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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.3090 of 2017
and
C.M.P.No.18834 of 2017

Aegan Industries Pvt.Ltd.,
No.280, Bommanallur - 638 673,
Palani Highway, Dharapuram Taluk,
Tirupur District,
Rep. by its Managing Director,
Thyagarajan Arunkumar.

.. Appellant

Vs.

Vishva Cottex,
"Anjani" 1, Mayur Nagar,
Amin Marg,
Near Rudraksh Building,
Kalavad Road, Rajkot,
Gujarat State,
Rep. by its Proprietor
Mrs.Mitalben.B.Bodar

.. Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Order 43 rule 1(q) of Civil Procedure Code, against order of the learned III District Judge, Dharapuram, Tirupur District dated 07.10.2016 in I.A.No.111 of 2016 in O.S.No.207 of 2016.

For Appellant : Mr.T.M.Hariharan

For Respondent : No appearance

J U D G M E N T

The appellant herein is the defendant O.S.No.207 of 2016 which was filed by the respondent / plaintiff for recovery of money and in the said suits I.A.No.111 of 2016 was filed by the respondent / plaintiff praying to attach the immovable properties belongs to the appellant.



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2. After full enquiry, the learned Trial Judge allowed I.A.No.111 of 2016 and attached the properties belongs to the defendant. Aggrieved by the said order, the appellant has preferred this appeal.

3. The question of law that arises for consideration in this appeal is as to

" whether the learned trial Judge erroneously ordered to attach the properties belongs to the appellant without appreciating the fact that until and unless claim is proved, no attachment can be effected?"

4. The respondent / plaintiff has filed the suit in O.S.No.207 of 2016, for recovery of Rs.45,35,350/- with interest against the appellant / defendant. He filed I.A.No.111 of 2016 under Order 38 Rule 5 and Section 151 of CPC praying to furnish the security from the defendant, failing which, he prayed to attached the properties of the defendant. The trial Court ordered against the appellant / defendant to attach the B-Schedule properties belongs to him. Aggrieved by the same, the appellant has preferred this appeal.

5. It is also admitted fact that, already properties were mortgaged with the State Bank of India which is having first charge over the schedule mentioned properties. Considering this fact, while passing the order, the learned trial Judge observed that subject to the charge claim of the bank as well as the charge over the properties, the learned trial Judge has ordered to create the second charge subject to the bank attaching B-Scheduled properties and the fact is not denied by the appellant.

6. At the time of arguments, the main objection raised by the appellant is that the properties worth several Crores of Rupees. So, the appellant is not entitled to attach all the properties for the suit claim.

7. But as discussed above, since already charge had been created by Bank and subject to the charge alone, the properties were attached as per the order passed in I.A.No.111 of 2016 by the learned No.III, Additional District Judge, Dharapuram. Further, there is no material evidence on the side of the appellant to prove that the properties are valid more than Crores of Rupees.



8. Considering the facts and circumstances of the case, to safeguard the interest of the plaintiff it is just necessary, that the properties of the defendant have to be attached. Accordingly, the order passed by the learned No.III, Additional District Judge, Dharapuram, is justifiable one, which requires no interference by this Court.

9. In this result, the Civil Miscellaneous Appeal is dismissed, as devoid of merits and the order passed by the learned III District Judge, Dharapuram, Tirupur District dated 07.10.2016 in I.A.No.111 of 2016 in O.S.No.207 of 2016 is confirmed. Consequently connected Civil Miscellaneous petition is closed. No Costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The No.111, Additional District Judge,
Dharapuram,
Tirupur District.

Copy To

The Section Officer,
VR Section,
High Court, Madras - 104.

+1cc to Mr.T.M.Hariharan, Advocate, S.R.No.21819

C.M.A.No.3090 of 2017
and
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PL(CO)
RLP(06/08/2021)