IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **24.11.2016**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

Application No.6773 of 2013
in
C.S.No.31 of 2013

1. Vishal Ranka
   Proprietor M/s.Global Workshop

2. G.D.Ranka
3. Managala Ranka .. Applicants

vs

Union Bank of India
Asset Recovery Branch
rep.by its Chief Manager
139, Broadway
Chennai 600 108. .. Respondent

Prayer: Application filed under Order XIV Rule 8 of O.S.Rules r/w Order VII Rule 11 of the Code of Civil Procedure to reject the plaint.

For Applicants : Mr.Joseph Augustine
for M/s.Sampathkumar
Associates

For Respondent : Mr.S.A.Rajan

**ORDER**

This application has been filed by the defendants for rejection of the plaint.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status and ranking in the suit.

3. The suit is filed for a declaration declaring that the transfer made by the first defendant in favour of the third defendant in respect of the shares of the first and second defendants in the suit scheduled properties is fraudulent and also for a permanent injunction.

4. The case of the defendants is that the second defendant had purchased the properties mentioned in the suit schedule from out of his own earnings. The daughter of the second defendant had estranged her husband and in order to protect the properties from her estranged husband, she had also executed relinquishment deed in favour of defendants 2 and 3. While so, as advised by the Auditor, the first defendant had executed settlement deeds in favour of the third defendant with respect to his undivided share. The second defendant had also executed a settlement deeds in favour of his wife,viz., the third defendant. It is contended by the defendants that these transactions were made with a bona fide intention and the other members of the family have no right or title to the suit properties, as the second defendant was only contributory to the purchases. As the suit is filed by the Bank for declaring that the above said transactions

are fraudulent one, the above application has been filed by the defendants to reject the plaint on the ground that a single creditor cannot maintain the suit.

5. The application was resisted by the plaintiff contending that the settlement deed executed by the second defendant and the release deed executed by his daughter were executed only after obtaining loan from the bank based on the said properties. The first defendant was also indebted to various other creditors as on the date of transfer. It is the further contention of the plaintiff that the defendants have filed the above application after the commencement of the trial wherein PW1 had been examined and documents are also marked. Hence, the plaintiff prays for the dismissal of the application.

6. The only question that arise for consideration in the above application is whether the plaint can be rejected on the ground that it is filed by a single creditor?

7. It is the contention of the learned counsel for the defendants that, when admittedly the first defendant also had borrowed monies and the second defendant had obtained loans from various banks,

treating the suit scheduled property as security, without adding the other creditors, the suit filed by the plaintiff, is not maintainable. The learned counsel further contended that when the execution of the settlement deed and the release deed as mentioned above are fraudulent transfers, which would affect the credentiality of the creditors, the suit laid by the single creditor, whose interest alone has been defeated, cannot be entertained.

8. In this regard, it is useful to refer Section 53 of the Transfer of Property Act, 1882:-

> "53. Fraudulent transfer.— (1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.
>
> Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.
>
> Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.
>
> A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transfer or shall be instituted on behalf of, or for the benefit of, all the creditors.
>
> (2) Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

> For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made."

9. A reading of the above provision shows that a suit can be instituted by a creditor challenging the transfer of the immovable property made with an intention to defeat or delay the creditors of the transfer or shall be instituted on behalf of, or for the benefit of all the creditors. Therefore, the objection of the defendants that a single creditor cannot maintain the suit, is unacceptable.

10. Assuming for a moment that all the creditors have to join in taking the action, it is for the defendant to furnish the details of the other creditors to maintain a suit. Section 53 of the Transfer of Property Act, only contemplates a suit by a creditor, to avoid transfer of the property. Secondly, such transfers should have been made with an intent to defeat or delay the creditors of the transferor. Thirdly, the section provides that any one of the creditors can maintain a suit.

11. Therefore, the objection of the defendants that the suit has

to be rejected under Order 7 Rule 11 of the Code of Civil Procedure, is unsustainable.

12. In this regard, Section 13 of the General Clauses Act, 1897 can be usefully referred to:

> "13. **Gender and number.** In all [Central Acts] and Regulations, unless there is anything repugnant in the subject or context,
>
> (1) words importing the masculine gender shall be taken to include females; and
>
> (2) words in the singular shall include the plural, and vice versa."

The language of Section 13 of the General Clauses Act indicates that the singular must include plural. Therefore, even if a single creditor has filed a suit that includes the body of creditors.

13. In the judgment reported in ***1989 TLNJ pg 364 [Dr.S.K.Subramaniam vs. Vellasami and others],*** this Court had decided about the maintainability of an insolvency petition by a single creditor for adjudication.

14. Inasmuch as single creditor can also maintain the suit, the suit has been laid correctly by the plaintiff and the objection of the

defendants does not hold any water. Therefore, the suit cannot be rejected under Order 7 Rule 11 of the Code of Civil Procedure.

15. Accordingly, this application is dismissed.

**24.11.2016**

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Index: Yes/No

Internet: Yes

**PUSHPA SATHYANARAYANA,J.,**

**vj2**

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