WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.12.2023

Pronounced on : 22.12.2023

CORAM : JUSTICE N.SESHASAYEE

C.M.A.Nos.1676 & 1677 of 2023
and CMP.Nos.16491, 16492, 16493 & 16497 of 2023

T.S.Vasanth Kumar ... Appellant / Petitioner / Plaintiff (in both CMAs)

Vs

1.Anitha Karuturi
2.Sai Ramakrishna Karuturi
3.K.Yasoda
4.Shanthi Kaja
[Legal heir of late Smt.Vasundhara Tumu)
5.Tumu Anil
[Legal heir of late Smt.Vasundhara Tumu)

6.M/s.Axis Bank Limited
A company registered under the Companies Act, 1959
With Office at Axis House
C-2, Wadia International Centre
Pandurang Budhwar Marg
Worli, Mumbai - 400 025.

Also at :
M/s. Axis Bank Limited
Having branch at :
Mega Wholesale Banking Centre

WEB COPY

Level-3, Nitesh Timeshare,
No.8, M.G.Raod, Bengaluru - 560 001
Represented by its Branch Manger.

... Respondents / Respondents
Defendants (in both CMAs)

COMMON PRAYER : Civil Miscellaneous Appeals filed under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908, praying to set aside the order dated 30.06.2023 passed in I.A.No.3 of 2023 & I.A.No.4 of 2023 in O.S.No.226 of 2023 on the file of the Hon'ble Additional District Judge at Hosur, and consequently, allow I.A.No.3 of 2023 and I.A.No.4 of 2023 in O.S.No.226 of 2023 on the file of Additional District Judge at Hosur.

For Appellant : Mr.C.Manishankar, Senior Advocate
Asst by Mr.Bharadwaj Ramasubramaniam
for M/s.VIVRTI Law Firm

For Respondents : Mr.AR.L.Sundaresan, Senior Advocate
Assisted by Mr.L.Palanimuthu for R1, R2

Mr.K.J.Parthasarathy for R4 & R5
(No Appearance)

Mr.V.V.Sivakumar for R6
R3 - Batta due

COMMON ORDER

These two Civil Miscellaneous Appeals are preferred by the plaintiff in O.S.No.226 of 2023 on the file of the Additional District Judge, Hosur,

WEB COPY

challenging the orders of dismissal in two separate applications which the plaintiff had filed in I.A.No.3 of 2023, seeking interim injunction against alienation of the suit property by defendants 1 to 5, and I.A.No.4 of 2023 for another order of interim injunction to protect plaintiff's peaceful possession. The cause of action for the suit is founded on a MoU, dated 11.05.2022, under which defendants 1 and 2 along with another Vasunthara (whose heirs are defendants 3 to 5) had promised to sell the suit property.

The Facts:

2. The case of the plaintiff may be briefly stated:

(a) The defendants 1 to 5 / respondents 1 to 5 are indebted to the sixth respondent bank approximately to the tune of Rs.180 crores. To secure the repayment of the said loan, these borrowers had created equitable mortgage of several properties which belong to them in favour of the sixth respondent / bank. One of those secured properties is the subject matter of the present litigation.

(b) While things stood thus, defendants 1 and 2 along with Vasunthara, had negotiated for sale of the suit property with the

WEB COPY

plaintiff and it resulted in the execution of a MoU, dated 11.05.2022. The material terms of the MoU which are relevant for the current purpose (since they were frequently referred to, during the arguments) are that:

i. The total consideration for the property is Rs. 12.40 crores, out of which the plaintiff is required to pay Rs.9.10 Crores to the the 6th defendant-bank. Under the MoU, Rs.1.0 crore was paid by the plaintiff to his vendors.

ii. On receipt of the said sum of Rs.9.10 crores, the bank is to release the mortgage over the suit property, wherein after the vendors under the MoU would execute the sale deed in favour of the plaintiff.

