

Reserved on : 08.04.2021
Delivered on : 17.04.2021

A.No.1200 of 2021
in
O.A.No.93 of 2021
in
C.S.No.51 of 2021

V.PARTHIBAN. J.

The short facts necessitating the filing of the present Application are stated hereunder;

The Applicant/proposed respondent herein is a Company incorporated under the provisions of Companies Act, 1956 having its registered office in the State of Maharashtra and having its Corporate office at Chennai. The applicant/proposed respondent is a notified financial institution and recognized as secured creditor within provisions of the SARFAESI Act, 2002.

2.The first respondent/plaintiff herein has filed this suit inter alia praying for a judgment and decree for recovery of a sum of Rs.4,33,50,000/- from the second respondent/defendant together with interest and costs towards financial assistance lent by him. In the suit, the first respondent plaintiff filed O.A.No.93 of 2021 praying for grant of temporary injunction as under;

"This Hon'ble Court may be pleased to grant an order of temporary injunction restraining the defendant (2nd respondent herein) their men and agents from in any manner alienating or

encumbering the properties more fully described in the Judges summons filed herewith pending disposal of the suit and thus render justice"

3.On 22.02.2021, this Court in consideration of the submissions of the parties therein had granted the injunction as prayed for in O.A.No.93 of 2021. The fact of the grant of interim injunction was published in the newspaper on 26.02.2021. The applicant herein being not a party in the Original Application, had come to know of the grant of injunction affecting its right for the reason that the applicant herein is a secured creditor of having sanctioned financial assistance against the mortgage scheme to the second respondent/defendant to the tune of Rs.203 Crores repayable by the second respondent/defendant in 84 monthly installments.

4.The Applicant/proposed respondent by virtue of its sanctioning of a huge loan to the second respondent/defendant has become entitled to recover the dues from second respondent stepping into shoes of original Lenders or assignees as secured creditors of loan.

5.In fact, in order to secure the amounts payable to the Applicant herein by way of security the second respondent has mortgaged by deposit of title deeds of land/super structure of the entire building known as 'Prince Courtyard' vide memorandum of deposit of title deed dated 25.10.2016 registered as Doc.No.2923/2016. In furtherance of the

registration of the deposit of title deed, this Applicant herein has also got the charge created on 27.10.2016 in its favour with the Central Registry of Securitization Asset Reconstruction and Security Interest of India (CERSAI).

6.Thus, the Applicant/proposed respondent holds an exclusive charge over the properties (Item Nos.1 to 8 described in the Judges summons to O.A.No.93 of 2021) by virtue of being its sole Lender.

7.In view of the above operation of the interim injunction insofar as certain items of the properties, having cascading effect on the transaction entered into between Applicant herein and the second respondent affecting the recovery of the dues payable to the Applicant/proposed respondent, the present Application has been filed for impleadment and also for vacating the order of interim injunction dated 22.02.2021 passed in O.A.No.93 of 2021 in C.S.No.51 of 2021.

8.Mr.V.V.Sivakumar, learned counsel reiterated the above facts and submitted that the Applicant herein is a necessary and proper party in O.A.No.93 of 2021 and it should be heard by this Court in the light of the above narrated facts. According to the learned counsel that Applicant herein being a secured creditor is entitled to be heard in the matter as his right is being currently affected by the operation of the interim order

passed by this Court namely the interim injunction granted in the said Original Application. The learned counsel reiterated that it is needless to emphasize the fact that the right of the secured creditor would have precedence over the right of any other creditor and in that circumstances, the present Applicant herein ought to be heard in regard to the continuance of the interim injunction granted by this Court on 22.01.2021.

9.At this, learned counsel for the first respondent/plaintiff strongly objected to the Application seeking impleadment on the ground that the Applicant first of all has not chosen to file any Application for impleadment in the suit. In the absence of any Application for impleadment in the suit, the present Application for impleadment in O.A.No.93/2021 is not maintainable. At this short ground alone, the Application is liable to be dismissed and rejected. The learned counsel further submitted that even on merits, the Applicant herein is not a necessary and proper party for the reason that the issue arises purely between the plaintiff and the second respondent/defendant and the present attempt by the Applicant herein to be made as a party in the said dispute is uncalled for. According to the learned counsel that in consideration of the *prima facie* case made out by the first respondent/plaintiff, the interim injunction was granted by this Court on 22.02.2021 in O.A.No.93 of 2021 and such interim order granted by this Court cannot be sought to be varied and diluted at the instance of

the third party namely the present Applicant herein. Therefore, he submitted that the present Application filed by the Applicant is not only maintainable but also not sustainable on merits and is liable to be dismissed.

