IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 05.08.2022

Delivered On : 27.01.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Civil Revision Petition No.836 of 2021
and
C.M.P.No.6922 of 2021

1. D.Venkatesh
2. R.A.Devarajan
3. D.Kavitha .. Petitioners

Versus

1. V.C.G.Siva Prakasam
2. V.C.Gurupriya .. Respondents

Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decretal order dated 18.01.2021 in I.A.No.02 of 2020 in C.O.S.No.61 of 2020 on the file of the learned Principal District Judge, Salem.

For Petitioners	:	Mr. S. Kalyanaraman
For Respondents	:	Mr. M.R.Thangavel

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 18.01.2021 passed in I.A. No. 02 of 2020 in C.O.S. No. 61 of 2020 on the file of the learned Principal District Judge, Salem.

2.The Defendants in C.O.S. No. 61 of 2020 on the file of the learned Principal District Judge, Salem are the Revision Petitioners. The Plaintiffs, who have instituted the said suit are the Respondents herein.

3.The Plaintiffs have instituted the suit for recovery of a sum of Rs.51,61,874/- with subsequent interest at 12% per annum on Rs.49,000/- from the date of suit till realisation. As per the plaint averments, the Defendants have been closely acquainted with the plaintiff and taking note of such proximity of relationship, when the Defendants sought for financial help, the Plaintiffs borrowed money on interest from Tata Capital Housing Finance Limited and IDBI Bank Limited and paid it to the Defendants 1 to 3 by way of four cheques to the tune of Rs. 49 lakhs. It was stated that the Defendants have agreed to clear the entire loan amount in 12 months. However, as per their assurance, they did not repay the borrowed amount. The Plaintiffs also came to know that the Defendants have sold two house plots vide sale deed dated 02.09.2020 for Rs.32,00,000/- but they did not pay the amount borrowed from the Plaintiffs. After repeated demand, the Defendants paid a sum of Rs.8,14,246/- by remitting it in the bank account of the plaintiff, leaving the balance sum payable by them. It is in those circumstances, the Plaintiffs have filed the suit.

4.Pending suit, the Plaintiffs have also filed I.A. No. 2 of 2020 in C.O.S. No.61 of 2020 under Order XXXVIII,, Rule 5 of the Code of Civil Procedure (in short CPC) to attach the property morefully set out in the petition, before judgment.

5.It appears that the trial Court passed an order on 04.12.2020 directing the Defendants to furnish security for the suit claim of Rs.51,61,874/-. On notice, the Defendants/Revision Petitioners herein have voluntarily executed security for production of property in Form No.VI as per Order XXXVIII, Rule 5 of CPC. In other words, the Defendants themselves have offered as security the property in their name. However, the Plaintiffs objected to the same by stating that the property offered as security was subjected to mortgage with Karur Vysya Bank Limited for a sum of Rs.1,15,00,000/- on 09.01.2019 vide document No.89 of 2019. Therefore, the Plaintiffs prayed the trial Court to order attachment of the properties mentioned in the schedule of the Petition in IA No. 2 of 2020.

6.Taking note of the submissions of the counsel for both sides, the trial court pointed out that the security bond furnished by the Defendants is not as contemplated as per Civil Rules of Practice. The trial court also concluded that the Defendants are attempting to create encumbrance over the petition mentioned property and therefore, to protect the interest of the Plaintiffs/Respondents herein, has allowed I.A.No. 2 of 2020 and attached the property mentioned in the Schedule of the Petition till the disposal of the suit. Aggrieved by the aforesaid order, the Defendants are before this Court with this Civil Revision Petition.