iii. If for some reason, sale deed could not be registered after the plaintiff paying the entire sale consideration in the manner indicated, the plaintiff would be entitled to take a power of attorney from the defendants 1 to 5 and also take possession of the property.

iv. The plaintiff is required to pay off the debts due to the bank within two months from the date of MoU, and the entire

WEB COPY

transaction contemplated is required to be completed within three months.

v. Time is specifically stated to be an essential term of the contract. The MoU recites that the proposed sale is intended to mobilise funds for education of the children in the family and to meet certain immediate financial and legal necessities. In particular, it stipulates that if the plaintiff fails to perform his part of the contractual obligations, then the vendors will restore the benefit (Rs.1.0 crore) they had obtained under the MoU back to the plaintiff within one week from the date of expiry of the aforesaid three months period.

(c) The three month period as stipulated in the MOU expired on 11.08.2022, but the mutual contractual obligations were not performed. According to the plaintiff, Vasunthara, one of the vendors under the MOU had passed away on 05.06.2022, and it delayed the issue. Vasuntahra's legal representatives are defendants 3 to 5.

(d) While so, on 11.08.2022, the plaintiff had purchased two demand

WEB COPY

drafts for a total sum of Rs.1.82 crores in favour of the 6th defendant. On 19.08.2022, the vendors / borrowers intimated the 6th defendant-bank that the plaintiff would be paying Rs.9.10 crores and on 25.08.2022, they requested the bank to receive demand drafts for a sum of Rs.1.82 crores from the plaintiff. (It is relevant to mention here that this Rs.1.82 crores represents 20% of Rs.9.10 crores, which is required to be paid as part of the arrangement by which the bank had agreed to release the suit property.)

(e) The demand drafts were subsequently delivered to the bank, and the bank too has acknowledged their receipts. Thereafter, the plaintiff opened an account with the 6th defendant – bank, and transferred Rs.7.30 crores to that account. Indeed, the plaintiff had mobilised the said funds by obtaining a loan from M/s Kotak Mahindra Bank, on the security of his immovable properties.

(f) After these developments, on 21.01.2023, the bank had addressed a letter to the concerned Sub Registrar within whose jurisdiction the suit property is located. The letter stated that the bank's Vice President would execute a release deed as regards the suit

WEB COPY

property.

(g) Up till this point, things were appearing to be traveling along the intended path contemplated by the MOU, even though beyond the three months time stipulated in the MoU for completion of performance of mutual contractual obligations.

(h) Now intervenes a twist, when defendants 1 and 2 (two of the borrowers of the 6th defendant), sent an e-mail dated 24.01.2023 to the 6th defendant, requesting the latter to release their personal guarantees, which they had created along with Vasunthara when they obtained the loan. This appears to have surprised the bank, and it chose to put the entire deal on hold.

(i) In this backdrop, on 14.03.2023, the plaintiff issued a legal notice on all the defendants, but only defendants 1 to 5 alone responded to the notice with their reply dated 06.04.2023 resisting the plaintiff's demand made in the suit notice.

It is in these circumstances, the plaintiff has laid the present suit inter alia for (a) mandatory injunction, requiring the bank to release the mortgage deed on receipt of the balance amount of Rs.7.82 crores to be paid by him; (b)

https://www.mhc.tn.gov.in/judis

WEB COPY

specific performance of the MoU.

3.1 Along with the suit, the plaintiff has taken out two interlocutory applications in I.A.No.3 of 2023 and I.A.No.4 of 2023. In I.A.No.3 of 2023, the plaintiff seeks an order of interim injunction against defendants 1 to 5 (which included the heirs of deceased vendor in the MoU), not to alienate the suit property/the subject matter of MoU. I.A.No.4 of 2023 was laid for an interim injunction against the same set of defendants not to interfere with the physical possession of the subject matter of the suit. This is premised on the assertion of the plaintiff that pursuant to the MoU, he was put in possession of the suit property sometime in October 2022. (At another place in the plaint it is mentioned that plaintiff was put in possession immediately after the MoU).

