

O.A.No.75 of 2021

ABDUL QUDDHOSE, J.

This application has been filed under Section 9 of the Arbitration and Conciliation Act seeking for an injunction restraining the respondents from alienating or encumbering the property morefully described in the schedule to the Judge's Summons.

2. It is the case of the applicant that the first respondent borrowed money to the extent of Rs.20 lakhs from the applicant on 29.11.2019 under a Loan Agreement entered into between them. Under the Loan Agreement, the respondents 2 to 7 stood as guarantors. The property mentioned in the schedule to the Judge's summons was mortgaged in favour of the applicant by the respondents under a Simple Mortgage Deed dated 27.11.2019. According to the applicant, the respondents failed to re-pay the said loan amount in accordance with the loan agreement. According to the applicant, several cheques issued by the respondents in favour of the applicant were returned dishonoured for "insufficiency of funds". It is the case of the applicant that as on date, a sum of Rs.20 lakhs and odd is due and payable by the respondents to the applicant under the loan agreement dated 29.11.2019. It is also the case of

the applicant that despite executing the Simple Mortgage Deed in favour of the applicant, the respondents have partitioned their property amongst themselves without the knowledge of the applicant. Under such circumstances, this application has been filed under Section 9 of the Arbitration and Conciliation Act seeking for an order of injunction restraining the respondents from alienating or encumbering the property morefully described in the schedule to the Judge's summons.

3. It is further submitted by the learned counsel for the applicant that subsequent to the filing of this application, since there was no consensus between the parties about the named Arbitrator, the applicant has filed an application under Section 11 of the Arbitration and Conciliation Act for appointment of an Arbitrator, which is pending on the file of this Court.

4, A counter affidavit has been filed by the respondents before this Court. In the counter affidavit, they have not denied the borrowal of money from the applicant to the extent of Rs.20 lakhs on 29.11.2019. They have also admitted in the counter affidavit as seen from the paragraph 5.1 that only due to lock down and Covid restrictions, they are unable to mobilise the EMIs payable to the applicant. They have also admitted that they had requested the applicant

to give few more months time to regularise the payment of EMIs to the applicant. The only allegation that they have levelled against the applicant in their counter affidavit is that the applicant has pressurised the respondents to make the payment with the assistance of anti-social elements. There is no proof to substantiate that the applicant had sought the assistance of anti-social elements for the purpose of recovery of its dues from the respondents. Therefore, this Court is of the considered view that there is no merit in the defence raised by the respondents for non payment of the dues to the applicant under the Loan Agreement dated 29.11.2019.

5. The applicant has filed the following documents along with the application in support of his case.

- a) Sale Deed dated 16.03.2000 registered as Document No.993 of 2000 standing in the name of the respondents.
- b) Simple Mortgage Deed dated 27.11.2019 executed by the respondents in favour of the applicant.
- c) Loan Agreement dated 29.11.2019 entered into between the applicant and the respondents.
- d) Partition Deed dated 08.06.2020 registered as Document No.205 of 2020, under which, after execution of the Simple Mortgage Deed

Dated 27.11.2019, the respondents have partitioned their property amongst themselves.

- e) Police complaint given by the first respondent against the applicant on 24.10.2020.
- f) Copy of the dishonoured cheque dated 24.12.2020.
- g) Copy of the Return Memo dated 28.12.2020.

6. After perusing and examining the aforementioned documents as well as after considering the averments contained in the affidavit filed in support of this application as well as the counter affidavit filed by the respondents and after hearing the submissions made by the learned counsel for the applicant, this Court is of the considered view that a *prima facie* case has been made out for the grant of interim injunction as sought for in O.A.No.75 of 2021. Accordingly, there shall be an order of interim injunction as prayed for in O.A.No.75 of 2021. In fact, during the pendency of this application, by order dated 26.04.2021, this Court had ordered status-quo and remains in force till date.

7. The respondents have been duly served and they have been represented by their respective learned counsels. Despite the names of the

respondents have been printed in the cause list today, there is no representation on their side. Even on the earlier occasion on 05.10.2021, there was no representation on the side of the respondents.

8. For the foregoing reasons, this application is allowed as prayed for.

10.11.2021

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