RESERVED ON	**: 04.03.2022**
PRONOUNCED ON	**: 17.08.2022**

A.Nos.1459, 1461 and 1462 of 2021
in E.P.No.118 of 2017

P.VELMURUGAN,J.

These applications have been filed to set aside the orders of the learned Master of this Court dated 26.02.2020 passed in A.Nos.1510 and 1511 of 2019 in E.P.No.118 of 2017 and to stay the proceedings in E.P.No.118 of 2017.

2 The brief facts leading to file these applications is that the 1st respondent is a Nationalized Bank registered under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. It is having a branch office situated in the Republic of Singapore. The 2nd respondent is a company registered under the Laws of Singapore. The 3rd respondent is a company registered in India under the Indian Companies Act, 1956. The 4th respondent is a Director of the 2nd and 3rd respondent companies. The 2nd respondent had borrowed money from the 1st respondent and the loan was secured by;

a. Mortgage of a Dredger Vessel namely Marg Cauvery; and

b. The Corporate Guarantee of the 3rd respondent and the personal guarantee of the 4th respondent.

3 The principal borrower/2nd respondent namely M/s. Marg International Dredging Pte. Ltd. committed default in repayment of the loan amount borrowed from the 1st respondent. Hence, the 1st respondent filed a suit on the file of the High Court of Republic of Singapore in Case No.946 of 2014 against the respondents 2 to 4. The Hon'ble High Court of Republic of Singapore passed a judgment in favour of the plaintiff in the said suit who is the 1st respondent herein, against the 4th respondent who was the 3rd defendant before the suit in Singapore Court for;

a. A sum of USD 3,816,326.68

b. Interest of the said sum of USD 3,816,326.68 at the rate of 8% (Libor Rate) from 24/05/2014.

c. By consent cost fixed at Singapore Dollars 7000 plus disbursement of Singapore Dollar 2012.

4 The 1st respondent based on the decree obtained from the Hon'ble High Court of Republic of Singapore, located the mortgaged Dredger Marg Cauvery at Karaikal, Pondicherry, and filed a suit in C.S.No.3 of 2016 before this Court vide its admiralty jurisdiction, seeking to arrest and sell the said vessel and recovered a sum of Rs.5,75,00,000/-.

5 Thereafter, an execution petition was filed in E.P.No.118 of 2017 for recovery of remaining amount of Rs.27,36,77,430/- with further interest apart from costs. As of now, the amount due is more than Rs.35 crores. The Execution Petition was filed for attachment and sale of 50% of share in the schedule property belonging to the 4th respondent herein who is a judgment debtor. The first respondent/Bank/decree holder applied for encumbrance certificate and found that the schedule property stands in the name of the 4th respondent and his wife/the applicant herein, without reference to any specific division of share to each.

6 The learned Master on 10.04.2018 ordered attachment and sale of schedule property to realize the said balance decree amount. Challenging the said order of the learned Master, the applicant who is a 3rd party in the execution petition as well as to the decree and who is none other than the wife of the 4th respondent herein, has filed applications in A.Nos.1510 & 1511 of 2019 seeking to stay the further proceedings in E.P.No.118 of 2017 and to release the property from the attachment and the said applications were also dismissed. Challenging the same, the present applications have been filed before this Court.

7 The learned counsel for the applicant would submit that with regard to the execution proceedings in E.P.No.118 of 2017, the applicant is the largest stakeholder to be seriously affected by the proceedings. The larger extent of schedule property was jointly purchased by the applicant and her husband, the 4th respondent herein and as per the arrangement between the applicant and her husband, the applicant owns almost the entire property comprising 90% of the property. The 4th respondent, who is the husband of the Applicant, is an Indian Individual, who appears to have provided personal guarantee, in his capacity as Director to the said financial facility. It is pertinent to state that the 4th respondent had merely provided personal guarantee to the Singapore based loan. He had not provided any kind of Collateral security or other forms of Guarantee. The schedule premises was not within any kind of security or guarantee offered for the loan. It is a commercial loan and the only financial guarantee was that of the guarantee offered by the 3rd respondent. However, the execution proceedings are being proceeded purely on the basis of the personal guarantee of the 4th respondent. Whether the personal guarantee executed at Singapore will be binding on the 4th respondent in India or the whole of the world remains to be seen.