10.The learned counsel for the second respondent/defendant would support the case of the Applicant/proposed respondent herein and said that being a secured creditor, the Company has a say in the matter as far as the operation of the interim injunction is concerned and not in the main *lis* in the suit as such, between first respondent/plaintiff and the second respondent/defendant.

11.The learned counsel for the Applicant herein submitted that the contention regarding the applicant in not choosing to file impleadment in the suit is misconceived for the simple reason that as far as the main dispute between the plaintiff and the defendant is concerned, the applicant herein has no stakes and is not concerned with it. It is entirely a dispute between the plaintiff and the defendant and in such consideration, the question of getting impleaded in the main suit did not arise at all. But as far as the operation of the interim injunction is concerned, it directly affects the right of the secured creditor namely the Applicant herein and therefore it is necessary to get impleaded in O.A.No.93 of 2021. Therefore, the Application cannot be held to be not maintainable.

12.This Court considered the submissions of the learned counsel for the parties and perused the pleadings and the materials placed on record.

13.The above factual narrative would unequivocally disclose that the Applicant/proposed respondent herein is the secured creditor of having stepped into the shoes of the original Lender, having lent over Rs.200 Crores towards the project undertaken by the respondent/defendant namely 'Prince Courtyard'. The defendant having mortgaged the subject property in its entirety to the secured creditor namely the present Applicant herein and handed over the right of exclusive charge over the subject property, the applicant's right to be heard in the O.A. is undoubtedly a legal imperative. In the said circumstances, the Applicant herein is a proper and necessary party for further adjudication of O.A.No.93 of 2021.

14.The arguments that the Applicant herein has not chosen to get impleaded in the suit is a specious and desperate contention made on behalf of the first respondent/plaintiff which has to be brushed aside as being completely devoid of substance. As rightly contended by the learned counsel for the applicant herein, as regards the principal issue in the main suit, the applicant herein may not have any stakes and in that

view of the matter there is no necessity for the Applicant herein to get impleaded in the suit. But as far as the operation of the interim order of injunction is concerned, the Applicant herein has a dominant interest which cannot be overlooked or ignored. The order of injunction granted to protect the interest of the 1st respondent/plaintiff pending disposal of the suit, collaterally is infringing upon the right of the applicant herein as being the secured creditor. Therefore, it may not be gainsaid that the Applicant herein is not a necessary or proper party to be impleaded in O.A.No.93 of 2021 alone for the purpose of deciding the continuance of the interim order of injunction passed in favour of the first respondent/plaintiff.

15. In any event, the right of the applicant herein to get impleaded in the matter when such right is premised on the basis of its position being a secured creditor, it does not lie in the mouth of the first respondent/plaintiff to resist the impleadment of the Applicant herein, as the right of the secured creditor stands on a much better legal footing than the right of the first respondent/plaintiff herein. Therefore, the opposition to the impleadment has to necessarily fail.