3.2 The defendant 1,2,4 & 5 have filed their counter and the line of contention they had adopted reads as below:

(a) The MoU is not registered, and hence no cause of action can be founded on it.

(b) That three months time stipulated in MoU was of an essential term

WEB COPY

of the contract, but the plaintiff did not perform his part of the contractual obligation within the time stipulated.

(c) There is no privity of contract between the 6th defendant-bank and the plaintiff and hence the bank cannot release the mortgage over the property in favour of the plaintiff.

3.3 the 6th defendant-bank did not file its counter before the trial Court. It however, has filed its counter before this Court.

3.4 Both these applications came to be dismissed by the learned trial Judge. The line of reasoning of the trial Judge is three-folded:

(a) that the MoU under consideration is not registered;

(b) that inasmuch as the MoU has stipulated three months time for performing and the same is the essential term of the contract;

(c) since the recovery officer of the bank is in seisin of the property, the maintainability of the very suit is in question.

After holding thus, the trial Court directed the defendants 1 to 5 to deposit Rs.1.0 crore, which they or their predecessor, as the case may be, had received under the MoU, into the Court on or before 31.07.2023.

WEB COPY

4.1 Mr.C.Mani Shankar, the learned senior counsel appearing for the appellant made his submissions on (i) facts; and (ii) on the basis of certain subsequent events.

4.2 On facts, the learned counsel made the following submissions :

(a) So far as non-registration of the MoU goes, it cannot affect the maintainability of the suit for specific performance. Notwithstanding the insertion of Sec.17(1)(g) vide T.N. Amendment to the Registration Act in 2012, no corresponding amendment was made to Section 49 of the Registration Act, and it has been judicially approved in ***Hemalata Vs Kasthuri*** [2023 SCC OnLine SC 381], ***Amir Minhaj Vs Diadre Elizabeth (Wright Issar & Others*** [(2018) 7 SCC 639], ***S. Kaladevi Vs R. Somasundram*** [(2010) 5 SCC 401], that a suit for specific performance can be laid on the basis of unregistered sale agreement.

(b) Whether time for performance of a contract as stipulated in a contract for sale of immovable property is required to be considered only post trial, at the time of final disposal of the suit, and this

WEB COPY

issue should not have occupied the contemplation of the Court at this interim stage. What the trial court has omitted to note is that,

(i) that the delay has occasioned due to the death of Vasunthara, and certain legal formalities such as obtaining the legal heir certificate are required to be obtained;

(ii) that the trial court has failed to note that a letter from defendants 1 to 5 to the 6th defendant-bank dated 19.08.2022, and 25.08.2022 requesting the bank to receive Rs.1.82 crores, and also set of e-mails dated 18.10.2022 and 28.10.2022 sent by a certain Halappa, the representative of the defendants 1 to 5, to the 6th defendant-bank to accept the payment of Rs.9.10 crores from the plaintiff, and to release the title documents of the suit property. Needless to state these correspondences at the instance of the defendants 1 to 5 or their representative, as the case may be, are sent after the expiry of the 3 months time stipulated in the MoU; and

(iii) that on 11.08.2022 the plaintiff has paid Rs.1.82 crores by

WEB COPY

draft to the 6th defendant, and has also deposited Rs.7.28 crores in a separate bank account with the 6th defendant to facilitate its appropriation towards the liability hanging over the suit property. (Today, with accrued interest the balance amount due payable to the bank has enlarged to around Rs.7.78 crores approximately, and the plaintiff is willing to pay the same).

(c) So far as the doubted maintainability of the suit is concerned, it is for the bank to worry about, and not for the defendants 1 to 5. Indeed, the bank has not even chosen to file its counter for resisting the contract which provides for alienation of its security by these defendants. What however, is in stake is that the whole deal has exposed the interest of the plaintiff to peril.

(d) If the line of reasoning of the trial Court is closely observed, the learned Judge has literally decided the suit, more particularly, in directing the defendants to deposit Rs.1.0 crore paid as advance under the MoU. The Court has treated the MoU as either incapable of being performed or having been frustrated as to

WEB COPY

restore the status quo ante.

