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A.No.4502 & 4503 of 2023

A. Nos.4502 & 4503 of 2023
in A. No.2217 of 2021 in C.S. No.224 of 2015

N.SESHASAYEE. J.,

The suit is laid for recovery of a sum of Rs.1.80 crores with future interest and the plaintiff has also moved an application in A. No.2152 of 2015 for interim attachment of defendant's property in the eventuality of he is failing to furnish any security for payment of the decretal sum. An order of an interim attachment was made wherein all the properties, which the defendant owned, were attached.

2.It is in these circumstances, when the matter came before this court on 02.02.2020 and a few days before that, this court explored the possibility of enabling the defendant to make payment to the plaintiff by selling at least one item of the properties attached. Since the plaintiff was not adequately confident, this court passed an order vacating the order of attachment vis-a-vis the property in S. No.79/4 of Thekkalur village and instead it created a charge over the property. Indeed, in paragraph 18.1 of its order, this court recorded the statement made by the learned counsel for the defendant wherein he says that



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the property in S. No.79/4 among the list of properties of the defendant alone is unencumbered. The idea is to vacate the order of attachment vis-a-vis the property in S. No.79/4 and to convert that into a charge with the set of conditions, in order the defendant might sell the property but under the watch of this court, in order the plaintiff's claim, may at least be deposited in the court.

2.This order did not work out as this court intended. The plaintiff had taken out an application in A. No.4502 of 2023 for recalling that order, and the defendant on his part has filed A. No.4503 of 2023 for seeking clarification.

3.Turning to defendant's application in A. No.4503 of 2023 is concerned, he brought to the notice of this court certain apparent inconsistencies between the order passed by this court and the decretal order prepared by the Registry. Whereas this court has vacated the order of interim attachment only with regard to the property of the defendant in S. No.79/4 of Thekkalur village. The decretal order has indicated as if the entire attachment over all the properties have been raised.



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4.Turning to A. No.4502/2023 which the plaintiff has filed for recalling the order of this court dated 04.02.2022 is concerned, the learned counsel for the plaintiff/applicant brought to the notice of the court that on 09.06.2021, the defendant had created a mortgage with LIC Housing Finance as regards all the three survey number of the properties.

5.The learned counsel submitted that the defendant knew that the property in S. No.79/4 had been given as security for certain loan obtained by the defendant from LIC Housing Finance, the fact which the plaintiff did not know. Indeed he had given all the three properties, which were attached by this court interimly, as collateral security to LIC Housing Finance, notwithstanding the fact that attachment made by this court, reflect in the encumbrance certificate.

6.The learned counsel for the defendant would submit that the defendant had only created a floating charge vis-a-vis LIC Housing Finance, and tried to distinguish a floating charge from a mortgage. This court must record its plain disappointment vis-a-vis the conduct of the defendant. When this court passed this order in A. No.2217 of 2021 on 04.02.2022 it was done with the good intention to ensure that the defendant's right to property should not be killed merely because he faces a potential liability in the suit, but the defendant has



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screened certain vital facts from the knowledge of the court, which are well within his personal knowledge at the relevant time, and he ought to have instructed his counsel about it, but he did not. Indeed, this court remembers, prior to 04.02.2022, the matter has been coming on few occasions, when this court tried to develop a mechanism by which the defendant was enabled to raise or mobilise funds from the property in S. No.79/4, but at no time the defendant appeared to have instructed his counsel about the mortgage he has created in favour of LIC Housing Finance. Secondly, as an honest defendant, even if he had breached the order of attachment and raised funds from LIC Housing Finance, he should have at least shown the minimum anxiety of depositing the suit claim involved in this case. He did not do that, either.

7.This court is satisfied that it showed mercy on the undeserving. This defendant does not deserve to have the benefit of the order of this court dated 04.02.2022 for the reasons stated herein above. This court is constrained to recall the said order forthwith and the order of attachment on property in S. No.79/4 of Thekkalur Village is restored to take effect from the date on which it was raised.



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8.In conclusion, Application No.4502 of 2023, filed by the plaintiff, is allowed and the order of this court dated 04.02.2022 made in A. No.2217 of 2021 in C.S. No.224 of 2015, is recalled forthwith and the order of attachment on property in S. No.79/4 of Thekkalur Village is restored to take effect from the date on which it was raised. A. No.4503 of 2023, filed by the defendant, is dismissed. No costs.

30.08.2023

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Date : 30.08.2023