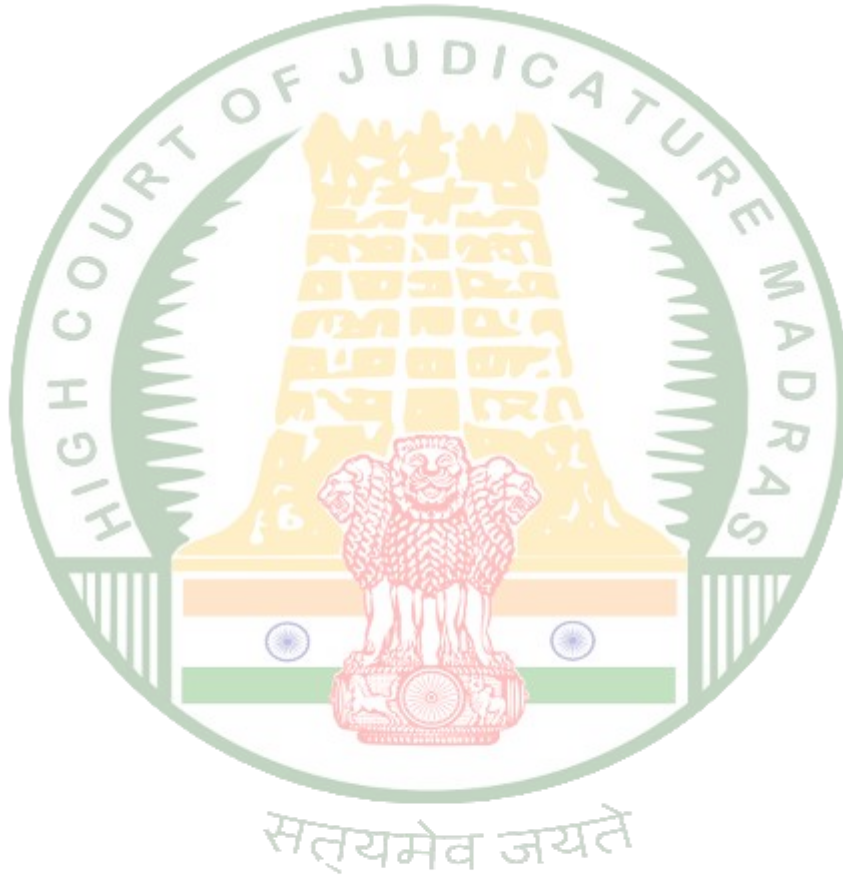
16. For the above said reasons, the objection of the first respondent/plaintiff herein is rejected as being without any merits and substance and Application No.1200 of 2021 i.e., for the impleadment of

the Applicant/ proposed respondent is ordered.

17.Registry is directed to carry out the necessary amendment in the cause title and post the matter on 19.04.2021.

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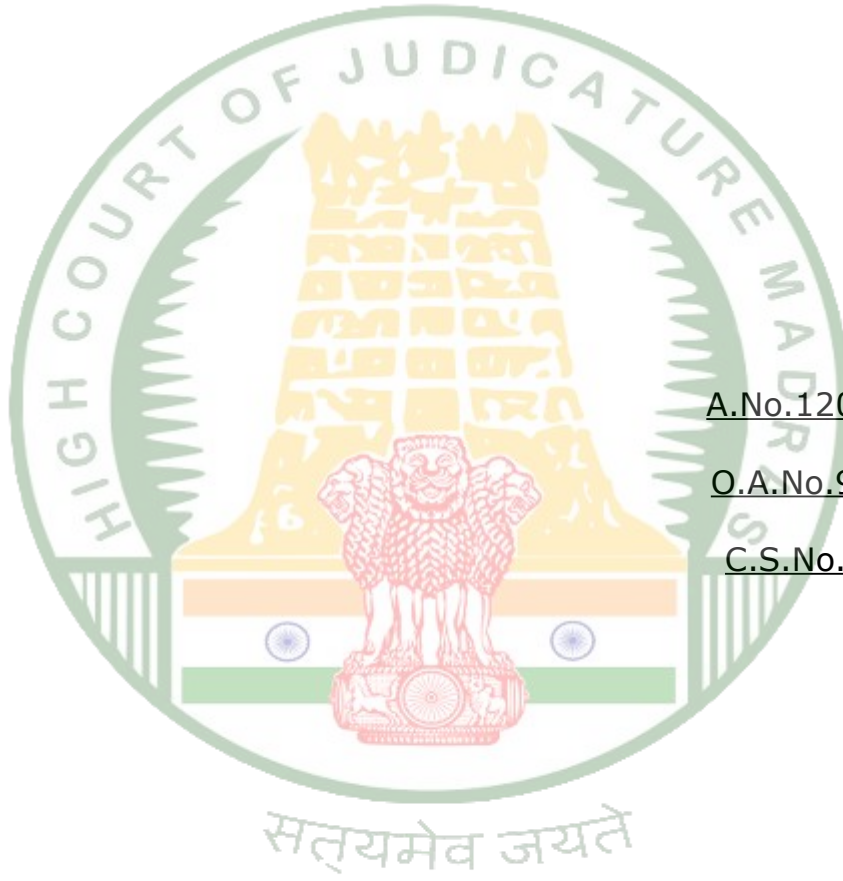
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