4.3 Shifting his focus to certain *pendente lite* developments, the learned counsel submitted that when these appeals were pending before the Court, on 06.10.2023, the 6th defendant bank has filed a memo wherein it has broadly indicated its willingness to release the security created on the suit property. Explaining the circumstances under which this memo came to be filed, the learned counsel submitted that pursuant to the orders of the trial Court, the defendants 1 to 5 have deposited Rs.1.0 crore to the credit of the case. It appears the 6th defendant-bank has approached the trial court to permit it to withdraw said sum. To this, the appellant/plaintiff has filed a memo, wherein he has lent his consent to the proposal made by the bank. However, to bring certain clarity to couple of clauses in the memo filed by the bank, the appellant has almost made the same proposal in different phraseology through its memo.

4.4 Summing up his arguments the learned counsel submitted that inasmuch as the MoU and some of its terms are tested prematurely, and the trial Court has literally decided the maintainability of the suit without putting the

WEB COPY

plaintiff on notice about the maintainability, the order of the trial Court cannot be sustained in law. So far as the bar of suit under Sec.18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDB Act, 1993), is concerned, inasmuch as the bank does not oppose the jurisdiction of the Court but is only anxious to have its loan dues discharged, the very doubt entertained by the trial Court is both misplaced and misconceived. Now, unless the present *status quo* is preserved, the amounts which the plaintiff had paid will go wasted. After all, the plaintiff has paid Rs.1.82 crores to the bank pursuant to the MoU. The plaintiff had borrowed huge amounts from M/s Kotak Mahindra bank, and he is paying interest on the same. Today, the defendants 1 to 5 might have deposited Rs.1.0 crore, but that is only based on the order that is impugned in this proceedings. The plaintiff has established the triple criteria required for obtaining the interim injunctions.

5.1 Mr.AR.L.Sundaresan, the learned senior counsel appearing for the respondents/defendants 1 to 5, submitted:

a) that this suit involves two separate contracts, one, a loan transaction between defendants 1 to 5 and the 6th defendant, and the other is the

WEB COPY

MoU dated 11.05.2022 between the same set of defendants and the plaintiff. Both are bilateral contracts and not a tri-party agreement. This in effect, implies that there is no privity of contract between the 6th defendant bank and the plaintiff, and hence the suit seeking a decree of mandatory injunction for release of the mortgage over the suit property on receipt of the sum agreed between the plaintiff cannot be maintained.

b) Today, the plaintiff seems to show an anxiety to settle certain dues in terms of OTS which the debtors have entered with the 6th defendant-bank. This OTS was extended by the bank to defendants 1 to 5, and not to the plaintiff. If the MoU has to be worked out in the manner contemplated, then the plaintiff ought to have paid the money to these defendants. It is his obligation under the MoU to release the suit property from the bank. Therefore, neither the plaintiff nor the bank can breach their respective obligations created under two independent contracts.

c) Admittedly, the MoU was not registered. While the plaintiff may be

WEB COPY

able to maintain the suit for specific performance on an unregistered MoU, yet for defending the possession through a decree for prohibitory injunction, the MoU ought to be registered as per Section 17(1-A) of the Registration Act. As long as the MoU continues to be an unregistered document, the plaintiff may not be able to preserve his alleged possession, and the suit cannot be maintained on that score.

d) When the suit cannot be so maintained vis-a-vis the alleged possession of the plaintiff, then it will have a direct reflection on the entitlement of the plaintiff to seek specific enforcement of the MoU.

e) So far as the MoU is concerned, it stipulates three months time for both sides to perform their respective part of contractual obligations, and it also spells out the consequences if the plaintiff does not complete his part of the obligation within the time stipulated. It further provides in the eventuality of the plaintiff failing to perform his contractual obligations, the MoU will stand cancelled. Admittedly, the plaintiff has not fulfilled the contractual obligation within the time stipulated, and therefore, the MoU itself now stands cancelled and

WEB COPY

hence, the plaintiff cannot rest a cause of auction on the MoU, which is not there for consideration. Taken as a whole, it would indicate that the MoU not only discloses the circumstances that forced these defendants to sell the property, but also stipulates the consequences of its breach, which itself would indicate that the time is of the essence of the contract.

