



A.No.2279 of 2023

in

A.No.562 of 2023

in

E.P.No.103 of 2013

N. SATHISH KUMAR, J,

This application has been filed challenging the order passed by the learned Master for return of documents.

2.It is the grievance of the petitioner that he has produced the original documents in the execution proceedings. When he sought for return of those documents, the learned Master refused to return the same on the ground that the documents cannot be returned and if the documents are returned, the petitioner may alienate the properties. Challenging the same, the present application is filed.

3.As per Order 13 Rule 9 of the Code of Civil Procedure, the documents received may be returned at any time substituting the copies thereof.



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4.The learned counsel for the applicant would submit that the subject matter of the properties is not belonging to the judgment debtor. Even before the Award is passed, the properties have been purchased by the mother of the petitioner and it has been transferred to the petitioner even before the attachment. Therefore, contend that the document can be returned to him and the applicant is also willing to give an undertaking not to alienate the property.

5.The learned counsel for the respondent would submit that even during the arbitral proceedings, there was an undertaking not to deal with the properties. Contrary to the undertaking given, the properties have been dealt with and if the documents are now returned to the petitioner he will bring the properties for sale and at this stage, the said documents cannot be returned.

6. Perused the Order of the Master.



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7. No doubt, Order 13 Rule 9 of the Code of Civil Procedure deals with the return of documents. But the fact in this case, it appears that the petitioner has already filed an application under Order 21 Rule 58 of the Code of Civil Procedure and the matter is in the trial stage. The sum and substance of the grievance of the petitioner is that the subject property is not liable to be attached. Therefore, those documents have to be returned.

8. Admittedly, the attachment order was passed on 03.04.2013. Though it is the contention of the petitioner that the settlement dated 06.02.2013 has been made in her favour even much before the attachment, the fact remains that such transfer is effected after the Award has been passed. Such being a position, whether such a transfer falls within the ambit of fraudulent transfer or not could be gone into by the Execution Court. Though it is the contention of the learned counsel for the petitioner that the properties are purchased even prior to the Memorandum of



Understanding, it is well open to the petitioner to establish the same in his claim application.

9. Considering the fact that the claim application is in process and the evidence is also recorded, at this stage, this Court do not find any reason to return the original documents. Accordingly, this Application is dismissed. The learned Master is directed to dispose of the Execution Petition within a period of three months.

11.12.2023

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