



**Arb. A.No.87 of 2022
in
A.No.2569 of 2019**

R.N.MANJULA, J.,

The applicants are the third parties. The 1st respondent has filed this application seeking leave to implead himself as party to the application filed in A.No.2569 of 2019 and to raise the order of attachment and prohibition made in A.No.2569 of 2019.

2.The averments in the plaint:

The applicants and the 1st respondent had jointly purchased the property mentioned in the schedule to the Judges summons partly from and out of their own funds and partly by availing housing loan from M/s.GIC Housing Finance Ltd., from the second and third respondents vide sale deed dated 05.02.2021. At the time of execution of the Will the respondents 2 and 3 have stated that the property is free from encumbrance. By believing their statements loan has been sanctioned by M/s.GIC Housing Finance Ltd. The title deeds of the property has been handed over to the finance company. When the memorandum of title deed was about to be registered, the applicants came to know that there is an order of attachment over the property.



WEB COPY

2.1. In view of the order of this court made on 20.11.2013 in A.No.4282 of 2013 towards the execution of the arbitration award dated 03.12.2014. Hence the applicant had taken efforts to settle the claim amount and got the attachment rights. The 2nd and 3rd respondents had conceded that the encumbrances was pending over the property by giving false assurance that there is no encumbrance. Even the encumbrance certificate does not show any encumbrance between the period from 01.01.1987 to 14.02.2021. The applicants managed to get a proper legal opinion and on perusal of the records it is seen that despite an order of attachment in A.No.2569/2019 was ordered on 19.06.2019, it was not effected until 12.07.2021. The petitioner's sale deed is dated 05.12.2021 and there was no order of attachment as on the date when the sale proceedings had taken place. In view of the above stated reasons the respondent should be allowed to implead himself as a third party to the proceedings in A.No.2569 of 2019.

3.The brief facts of the counter filed by the 1st respondent:

During the month of April 2017, the 2nd and 3rd respondents have availed a loan of Rs.5,74,000/- for the purpose of buying the vehicle Ashok Leyland Bus 2012 model bearing registration No.AR-01-J-5565. Since the respondents defaulted in making repayment regularly a sum of



Rs.8,24,477/- was pending. The application in A.No.2569 of 2019 has been filed by the 1st respondent under Section 9 of the Arbitration Conciliation Act, 1996 for seeking direction to the respondents 2 and 3 to furnish security for the said dues and failing which to pass an order of attachment of the petition mentioned property. Since the respondents 2 and 3 failed to furnish security, the order to attach the petition mentioned property has been passed on 19.06.2019.

3.1. The 1st respondent/applicant filed a memo for executing the order dated 19.06.2019. Since it was informed to the registry that attachment order can be effected only through the original side of the High Court and not through the City civil Court at Chennai, hence he filed an application in A.No.8684 of 2019 for amending the prayer portion and the same was allowed on 10.03.2020. Due to Covid pandemic the court was closed for long time and hence the 1st respondent was not able to take steps through the Court to execute the order of attachment of the subject property. Despite service of notice, the respondents 2 and 3 have executed a sale deed dated 05.02.2021 in favour of the third party applicant which is unlawful.

3.2. After the court was reopened, the attachment warrant dated 17.08.2021 was duly served and it got reflected in the encumbrance



certificate on 18.09.2021. In the peculiar circumstances of the case, the attachment should be allowed to be continued. The delay in execution is neither wilful nor wanton but the circumstances are beyond the control of the 1st respondent. The respondents 2 and 3 have sold the property despite knowing that there is an order of attachment. Apart from the petition mentioned property, no other immovable property belongs to the respondents 2 and 3 which is known to the first respondent and hence this application has to be dismissed.

4. Heard the submission of the learned counsel on either side and their pleadings and perused the materials available on record.

5. Despite the 1st respondent / applicant has got an order for attachment as early as on 19.06.2019, the same was not intimated to the Sub registrar office in due time. Before the court attachment order was served and reflected in the encumbrance certificate, the applicants seem to have purchased the property by relying in the Nil encumbrance certificate in respect of the petition mentioned property.

6. It is seen that on 05.02.2021, the sale in favour of the applicants have been made. During that time, there is no reference about the order of



WEB COPY



attachment obtained by the 1st respondent. So far as the applicant/ third party is concerned, they went to buy the encumbrance certificate which reflected certain encumbrances in respect of an arbitration award dated 03.12.2014 in favour of M/s. United Overseas Finance Limited. The applicant third party is said to have settled the claim amount of the said finance company and got the attachment raised and then proceeded to register the sale deed.

7. It is true that there was no normalcy and the normal court function were affected for some time and that cannot be a reason for not taking steps to intimate the same through the Court to the Sub Registrar office. The records would show that by virtue of the order passed by this Court on time for furnishing security has been extended till 12.07. 2021. That is obviously the reason why the order of attachment warrant was not executed till 08.09.2021. Since the sale is in favour of the applicant as early as on 05.02.2021 the applicant cannot be blamed for praying to raise the attachment.

8. The learned counsel for the applicant cited one of the oldest judgement of this court held in ***Sinnappan Alias Hetharmamana Rowther***



Vs. Arunchalam Pillai & others [reported in **CDJ 1919 MHC 090**] in

support of his contention that the attachment can operate as a valid prohibition against the alienation of the attached property only from the date on which the necessary proclamation is made -- copy of the order affixed as contemplated in Order XXI Rule 54.

9. The above position of law is applicable to the facts of the present application also. Unless, the order of attachment was rightfully communicated and it is reflected in the encumbrance certificate, the third party applicants can not know its subsistence. Though it might be true that the respondents 2 and 3 had the knowledge about the pending attachment, they would not have disclosed the said fact to the third party applicant. Because the third party applicant who had known about the earlier attachment in favour of some other financial company and settled their claim and then that attachment is raised. Though it is unfortunate that the order of attachment was not executed on time, the applicant cannot take advantage of the only fact that the delay caused due to covid pandemic.

10. Had the 1st respondent taken prudent steps to file due application in time that would have saved his interest. Since the encumbrance certificate



did not reflect any attachment order passed in favour of the 1st respondent,
the third party applicant is entitled to get the attachment raised as prayed.

Hence this application is **allowed**.

20.09.2023

jrs

Index: Yes/No

Speaking : Non-Speaking

Neutral: Yes /No



WEB COPY



Arb.A.No.87 of 2022 in A.No.2569 of 2019

R.N.MANJULA, J.,

jrs

Arb. A.No.87 of 2022
in
A.No.2569 of 2019

20.09.2023