5.2 Developing his arguments further, the learned counsel submitted:

(a) The plaintiff claims that he has been given possession of the property, but on this aspect he makes two conflicting statements. In the body of the plaint, he alleges that he was in possession in October, 2022, whereas in the paragraph dealing with cause of action for the suit, he says that the possession was handed over almost immediately after the execution of the MoU.

(b) that the total consideration payable under the MoU was Rs.12.40 crores, of which the plaintiff was required to pay Rs.9.10 crores to the 6th defendant, which in terms of the contract has to be performed within two months from the date of MoU; Indeed, the MoU does not even provide for forfeiture of any advance amount

WEB COPY

paid by the plaintiff in the eventuality of cancellation of the MoU in the circumstances indicated above, but directed restoration of *status quo ante* when it required the vendors to repay Rs.1.0 crore back to the plaintiff. Now, if the plaintiff was shown to have the entire sale consideration within the time stipulated for performance, and inasmuch as he has not paid it, it has to be construed that he was ready but unwilling to perform his contract. And, if he does not possess the said amount, he may be willing but not ready to perform his part of the contract. To support that the plaintiff is possessed of the funds required, he had relied on a loan sanction letters issued by M/s.Kotak Mahindra Bank dated 12.07.2022 and 30.07.2022 respectively for a sum of Rs.2.75 crores and Rs.9.25 crores. However, it is not adequately known when exactly these amounts were actually credited to the account of the plaintiff, but the fact remains that till 11.08.2022, the plaintiff has not paid any amount to the 6th defendant towards discharge of the liability over the suit properties. On 11.08.2022, the plaintiff had purchased two demand drafts for a total sum of Rs.1.82 crores. This incidentally marks the expiry of three months time stipulated for

WEB COPY

completing the sale under the MoU dated 11.05.2022. The plaintiff follows the same with the purchase of two demand drafts for Rs.3,77,60,000/- and Rs.3,50,40,000/-, both dated 30.08.2022. What this in effect means is that the plaintiff has not been ready to perform his part of the contract before the time stipulated, and on the expiry of three months period, the MoU stands automatically terminated. The plaintiff has produced the bank statement of his account with M/s.Kotak Mahindra, the entries of which starts with 14.07.2022, which is couple of days after the expiry of two months period stipulated for discharge of the loan liability over the suit property, but it still does not disclose that the plaintiff possessed the entire Rs.9.10 crores, atleast on that date. Nowhere it states that the plaintiff possessed the entire sale consideration for complete performance of his obligation under the MoU. There could be only two inferences possible, argued the learned counsel: (i) either the plaintiff does not possess the funds, in which case, he is not ready to perform his contractual obligations; (ii) that he might have possessed the funds, but still he did not show his willingness to perform his part of the contract.

WEB COPY

(c) Pending these appeals, the 6th defendant and the plaintiff have exchanged memos before the Court on the mode of settlement of bank's claim over the property, but the nature of the memo shows that they do not share any consensus. The intent of the plaintiff has been to outmanoeuvre the tenor of the MoU and to sabotage the rights of these defendants.

5.3. Summing up his arguments, the learned counsel submitted that so far as the present appeal is concerned, the plaintiff has not established the triple criteria required for sustaining his prayer for interim injunction to both the applications. So far as the possession is concerned, his stance is wobbling, as he has not produced a shred of evidentiary material which may enable the Court to draw a strong *prima facie* possibility that the possession could have been given to him. Admittedly, the entire sale consideration has not been paid within the time stipulated in the MoU. Turning to the interim injunction seeking to restrain the plaintiff from alienation is concerned, at the end of day, the plaintiff is least likely to suffer any damages, whereas these defendants are facing a constant increase in loan liability which is essentially

WEB COPY

attributable to the default of the plaintiff to perform his part of the contract within the time. When the triple criteria required for grant of injunction is not in favour of the plaintiff, necessarily they would not be entitled to the relief sought, which precisely what the trial Court has done.

