

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :14.12.2020

Pronounced on :22.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.R.P.(P.D).No.2268 of 2019 and
CMP.Nos.14783 & 14786 of 2019

M/s.Parahmesware Exports,
Rep. by its Proprietor,
T.Ashokan
S/o Thangavelu Nadar,
No.95, Raja Street,
Coimbatore – 641 001

...Petitioner

Vs

- 1.M/s.Manipal Housing Finance Syndicate Ltd,
Manipal House,
Manipal – 576 104
- 2.M/s.Baba Mart PTE Ltd.,
Rep. by its Director Thiru.Gopinath,
No.02-04, Kewalram Hill View,
Hill View Avenue,
Singapore – 669 594
- 3.M.Gopinath
- 4.G.Punithavalli
- 5.N.Chandrasekar

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final order dated 22.03.2019 made in I.A.No.699 of 2016 in I.A.No.247 of 2015 in O.S.No.129 of 2015 on the file of the I Addl. District Judge, Coimbatore.

For Petitioner : Mr.A.E.Ravichandran

For Respondents : Mr.K.Subbu Ranga Bharathi

ORDER

The Civil Revision Petition is filed to set aside the fair and final order dated 22.03.2019 made in I.A.No.699 of 2016 in I.A.No.247 of 2015 in O.S.No.129 of 2015 on the file of the I Addl. District Judge, Coimbatore.

2.The suit has been filed by the revision petitioner/plaintiff in O.S.No.129 of 2015 as against the respondents/defendants, for recovery of money, Rs.55,23,557/-.

3.Pending suit, the revision petitioner/plaintiff filed the I.A.No.247 of 2015 in O.S.No.129 of 2015, on the file of the Principal District Judge, Coimbatore, for the attachment of property belongs to the

respondents/defendants. After elaborate arguments advanced by the learned counsel, the trial Judge attached the 1/2 of the property, mentioned in the plaint, by order dated 18.06.2015.

4. Aggrieved against the order of the trial Judge, in I.A.No.247 of 2015 dated 18.06.2015, the 1st respondent/5th defendant filed the I.A.No.699 of 2015 and by order dated 22.03.2019, the order of the learned trial Judge, made in I.A.No.247 of 2015 dated 18.06.2015 was set aside.

5. Against the order dated 22.03.2019 in I.A.No.699 of 2015, the revision petitioner/plaintiff is before this Court.

6. The learned counsel for the petitioner submitted that the order of the trial Court, raising the attachment made in I.A.No.247 of 2015 is illegal, unjust and contrary to law. He further submitted that the petitioner filed the suit against the respondents 2 to 5 for recovery of money of Rs.55,23,557/-. In order to secure the money, I.A.No.247 of 2015 was filed for attachment before Judgment of the property belongs to 3rd and 4th defendants in the suit. That was ordered by the trial Court on 18.06.2015, after that the 1st respondent filed the application in I.A.No.694 of 2016 to raise the attachment on the ground that the properties were mortgaged to

them for loan. For non-payment of loan, proceedings have been taken and the properties were brought for auction under Section 14 of SURFAESI Act. The petition mentioned property was given on lease to one Sebastian, in order to evict them, the defendant 2 and 3 made the SURFAESI proceedings. The 1st respondent have not taken any steps for collecting their loan. The alleged housing loan was closed. The trial Court without considering the fact raised the attachment and reiterated the other grounds raised in the grounds of revision petition and pleaded to set aside the order of the trial Court and to allow the revision petition.

7.The learned counsel for the respondent supported the order of the trial Court and further submitted that petition mentioned property was separate property of 3rd and 4th defendant. They mortgaged the property to the 1st respondent for housing loan. For default of loan, further proceedings have been taken. The Chief Judicial Magistrate, Bangalore, passed an order on 06.04.2015 under Section 14 of SURFAESI Act for taking physical possession. Under such circumstance, the attachment before the Judgment made in I.A.No.247 of 2015 on 18.06.2015 is unsustainably and thus supported the order of the trial Court and pleaded to dismiss the revision

petition.

8.Heard the learned counsel for the parties and perused the records.