7.1 Learned counsel for the applicant would also submit that the 1st respondent had filed a suit under Admiralty Jurisdiction before this Court in C.S.No.3 of 2016. A money decree dated 17.09.2014 appears to have been passed in S.No.946 of 2014 for a sum of US $ 3,816,326.68 by the High Court of Singapore. In the same suit, a judgment had been passed by the Hon'ble High Court of Singapore on 01.09.2014 which was only a personal decree against the 2nd defendant therein. It is also stated that separate contested judgment for the same amount was granted on 08.05.2015 and 16.01.2015. It could therefore be seen that there were several orders and judgments in the very same case No.S946 of 2014. This is contrary to Indian Court procedures and hence the said order/judgment could not be executed by the Indian Courts. The 1st respondent ought to have filed all the orders and judgments pertaining to Case No.S946 of 2014 instead of just filing one order dated 16.01.2015. Obviously the relief claimed in C.S.No.3 of 2016 was based on another order dated 17.09.2014 of the same case whereas, present execution proceedings are based on order dated 16.01.2015 (Notification No.FEMA 21(R) / 2018-RB March 26, 2018). The Master Circulars and notifications have the sanctity of law. It could be seen that the circulars issued from the year 2000 onwards have laid down specific conditions towards "Repatriation of Sale proceeds of Immovable property in India" whereby it could be seen that repatriation was permitted and limited to strictly only those properties which were purchased using foreign exchange. With regard to all other properties, there is a clear bar on sale of immovable properties and repatriating the sale proceeds outside India. Hence, the 1st respondent/Decree holder cannot proceed against the schedule property in the execution proceedings and such a proceeding is in contravention to the public policy of land. The Reserve Bank of India's guidelines issued through their Master Circulars have sanctity of law could be gauged by the following citations:

1. Hon'ble Supreme Court in Akshay N Patel Vs. Reserve Bank of India & Anr by order dated 06.12.2021 in Civil Appeal No.6522 of 2021 (Reportable)

2. Hon'ble Gujarat High court (DB) in Ionic Metalliks vs UOI and others by order dated 09.09.2014 in special Civil Appln. No.645 of 2014.

8 The learned counsel for the 1st respondent, decree holder would submit that as per the Provisions of the Second part of Section 45 of the Transfer of Property Act, 1882, if no specific share is mentioned, it shall be presumed that the joint owners have equal share in the same. The applicant has not produced the sale deed dated 18.11.2005 to show how much share the applicant and 4th respondent are entitled to. In the absence of such positive evidence, it can safely be concluded that both have equal share. The 4th respondent had filed a similar applications raising the aforesaid defence and the same were dismissed by this Court. Hence, the 4th respondent setup his wife and raised the same defence before the learned Master in A.No.1510 of 2019 and 1511 of 2019, which were also dismissed by the Master. It is pertinent to note that though many grounds were raised before the learned Master, the following main grounds were alone argued;

a. That the property sought to be attached and to be sold is a joint property of the applicant as well as her husband in the ratio of Wife holding 90% and her husband holding 10%. It was rejected by the learned Master on the ground that no evidence was produced to show their share of entitlement in the schedule property.

b. The learned Master applied the provisions of Section 45 of the Transfer of Property Act and came to the conclusion that the 4th respondent and the applicant herein owns 50% each and consequently dismissed the application.

c. The second ground raised by the applicant is that she has a claim over the E.P. schedule property and that it need not be dealt with separately as the provisions of Order XXI Rule 58 enables the claimant to lodge a claim which can be disposed off by the Executing Court without resorting to a separate suit. Accordingly, it was held that the claim of the applicant can be decided by the Executing Court itself and came to a conclusion that the applicant is entitled to the 50% of the scheduled property and the balance belongs to 4th respondent/judgment debtor as no documentary / oral evidence was placed before the learned Master.

d. The next point raised before the learned Master is that the property sought to be executed is already mortgaged with axis Bank and that without impleading them as a party, the E.P. cannot be proceeded. The learned Master has given a finding that the property mortgaged to Axis Bank is only a secondary security as the axis Bank is secured by another property belonging to the judgment debtor. Moreover even if the property is mortgaged, there is no impediment for the Executing Court to attach and sell the property of the Judgment debtor.

e. The next contention raised by the applicant relating to th esale of the attached property and the proceeds of the sale to be taken out of India by the decree holder is in violation of Foreig Exchange Management Act, 1999

(FEMA). Even that was also considered by the learned Master and it was dismissed by the learned Master as it has no relevance at all in the present case. The decree holder being a Nationalized Bank are aware of the Rules relating to FEMA.

f. The last contention raised was relating to the Foreign Judgment cannot be enforced in India. The learned Judge has given a finding that both India and Singapore are both Reciprocating Territory and therefore the execution is valid and is enforceable. The decree holder has provided the Gazette Notification of Government of India showing reciprocating territory.

9 The money borrowed by the 2nd responded from the 1st respondent is public money. Therefore the bank is bound to recover the public money. As on date, a sum of more than Rs.35 Crores with further interst has become due and payable which the judgment debtors and guarantors have failed and neglected to pay.

10 All the grounds raised by the applicant herein were duly considered by the learned Master and learned Master passed an order on merits dismissing the same. It is therefore, prayed to dismiss the applications and enable the decree holder to proceed with the execution proceedings.