6. Replying to the same, the counsel for the plaintiff-appellant submitted that the contentions of the defendants 1 to 5 camouflage their intent to treat the time for performance as stipulated in the MoU as not an essential term of the contract. The MoU was entered into on 11.05.2022, and the two months period stipulated for discharging the mortgage over the suit properties expired on 11.07.2022, and the three months stipulated for completing the performance of mutual contractual obligation expires on 11.08.2022. However, one of the vendors under the MoU namely Vasundhara Tumu died on 05.06.2022, that delayed the performance briefly. And it is in this setting, the following facts becomes significant :

(a) On 12.07.022 and 30.07.2022, M/s.Kotak Mahindra had sanctioned two separate loans for Rs.2.75 crores and Rs.9.25 crores, in all Rs.12.0 crores. Of which, Rs.2.75 crores was credited on 14.07.2023 and the remaining Rs.9.25 crores was credited on

WEB COPY

31.07.2022 to the account of the plaintiff. These facts are not disputed.

(b) This is followed by two critical correspondences from the vendors to their banker. They are 19.08.2022 and 25.08.2022. The defendants 1 to 3 in essence authorised the plaintiff to receive the title documents upon payment of Rs.9.10 crores to the 6th defendant-bank. Indeed, in their correspondence dated 25.08.2022, the vendors would state that they have negotiated the transaction with the buyer, the plaintiff herein, and proceeded to confirm the purchase of property for an amount of Rs.9.10 crores. And it also says that the entire balance amount will be paid. It further says that 20% of the amount agreed upon for the release of mortgage is Rs.1.82 crores, and the balance would be paid by 29.08.2022.

(c) This was followed by an email dated 13.09.2022 from one Mr.Halappa, a representative of the vendors addressed to their banker, with a copy marked to the plaintiff, pertaining to the intended transaction. He also follows it with another email dated 18.10.2022, again to the 6th defendant-banker, and brings to the notice of 6th defendant that the plaintiff had transferred the liability

WEB COPY

of Rs.7.28 crores (partly to the current account to an extent of Rs.7.24 crores, and partly to his Savings Bank account, to an extent of Rs.4.0 lakhs). This implies till 18.10.2022, the defendants or his representatives had kept the MoU alive. This amply establishes that notwithstanding the fact that time is stated to be an essential condition of the MoU, neither parties to it, more significantly, the defendants 1 to 5 have not treated it as one.

(d) This is now followed by a communication from the 6th defendant-bank, dated 24.01.2023, wherein the banker informs the vendors that they had not completed the transactions from their side and granted extension of time for completion till 27.01.2023. It may have to be noted here a couple of days prior to this email, the bank had addressed a communication dated 21.01.2023 to the Sub Registrar concerned, informing about the authorisation given by its Assistant Vice President for executing a release deed vis-a-vis the subject matter of the suit. This would imply till 24.01.2023, the agreement was kept alive. And at no point of time, earlier to this date, to be specific after 11.08.2022 (the date on which the three months time stipulated in the MoU expired) the defendants 1 to 5

WEB COPY

had informed the plaintiff that the MoU had already stood terminated.

(e) Reverting back to email dated 24.01.2023 referred to above, the two of the vendors (defendants 1 and 2) make a demand to the bank that they be exonerated of the personal guarantees on the payment of Rs.9.10 crore as full and final settlement of the liability to the bank, but the bank was plainly uninterested since the total liability which the defendants 1 to 5 owed their bank was around Rs.180.0 crores. The banker obviously cannot expect to discharge the personal guarantee of two of the vendors for over Rs.180.0 crores, for a paltry sum of Rs.9.10 crores. This email has upset the equation. However, what is deducible from this is, notwithstanding the fact that the contract stipulated the time for performance and also automatic cancellation of contract may happen, the defendants at all times have kept the contract alive.

