

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

Reserved on : 23.02.2021

Pronounced on : 11.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Original Application No.425 of 2020 in
Civil Suit No.83 of 2019

1. Gayathri Jayaraman,
D/o.K.Jayaraman,
No.353/1, Shree Krishna Apartments,
Lakshmanaswamy Salai,
K.K.Nagar, Chennai - 600 078.

2. Shruthi Chandrasekar,
No.353/1, Shree Krishna Apartments,
Lakshmanaswamy Salai,
K.K.Nagar, Chennai - 600 078.

3. Sahana Chandrasekar,
Minor, represented by her mother
and natural guardian,
Gayathri Jayaraman,
No.353/1, Shree Krishna Apartments,
Lakshmanaswamy Salai,
K.K.Nagar, Chennai - 600 078.

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Applicants /
Plaintiffs

versus

V.Muthu Chandrasekar,
S/o.S.Venkatasubramanian,
No.11/6, Thiruvengadam, Street,
Mandaveli, R.A.Puram,
Chennai - 600 028.

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Respondent /
Defendant

Prayer: Original Application filed under Order XIV Rule 8 of Original Side Rules read with Order 39 Rule 1 and 2 of C.P.C., to issue an ad-interim injunction, restraining the respondent from alienating, selling, conveying or otherwise creating any third party rights in respect of any of its assets and properties, except for his discharging the obligations towards the applicants, until the said obligations are fully discharged.

For Applicants / : M/s.Abitha Banu
Plaintiffs

For Respondent / : M/s.R.S.Poornima
Defendant for M/s.Preeti Mohan

ORDER

The plaintiffs in C.S.No.83 of 2019 has filed this Original Application, seeking the relief to issue an ad-interim injunction, restraining the respondent from alienating, selling, conveying or otherwise creating any third party rights in respect of any of its assets and properties, except for his

discharging the obligations towards the applicants, until the said obligations are fully discharged.

2. Heard M/s.Abitha Banu, learned Counsel appearing for the applicants and M/s.R.S.Poornima, learned Counsel representing M/s.Preeti Mohan, for the respondent.

3. It is the contention of the first applicant that being the Natural Guardian, she has filed this application on behalf of the applicants 2 and 3 also. The marriage between the respondent and herself was solemnised on 01.06.1997, in Chennai. Subsequent to that, due to difference of opinion, the matrimonial relationship between the respondent and herself was broken down. Ultimately, the marriage dated 01.06.1997, was dissolved by decree of divorce, by mutual consent.

4. While at the time of agreeing for mutual consent, a Memorandum of Understanding dated 02.04.2016, was executed between the first applicant and the respondent at Dubai where they were residing at

that point of time, under which, the respondent was to pay and settle the amounts and properties of 25 Million US Dollars to and in favour of all the applicants, towards settlement of the alimony claims of the first applicant, as the one time settlement. Only thereafter, on 15.11.2016, O.P.No.4357 of 2016 was filed under Section 13(B) of the Hindu Marriage Act, 1955, before the Principal Family Court, Chennai and the same was ordered. Subsequent to the dissolution of marriage, in spite of repeated request, the respondent has not complied with the agreed terms dated 02.04.2016.

5. Though on 30.08.2018, it was agreed by the respondent that he shall pay 3 Million US Dollars, he has failed and neglected to pay the same. Therefore, the applicants herein are constrained to file this application for the recovery of the agreed amount from the respondent. It is further informed that the suit scheduled property has already been encumbered in favour of the State Bank of India.

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6. In response to the averments found in the affidavit filed by the applicants, the respondent herein filed a counter affidavit, wherein he had stated that already, the respondent has paid a total sum of 15 Million US Dollars through settlement of immovable properties in favour of the applicants 2 and 3. Further, the balance sum of 7 Million US Dollars was agreed to be paid by the respondent by 31.12.2019 and such reasons are fully beyond the control of the respondent. The respondent is not in a position to pay the said amount. Therefore, it cannot be said that the respondent fully failed and neglected to pay the agreed amount. The allegations levelled by the applicants are untenable and self-serving.

7. Further, the respondent is under continuous medical treatment and ultimately, he is unfit for any employment. The health condition of the respondent is not permitting him to pay further amount in relation to his balance obligation. Today, the respondent neither has any business or any source of income nor has anybody near and dear to care and console him. Accordingly, the respondent has prayed to reject the present application.

8. I have considered the rival submissions made on either side and perused the records carefully.

9. Here, it is a case, the respondent in his counter affidavit fairly conceded that he has failed to follow the terms of agreement found in Memorandum of Understanding dated 02.04.2016. Therefore, due to the reason that the respondent himself conceded the prayer sought for by the applicants, it is not necessary to decide the issue whether the prayer sought for by the applicants, is maintainable or not.

10. The only hurdle for allowing this application is that, the suit scheduled property has already been encumbered in favour of the State Bank of India, in such a situation, it is necessary to decide whether this Court is having the power to pass an order of conditional attachment against the suit scheduled property.

11. At this juncture, it is relevant and useful to see Section 39 of The Transfer of Property Act, 1882, which reads as follows;

"39.Transfer where third person is entitled to maintenance. - Where a third person has a right to receive maintenance, or a provision for advancement or marriage, from the profits of immovable property, and such property is transferred, the right may be enforced against the transferee, if he has notice [thereof] or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands."

12. In view of the said Section, it is made clear that the applicants being the third party has right to receive the maintenance from the respondent by attaching the property owned by the respondent subject to the encumbrance made in favour of the State Bank of India. Alternatively, it is necessary to create a charge over the said property pending due of the maintenance to be paid by the respondent. Therefore, it cannot be said that the prayer sought for by the applicants, is unreasonable. Accordingly, this Court came to the conclusion that the respondent is not in a position to

furnish security and therefore, it is necessary to create a charge over the property, which has already been encumbered in favour of the State Bank of India.

13. This Original Application is ordered accordingly.

14. Registry is directed to intimate the Order of attachment to the concerned Registrar.

15. List the Application Nos.2095 & 2096 of 2020 on 08.04.2021.

11.03.2021

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R.PONGIAPPAN, J.

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Pre-delivery order in
Original Application No.425 of 2020 in
Civil Suit No.83 of 2019

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