7.The learned Counsel for the Petitioners submitted that the trial Judge had passed orders on 04.12.2020 directing the Defendants to furnish security for the suit claim. As directed, the Defendants/Revision Petitioners have voluntarily furnished the property in their name. After the bond was executed, a memo of objection was filed by the Respondents/Plaintiffs stating that the property furnished as security had already been mortgaged in favour of Karur Vysya Bank besides the Defendants have sold two other properties and realised huge money. Therefore, it was contended that the Defendants are attempting to cheat the Plaintiffs. Based on such baseless objection of the Respondents/Plaintiffs, the trial Court ordered attachment of the properties. Even though the properties mortgage with Karur Vysya Bank has been offered as security, as item No.1, the Petitioners ought to have been given an opportunity to furnish alternate properties. Instead the learned Judge straight away attached the properties in question. Therefore, the attachment order passed by the learned Trial Judge in I.A.No.02 of 2020 in C.O.S.No.61 of 2020 dated 18.01.2021 is to be set aside and the Petitioners have to be given one more opportunity to furnish alternate properties.

8.The learned Counsel for the Respondents/Plaintiffs vehemently objected to the submission of the learned Counsel for the Petitioners/Defendants by stating that the Civil Revision Petition itself is not maintainable. The learned Counsel for the Respondents invited the attention of this Court to Section 8 of the Commercial Courts Act and contended that as per the said provision the present Civil Revision Petition is not maintainable. The learned Counsel for the Respondents also invited the attention of this Court to Form No.VI (security for production of Property) and the affidavit filed in support thereof. It is stated that the mortgage was not mentioned in the affidavit of the Petitioners herein and such affidavit was not in compliance of Section 8 of the Commercial Courts Act. Therefore, by suppressing the factum of mortgage of the property with the Karur Vysya Bank Limited, the property was offered as security. In fact, both the properties mentioned in the schedule of the petition in I.A. No. 2 of 2020 stood in the name of Defendant 1. After the suit was instituted, the said property was transferred to third party on 31.12.2020. This conduct of the Defendants is to be considered by the Court. Furthermore, the suit was taken for trial and it was posted for Plaintiff evidence on 22.7.2022. Subsequently, the case was posted for Defendant's evidence on 29.07.2022. At this stage, the case was transferred to the file of learned Senior Civil Judge after constitution of Commercial Court and the case is numbered as C.O.S.No.4 of 2022 and posted for Defendants evidence on 29.07.2022. It is the submission of the learned Counsel for the Respondents/Plaintiffs that the Commercial Courts was enacted for the purpose of speedy disposal of the Commercial disputes but such an avowed object is sought to be defeated by the Defendants/Revision Petitioners. In this context, the learned Counsel for the Respondents/Plaintiffs relied on reported rulings in ***2021 SCC online Delhi 5220*** in the case of ***Ashok Kumar Puri and Another Vs. S.Suncon Realtors Pvt. Ltd and another*** and contended that this Civil Revision Petition is not maintainable and it is liable to be dismissed.

9.On consideration of the rival submissions, it is an undisputed fact that the Defendants have borrowed money from the Plaintiffs and for recovery of the same, the suit was instituted. Pending suit, the application in I.A.No. 2 of 2020 was filed in which an order dated 04.12.2020 was passed directing the

Defendants/Revision Petitioners to furnish security of the suit claim. Pursuant to such direction, the Defendants have voluntarily furnished certain properties, but it was objected to by the Plaintiffs on the ground that item No.1 of the property so offered as security was already mortgaged with Karur Vysya Bank Limited. Therefore, in the event of the suit being decreed, it would be difficult to realise the said property which was already mortgaged with the Bank. The Plaintiffs also stated that after institution of the suit, the Defendants have sold two items of properties in their name and realised huge amount as sale price, but they did not repay the amount payable to the Plaintiffs. Having regard to the fact that the Defendants did not dispute the borrowal of amount but offered as security a property which was already mortgaged with the bank, the trial court directed the Defendants to furnish security towards suit claim. It is this order of the trial court, which is assailed in this Civil Revision Petition by the Defendants.