(f) Now it is demonstrated that by 30.07.2022, the plaintiff is shown to be in possession of Rs.11.0 crores with him. And the plaintiff had all the resources to pay the balance sale consideration the defendants. If the defendants 1 to 5 are allowed to alienate the

WEB COPY

property, it will jeopardise substantial monetary interest of the plaintiff. Indeed the plaintiff has pledged his property with M/s Kotak Mahindra Bank to mobilise funds for this sale.

Discussion

7. Both sides have laboured hard to present their version of controversy. But, what they have forgotten is that, this Court is now essentially dealing with appeals arising from interim orders, where this Court is chiefly concerned with ascertaining whether the plaintiff has established that the triple criteria required for obtaining them: (a) existence of a strong *prima facie* case; (b) in whose favour the balance of convenience is; and (c) who will be visited with irreparable injury in the eventuality of grant of interim order of injunction. This Court intends to test the case of the appellant/plaintiff for its merit viz-a-viz the existence of the triple criteria stated above.

8. The submissions made before this Court, travel far beyond the need. They spent considerable time on the significance of the time stipulated in the MoU for its performance and whether the plaintiff was ready and willing to

WEB COPY

perform its part of the contract. These are aspects which may have to wait for another day, till after the trial, and cannot be considered at the interim stage. Indeed, they need not be considered.

9. What is relevant for ascertaining the existence of a strong *prima facie* case for the plaintiff is, the very existence of the MoU. So far as the execution of MoU is concerned, its execution and its genuineness are not disputed by defendants 1 to 5. The next set of facts which this Court may have to read along with the factum of existence of MoU are :

- the payment of Rs.1.82 crores by the plaintiff to the 6th defendant, on the instructions of defendants 1 to 5 or their representative Mr.Halappa. There is no dispute on it.
- the plaintiff mobilising the requisite funds for performing his part of the contract by mortgaging his property and obtaining a loan from M/s.Kotak Mahindra. It shows that plaintiff has changed his position pursuant to the MoU;
- the instructions from defendants 1 to 5 or their representative to their banker (6th defendant-bank) to release the title document of the suit property on receipt of Rs.9.10 crores.

WEB COPY

These facts, taken as a whole would indicate that there indeed is a strong *prima facie* case for plaintiff to seek certain orders of injunction.

10. Turning to CMA.No 1677 of 2023 which the plaintiff has laid against the order in I.A.No 3/2023 for injuncting the defendants 1 to 5 from alienating the suit property is concerned, notwithstanding the fact that there is no triparte agreement between the plaintiff, the defendants 1 to 5, and the 6th defendant-bank, the fact remains that based on the directions given by defendants 1 to 5 or their representative Halappa to the bank, as referred to above, a bridge is built connecting the plaintiff and the 6th defendant. As indicated earlier, when once the plaintiff has acted on the basis of instructions from defendants 1 to 5, to that extent he may be considered as altering his position. Therefore, *prima facie* it can be said that the defendants 1 to 5 might have been estopped. This Court underscores that this is only a *prima facie* view, but this has to be tested only during the final adjudication of the suit. If in a scenario such as this, where the plaintiff has paid part of the sale consideration, borrowed and deposited the remaining part of the sale consideration, and if the defendants 1 to 5 are allowed to alienate the property, it would have a pernicious effect on the rights of the

https://www.mhc.tn.gov.in/judis

WEB COPY

plaintiff. Surely, the balance of convenience is in favour of the plaintiff. And needless to say that the plaintiff would be put to irreparable injury if alienation is allowed. This Court, therefore considers that the plaintiff is entitled to an order of injunction as sought in I.A.No.3 of 2023.

