

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

OSA 178 OF 2019
AND CMP Nos.15775 of 2019 and 7194 & 7195 of 2020

State Bank of India
SAM Branch, Red Cross Buildings,
Montieth Road,
Egmore,
Chennai - 600 008
Rep. by its Chief Manager Appellant

vs.

1.G.Moorthi
2.R.Vijay Kumar Respondents

Prayer :- Appeal filed against the order dated 15.03.2019 in O.A.No.253/2019 in C.S.No.673 of 2018.

O.A.No.253/2019 in C.S.No.673/2018 dt:15/03/2019:

Prayer: Application is filed under order XIV Rule 1 of the Original side Rules lead with order VII Rule 11 of the Code of Civil Procedure, Praying to reject the plaint as not maintainable on the ground of the Jurisdiction as well as for want of cause of action in view of statutory bar under section 18 of Recovery of Debts due to banks and financial institution Act 1993 and section 34 of sarfasi Act 2002 and consequently allow the above application with exemplary costs for filing the above vaxawoner suit by the first respondent/plaintiff.

CMP.Nos.7194 and 7195/2000: Application filed U/O XIV Rule 8 of O.S.Miles need with order, Rule 10 and sec.151 CPC praying to 1. Permit this petitioner/plaintiff to strike out the 1st Respondent/Second defendant bank from the array of the defendants in the above suit.

2.Permit this Petitioner/Plaintiff to strike out prayer 'b' in the above suit with a liberty to approach the Hon'ble Debts recovery Tribunal, Chennai to seek the said relief against the 1st respondent/second defendant/Bank.

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For appellant : Mr.M.L.Ganesh

For respondent : Mr.V.Chandraprabhu

ORDER

(Made by DR.VINEET KOTHARI, J.)

The Court was held by Video Conference, as per the Resolution of the Full Court dated 3 July 2020, by Judges at their respective residence and the counsel, staff of the Court appearing from their respective residences.

2. The learned counsel for the first respondent, Mr. Chandra Prabhu, has submitted that two CMPs, CMP Nos.7194 & 7195 of 2020 have been filed on behalf of the first respondent, who is the plaintiff in the suit for specific performance in the present case and that in the light of the previous orders passed by us, he has filed the said applications undertaking therein that the appellant State Bank of India may be deleted from the array of defendants in the said suit for specific performance filed by the first respondent and the prayer (b) against the appellant State Bank of India may also be treated as deleted or withdrawn.

3. In respect of the above submission, it is relevant to extract the orders of this Court dated 11.03.2020, 23.03.2020 and 01.06.2020.

(i) The order dated 11.03.2020 reads as under:

"Mr.V.Chandraprabhu, learned counsel appearing for one of the respondent G.Moorthi, who was the plaintiff in the original suit submits that, he has instructions to withdraw the suit for specific performance against the defendant No.2, State Bank of India, who is the present appellant before the Court and not to press the prayer No.31(b) in the prayer of the Civil Suit for declaration and also part of prayer No.31(c) so as to exclude State Bank of India from the array of Defendants effectively and he wants to pursue the suit for specific performance only against the vendor/first respondent.

2. Let appropriate application supported by Affidavit of the said Plaintiff / first respondent herein be filed with an advance copy to the appellant / State Bank of India. Put up on 18.03.2020."

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(ii) The order dated 23.03.2020 reads as under:

"Learned counsel appearing for the respondent submitted that she has filed an application along with affidavit, as directed in the order dated 11.03.2020, a copy of which has been supplied to the learned counsel for the appellant Mr.M.L.Ganesh.

2. Learned counsel for the appellant however submits that the application and affidavit filed by the respondent is not in terms with the order and he wants to file his objections to the same.

3. Let such objections be filed to the application and the same may be placed for orders after three weeks."

(iii) The order dated 01.06.2020 reads as under:

"Mr.V.Chandrababhu, learned counsel for the respondent submits that he could not take the return of the application which has been filed by the plaintiff/ respondent withdrawing the relief against the State Bank of India and therefore, he will be granted liberty to file fresh application for the same. He prays for a week's time.