10.The main contention of the Revision Petitioners is that they were not given opportunity to furnish alternative property as suit claim but the trial Court has straightaway passed the order attaching the property in question. Such a contention urged on behalf of the Defendants/Revision Petitioners cannot be accepted under the principles of fairness, equity and good conscience. When the trial Court issued notice directing the Defendants to furnish security for the claim, they ought to have offered security of a property which is free from any encumbrance. Even in the affidavit filed along with the Form VI, the Defendants did not disclose that item No.1 of the property so offered as security was already mortgaged with Karur Vysya Bank Limited. In all fairness the Defendants ought to have disclosed the subsisting encumbrance over the item No.1 of the property. Therefore, the conduct of the Defendants in filing Form No.VI is not bona fide and it cannot be appreciated. The Defendants have offered a property for security knowing fully well about the mortgage deed executed in favour of the Bank. In such circumstances, the trial court, in exercise of sound discretion, has directed furnishing security towards the suit claim. When the Defendants was directed to furnish security, they ought to have acted with bona-fide intention. When they failed to do so, they cannot be permitted to assail the order passed by the trial Court on the ground that they were not given opportunity to offer some other property as an alternative.

11.It is to be noted that the Commercial Courts Act was enacted with an intention to ensure speedy disposal of the cases, which have an element of commercial interest. In this context, reliance was placed by the learned

Counsel for the Respondents in ***2021 SCC Online Del 5220*** in the case of ***Ashok Kumar Puri and Another Vs. S.Suncon Realtors Pvt. Ltd and another***, the relevant portion is extracted hereunder:

> *"It was observed that though Article 227 is a constitutional provision which remains untouched by an non-obstante Clause 5 of the Arbitration Act but what is important to note is that though Petitions can be filed under Article 227 against Judgments allowing or dismissing First Appeals under the Arbitration Act, yet the High Court would be extremely circumspect in interfering with the same taking into account the statutory policy, so that interference is restricted to orders which are patently lacking in inherent jurisdiction. Thus, though we are of the view that gates of Article 227 ought not to be opened with respect to Orders in Commercial Suits at the level of the District Judge against which a revision application under CPC was maintainable but which remedy has been taken away by the Commercial Courts Act, but abiding by the judgments aforesaid, hold that it cannot be said to be the law that jurisdiction under Article 227 is completely barred. However the said jurisdiction is to be exercised very sparingly and more sparingly with respect to orders in such suits which under the CPC were revisable and which remedy has been taken away by a subsequent legislation i.e. the Commercial Courts Act, and ensuring that such exercise of jurisdiction by the High Court does not negate the legislative intent and purpose behind the Commercial Courts Act and does not come in the way of expeditious disposal of commercial suits."*

12.When the dispute between the Plaintiffs and the Defendants in C.O.S.No.61/2020 had been referred by the trial Court to the Commercial Court after the formation of commercial Courts, the intention behind is that the dispute has to be brought to the fore at the earliest. In the present case, even as early as on 04.12.2020, the trial court directed the Defendants to offer property security. Even though the Defendants/Revision Petitioners offered property, which consists of encumbrance, the trial court, taking note of the same has passed the order dated 18.01.2021 in I.A.No.02 of 2020 in C.O.S.No.61 of 2020, which is questioned in this Civil Revision Petition. Further, during the pendency of the Civil Revision Petition, parties went for trial during which the plaintiff side evidence was closed and the suit was posted for recording the evidence of the Defendants. In any event, the Defendants have successfully dragged the suit filed by the Plaintiffs and this Court is of the view that no further attempts of the Defendants could be encouraged that would in any manner result in derailing the trial, thereby the wheels of the criminal justice system come to a creaking halt. While so, the relief sought for in this Civil Revision Petition cannot be considered as it would result in further delay of trial, much to the chagrin of the Plaintiffs.

13.In the light of the above observations, this ***Civil Revision Petition is dismissed*** as having no merits. The Order passed by the learned Principal District Judge as Commercial Court in I.A.No.2 of 2020 in C.O.S.No.61 of 2020 is confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

27.01.2023

dh

To

1. The Principal District Judge,
   Salem.

2. Section Officer,
   V.R.Section,
   High Court, Madras.

SATHI KUMAR SUKUMARA KURUP, J.

dh

Pre-delivery Order made in
CRP.No.836 of 2021

27.01.2023