11. Turning to the other order in I.A.No.4 of 2023, it is directed against the same set of defendants 1 to 5 from interfering with the possession. Here, the MoU stipulates that the plaintiff will be entitled to seek possession only on the payment of the entire sale consideration which includes the payment required to be made to the 6th defendant-bank, as well as the balance payment required to be made to these defendants. The plaintiff however, contends that possession has been given to him sometime in October, 2022. Very unfortunately, the plaintiff has not produced any documents to show that he was given possession pursuant to the MoU. It may be that the circumstances are ideally set for defendants 1 to 5 to entrust possession, since the plaintiff has already paid Rs.1.82 crores by August, 2022, and is ready with the balance sale consideration by October, 2022. Still, the facts established before the Court are not adequate enough to inspire this Court to grant an order of injunction. It is underscored this is a *prima facie* view

WEB COPY

based on the facts now made available. But the merit of this contention is left open to be tested during trial. This necessarily implies that the order of the trial Court may have to be confirmed, though for different reasons.

12. This now brings to focus the approach of the trial Court to the matter before it. It is nothing but contrasting the line of reasoning of the trial Court as has been stated in paragraph 3.4 above with the line of approach of this Court disclosed above. The trial Court has literally hurried to decide few facts when it would have been advisable for it to wait till trial is complete. Therefore, at least two of the grounds of the trial Court except the ground vis-a-vis the bar of the suit under Sec.18 of RDB Act, cannot be sustained.

13. Turning to the bar of suit, it is settled that unless the nature of the dispute strictly falls within the ambit of RDB Act, the suit is always maintainable. See: ***Bank of Rajasthan Vs V.C.K.Shares*** [(2023) 1 SCC 1]. On this aspect, certain submissions were heard during hearing that inasmuch as there is no privity of contract between the bank and the plaintiff, the plaintiff cannot seek a mandatory injunction against the 6th defendant. First, this may not now arise as no interim mandatory injunction of the kind is now

WEB COPY

sought. Secondly, since the 6th defendant is only a mortgagee of the suit property in law, nothing prevents it from assigning its right with or without a triparte agreement binding it.

14.1 Since the trial Court has pre-decided both the issue of maintainability of the suit and that the time for performance stipulated in the MoU is an essential term of the contract even at the interim stage, it would be an embarrassing experience for the plaintiff to conduct the trial before the said Judge. This Court, therefore transfers the suit from the I Additional District Court, Hosur to the Principal District Court, Krishnagiri. The Principal District Judge, Krishnagiri, may either retain the suit in his/her file or make over the suit to any other Additional District Court.

14.2 The transferee Court is required to explore the possibilities of an amicable settlement, more so, because under Sec.20 of the Specific Relief Act, as substituted by Act 18 of 2018, there is hardly discretion left with the Court while considering the grant of a decree for specific performance. It now provides for substituted performance of the contract. There, is option open to such of the parties who considers that the other side is in breach of

https://www.mhc.tn.gov.in/judis

WEB COPY

the contract.

15.1 To conclude, CMA.No.1677 of 2023 is partially allowed and the order of the trial Court in I.A.No 3 of 2023 is set aside. Accordingly, defendants 1 to 5 are injuncted from alienating the suit property till the disposal of the suit.

15.2(a) Insofar as C.M.A.No.1676 of 2023 is concerned, it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

15.2(b) So far as CMA.No.1676 of 2023 is concerned, at the time when these appeals are admitted, this Court granted interim order protecting the plaintiff's possession. Since this order is delivered on the last day before the Christmas recess, to enable the appellant to work out his remedies against this order, this Court directs that the *status quo* as is in existence till this moment to continue till 18.01.2024.

22.12.2023

Index : Yes / No
Internet : Yes / No
Speaking order / Non-speaking order
ds

https://www.mhc.tn.gov.in/judis

WEB COPY

N.SESHASAYEE.J.,

ds

Pre-delivery Judgment in
CMA.Nos.1676 & 1677 of 2023

22.12.2023