speaking
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P.T. ASHA. J,

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