



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

O.S.A. (CAD)NO.114 OF 2021

AND C.M.P.NOS.18939 AND 18941 OF 2021

1. M/s.Annai Steels,
Rep. by its Authorised Signatory,
Mr.E.Sevvel, 37/1A, Melveeranam Road,
Walajah Tk., Melveeranam,
Vellore District 632 508.

2. Kalaivani

3. Rajesh

.. Appellants

vs

S.P.Chandrasekar
Proprietor, M/s.Lotus Trading Company,
No.L-7, 1st Main Road, SIDCO
Industrial Estate, Kodungaiyur,
Chennai 600 118.

.. Respondent

Prayer:

Appeal filed under Section 13 of the Commercial Act, 2015 against the order dated 02.09.2021 in Application No.1585 of 2021 in C.S.No.151 of 2021 on the file of original side of this Court.

Prayer in Application No.1585/21 in C.S.No.151/2021:

Application praying that this Hon'ble Court be pleased to direct the respondent/defendant to furnish security to an extent of Rs.1,30,31,282/-(Rupees one crore thirty lakhs thirty one thousand two hundred and eighty two only) within a time specified by this Hon'ble Court failing which to pass an order of attachment before judgment of the property detailed in the schedule to the judges summons pending disposal of the suit.



Prayer in C.S.151/2021:

Plaint filed under Order IV Rule 1 O.S.Rules read order VII Rule, of the CPC, read with section 2(1)(c)(i) and Sec 7 of the commercial courts, commercial Division and commercial Appellate Division of the High Court Act, 2015, praying that this Hon'ble Court may be pleased to pass Judgment and Decree against the Defendant.

a) For recovery for a sum of Rs.1,30,31,282/- (Rupees one crore thirty lakhs thirty one thousand two hundred and eighty two only) with interest at 12% per annum, as the Principal sum of Rs.1,01,37,044.40/- (Rupees One Crore One Lakh thirty seven thousand and forty four rupees, forty paise only) from the date of suit till realization.

b) To pay the cost of the suit.

c) Pass such other suitable orders as this Hon'ble Court may deem fit.

For the Appellants : Mr.S.Veeraraghavan

JUDGMENT

(Judgment of the Court was delivered by
the Hon'ble Acting Chief Justice)

By this appeal, challenge is made to the order dated 02.09.2021 for attachment of the property in respect of a claim of Rs.1,30,31,282/-. By order dated 04.08.2021, in A.No.1585 of 2021, the learned Single Judge directed the appellants to furnish security on or before 01.09.2021, failing which attachment of the property was ordered. The aforesaid order was passed since the appellants failed to file a counter-affidavit in the application and keeping in mind the nature of the suit, being one for recovery of money. The learned Single Judge passed the said order to ensure that if the suit is decreed, the plaintiff may be able to get the fruits of the decree. The appellants failed to comply with the direction of the learned Single Judge by furnishing security before the specified date i.e. on 01.09.2021. Accordingly, the order for attachment of the property was made on 02.09.2021.

2. Learned counsel for the appellant submitted that the suit was preferred by the plaintiff only as a counter-claim of the appellants/ defendants claim and thus, direction to furnish security or attachment should not have been passed by the learned Single Judge. It is more so when the written statement to the suit was filed, though subsequent to the order dated



04.08.2021. The prayer is accordingly to set aside the order dated 02.09.2021. The order dated 04.08.2021 was also sought to be challenged before the learned Single Judge.

3. We have considered the submissions made on behalf of the appellants. We find that the order dated 02.09.2021 is literally a consequential order to the earlier order passed on 04.08.2021. The appellants/ defendants were directed to furnish security, keeping in mind the nature of the suit as well as their failure to file a counter-affidavit in the application. Since it is a suit for recovery, the learned Single Judge passed the order of attachment to safeguard the interest of the plaintiff on failure of the appellant to furnish security. Hence, we do not find any illegality in the order passed by learned Single Judge.

4. The contention of learned counsel for the appellant that the suit was filed only as a counter to the claim made by the appellants is to be ignored since we are not inclined to deal with the said aspect of the matter at this stage and in absence of material for it. We do not find any ground to interfere with the order dated 02.09.2021.

5. Accordingly, the appeal fails and the same is dismissed. There will be no order as to costs. Consequently, C.M.P.Nos.18939 and 18941 of 2021 are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

tar

To:

The Sub Assistant Registrar
Original Side, Madras High Court,
Chennai.

+1cc to Mr.S.Veeraraghavan, Advocate, S.R.No.1484

O.S.A. (CAD) No.114 of 2021

AKII(CO)
PM/20/01/2022