11 Heard the learned counsel appearing for the applicant and the learned counsel appearing for the respondent.

12 It is seen that the 1st respondent is a Nationalized Bank registered under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. It is having a branch office situated in the republic of Singapore. The 2nd respondent is a company registered under the Laws of Singapore. The 3rd respondent is a company registered in India under the Indian Companies Act, 1956. The 4th respondent is a Director of the 2nd and 3rd respondent companies. Further it is an admitted fact that the 2nd respondent company had borowed money from the 1st respondent Bank and the same was secured under the Mortgage of a Dredger Vessel namely Marg Cauvery, and on Corporate guarantee as wells as personal guarantee of the 3rd and 4th respondents. Since the 2nd respondent who is the principal borrower committed default in repayment of the loan, the 1st respondent had filed a suit on the file of the High Court of Republic of Singapore in Case No.946 of 2014 and in said suit, the decree was passed in favour of the 1st respondent herein. Thereafter 1st respondent filed a suit in C.S.No.3 of 2016 vide its admiralty jurisdiction for arresting and selling the vessel and got a decree for selling the vessels. Subsequently, the 1st respondent realized a sum of Rs.5,75,00,000/- and there was a balance of Rs.27,36,77,430/-. For realizing the said amount, the 1st respondent Bank had initiated the execution proceedings before this Court in E.P.No.118 of 2017 for attaching the property of the 4th respondent and selling the same. The applicant herein is none other than the wife of the 4th respondent and she filed an application before the Master in A.No.1510 and 1511 of 2019 for rising the attachment and also to stay the proceedings of the execution petition and not to sell the schedule property as she is having major portion of share in the said property.

13 The main contention of the applicant herein is that she is having major portion of share in the schedule property. Further, the 4th respondent merely provided personal guarantee to the Singapore based loan and he had not provided any kind of collateral security or other form of guarantee. The schedule premises is not within any kind of security or guarantee offered for the loan. It is a commercial loan and the only financial guarantee was that of the guarantee offered by the 3rd respondent. However, the execution proceedings are being proceeded purely on the basis of the personal guarantee of the 4th respondent. Whether the personal guarantee executed at Singapore will be binding on the 4th respondent in India or the whole of the world remains to be seen.

14 It is the contention of the first respondent/decree holder even though the applicant has stated that she has got a major portion in the schedule property, as per the provisions of the second part of Section 45 of the Transfer of Property Act, 1882, if no specific share is mentioned in the sale deed, it shall be presumed that the joint owners have equal share in the property. Further, the applicant has not produced the sale deed dated 18.11.2005 to show how much share the applicant and the 4th respondent are entitled to. In the absence of such evidence, it can safely be concluded that both are having equal shares. Even the 4th respondent had also filed a similar applications raising the same defense and the same were also dismissed by this Court. Now the 4th respondent has set up his wife, who has raised the same defense before the learned Master on the ground that the property sought to be attached and to be sold is a joint property of the applicant as well as her husband/the 4th respondent herein in the ratio of 90% and 10% respectively.

15 It is seen that the applicant has not proved that she has got 90% of the share in the said property and the 4th respondent has got only 10% of the share in the schedule property. In the absence of any documentary proof for the same, the claim of the applicant is not sustainable. Unless the contrary is proved, the decree holder has right to initiate execution proceedings to realiaze the fruits of the decree. Further the contention of the learned counsel for the applicant that the decree holder, being a nationalised bank, cannot initiate execution proceedings by attaching the properties of the fourth respondent situated in India, in which the applicant has got major share, cannot be accepted. The 1st respondent is a Nationalized Bank in India, which has its branch office situated at Singapore. The 4th respondent is a Director of 2nd and 3rd respondent Companies and he is having property in India and vessel also sold vide the admiralty jurisdiction of this Court and realised some amount and it is true that the 4th respondent has not raised such defense in the said proceedings. Now for realizing the balance due, when the decree holder has filed the Execution Petition before this Court, the fourth respondent/judgment debtor and the applicant who is his wife have raised such defences, which are not sustainable either under Law or fact. It is seen that this plea is raised first time before this Court and even otherwise, it is not sustainable, unless the decree is set aside. Further both India and Singapore are reciprocating Territory and therefore, the execution is valid and enforcible. The Gazette Notification produced by the 1st respondent is very clear that there is no legal bar. The money borrowed by the 2nd respondent from the 1st respondent is a public money and therefore, the Bank is bound to recover the same. The learned Master considered all the legal points as well as factual points raised by the applicant and given answer to all the grounds raised and rightly dismissed the applications filed by the applicants.

16 It is seen that the 4th respondent tried to evade the execution of decree and also tried to protract the same and since he could not succeed, he has now set up the applicant who is his wife and filed the present applications. But the applicant is neither a borrower nor a party to the loan. Since the 4th respondent who is a Director of the 2nd and 3rd respondents has given personal guarantee, the decree holder has got every right to realize the amount from the guarantor. The citations referred to by the applicant are not applicable to the present case on hand. Whatever the points raised by the applicants are not sustainable and that the execution proceedings is only for 50% of the share of the 4th respondent who is guarantor to the loan and the applicant is no way prejudiced to that attachment and the sale is only with reference to the half of the share belonging to the 4th respondent and therefore, the contention raised by the learned counsel for the applicant is not sustainable. Therefore, the application is devoid of merits and liable to be dismissed.

17 Accordingly, these applications are dismissed and the order of the learned Master is confirmed. The learned Master is directed to proceed with the execution proceedings in accordance with law.

17.08.2022

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P.VELMURUGAN,J.

Ksa-2

Pre-Delivery Order in

A.Nos.1459, 1461 and 1462 of 2021

in E.P.No.118 of 2017

17.08.2022