9.The plaintiff filed the suit against the respondents 2 to 5 for recovery of amount of Rs.55,25,555/-, issued in a business transaction. In order to secure their amount, the plaintiff filed the I.A.No.247 of 2015 for the relief of attachment before the Judgment which was allowed by the trial Court on 18.06.2015. Thereafter the 1st revision petitioner i.e., 5th defendant impleaded in the suit. The 1st respondent and 5th defendant filed this I.A.No.699 of 2016 in I.A.No.247 of 2016 in O.S.No. 129 of 2015 on the file of the I Addl. District Judge, Coimbatore, to raise the attachment on the ground that for want of recovering the housing loan obtained by the 3rd and 4th defendants. The properties were secured under SURFAESI Act before the Debt Recovery Tribunal and the property was ordered for auction and further proceeded before the Chief Judicial Magistrate, Bangalore, for taking physical possession of the mortgaged property. The learned Chief Judicial Magistrate, Bangalore, passed an order on 06.04.2015 to this

effect. Under these circumstance, the attachment was passed before Judgment by the trial Court on subsequent date i.e., 18.06.2015 is unsustainable. The trial Court rightly raised the attachment made before the Judgment. I find no error in the order of the trial Court. Hence I hereby confirm the order of the trial Court made in I.A.No.699 of 2016 in I.A.No.247 of 2015 in O.S.No.129 of 2015 on the file of the I Addl. District Judge, Coimbatore, dated 22.03.2019. Further I find no merit in the revision petition.

10.Hence, the Civil Revision Petition is dismissed. No Costs. Consequently connected miscellaneous petitions are closed.

22.12.2020

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
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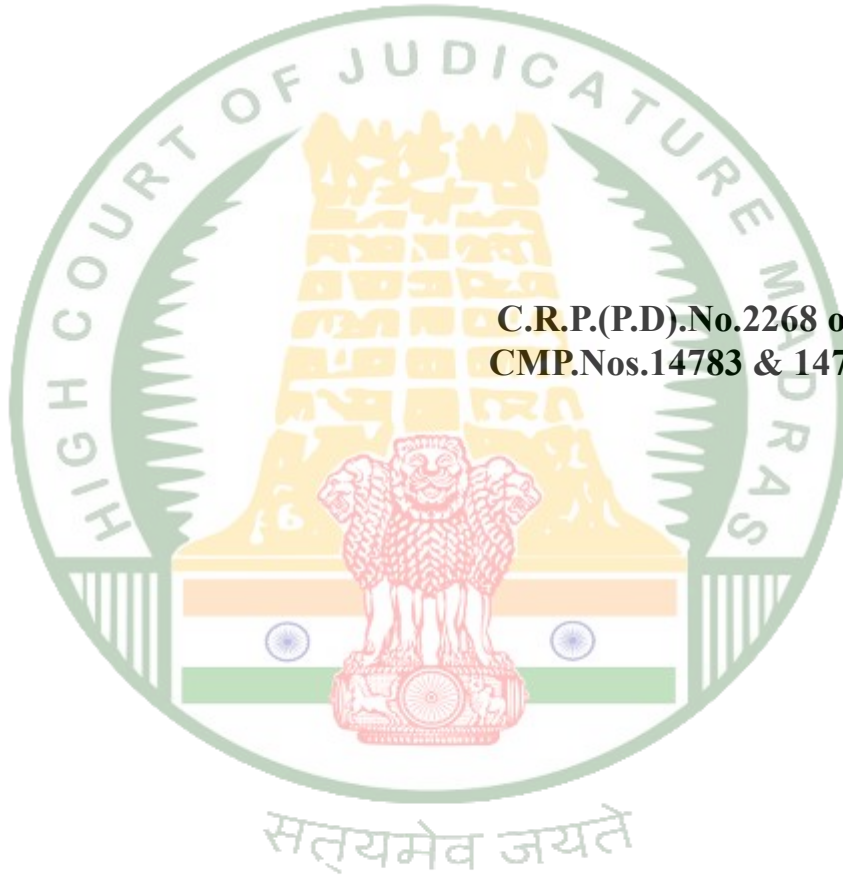
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To
The I Addl. District Judge, Coimbatore.

C.R.P.(P.D).No.2268 of 2019

V.SIVAGNANAM.J,

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