Put up the matter next week."

4. Mr.M.L.Ganesh, the learned counsel appearing for the appellant / State Bank of India has no objection for the deletion of State Bank of India from the array of respondents in the civil suit and also for the deletion of prayer (b).

5. The learned counsel for the first respondent / plaintiff, however, submitted that the first respondent/plaintiff may be given liberty to proceed against the appellant/State Bank of India before the Debts Recovery Tribunal.

6. The right of the first respondent/plaintiff to proceed against the State Bank of India is independent and has nothing to do with the pending civil suit and therefore, the respondent/plaintiff will not be entitled to claim any relief against the appellant/ State Bank of India in the present civil suit. Hence, in our opinion, there is no need to grant any such liberty as prayed for by the learned counsel the respondent.

7. In view of the above, CMP Nos.7194 and 7195 of 2020 are allowed as prayed for. The appellant / State Bank of India shall be treated as deleted from the array of respondents and also prayer (b) shall be treated as deleted in the civil suit for specific performance.

8. We, accordingly, dispose of the appeal as well as all the CMPs without any order as to costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

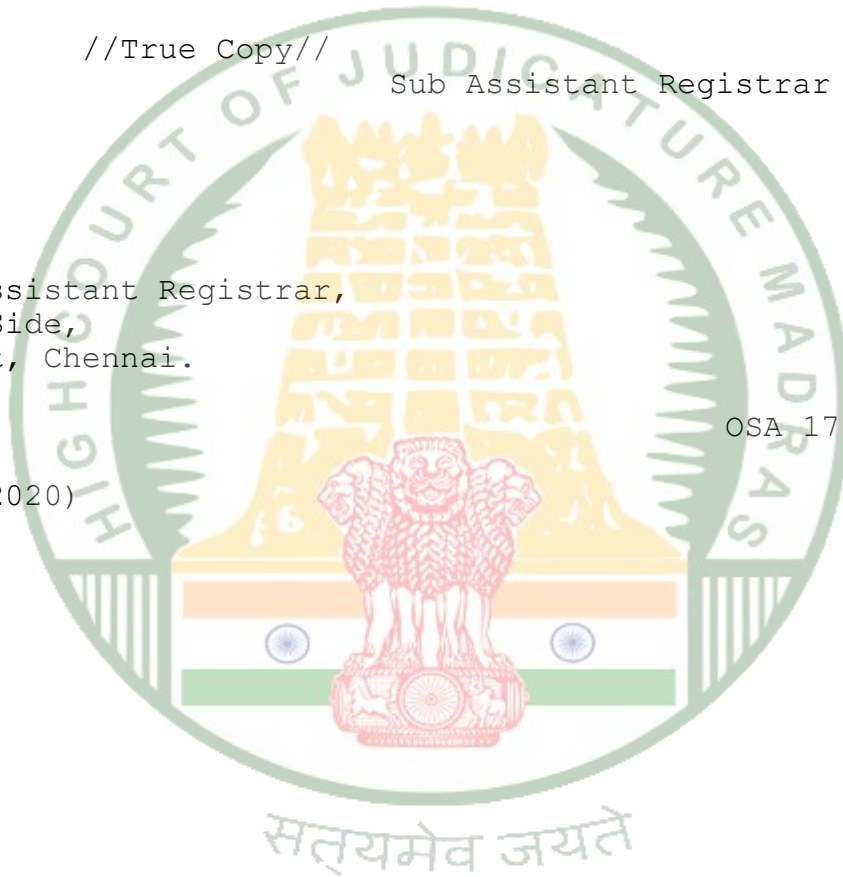
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To

The Sub Assistant Registrar,
Original Side,
High Court, Chennai.

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AD(CO)
CB(29/12/2020)



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