A.No.1267 of 2023
in C.S.No.48 of 2023

R.N.MANJULA, J.

This application has been filed directing the respondents 1 to 4 / defendants 1 to 4 for furnishing security for the suit claim of Rs.2,70,00,000/- and failing which to attach the schedule mentioned property as security.

2. The applicants are the plaintiffs and the respondents are the defendants. The suit has been filed by the plaintiffs against the defendants for recovery of money to the tune of Rs.2,70,00,000/- with interest @ 1.70% per month.

3. It is stated by the applicants / plaintiffs that the first respondent had borrowed a sum of Rs.35,00,000/- from the third applicant and because of the non-payment of the principal and interest as promised the loan was restructured as Rs.55,00,000/- and hence the first respondent executed a Promissory note for a sum of Rs.55,00,000/- on 20.01.2022; the first respondent had also borrowed a sum of Rs.35,00,000/- from the first applicant and due of the non-payment of the principal and interest as promised the loan was restructured as Rs.55,00,000/- and so the first

respondent executed a Promissory note for Rs.55,00,000/- on 20.01.2022; so a total sum of Rs.1,10,00,000/- was due with a promise to repay it along with interest at the rate of 1.7% per month; the fourth respondent has borrowed a sum of Rs.55,00,000/- from second applicant and have executed two Promissory notes on 20.01.2022 one for a sum of Rs.50,00,000/- and another for a sum of Rs.5,00,000/-, with a promise to repay it along with interest of 1.7% per month; the fourth defendant has also borrowed a sum of Rs.55,00,000/- from the fourth applicant and have executed two Promissory notes on 20.01.2022 one for Rs.50,00,000/- and another for a sum of Rs.5,00,000/-, with a promise to repay it along with interest of 1.7% per month; so a total sum of Rs.1,10,00,000/- was also borrowed with a promise to repay it along with interest.

3.1. The applicants further stated that the respondents 1 to 4 have failed to repay the principal and interest. On 20.01.2022 the first defendant represented through the second defendant along with the fourth defendant had executed a loan agreement in respect of all the borrowings got from the applicants and they promised to repay the said principal sum of Rs.2,20,00,000/- along with interest and agreed to pay the same in six installments of Rs.45,00,000/- each, from April, 2022; the fourth respondent is a builder and he had entered an agreement with the respondents 5 and 6 / land owners of the schedule mentioned property for developing the same; the fifth and sixth respondents through their power agent fourth respondent have executed an Agreement of Deposit of Title Deeds in favour of the first applicant and deposited the original documents related to the property; so the applicants are the financiers for the building project that is to be developed by the fourth defendant upon the property belonging to the respondents 5 and 6; however the Agreement of the Deposit of Title Deeds have been made only in favour of the first applicant in his individual capacity and there is no security offered in favour of the applicants for the money advanced by them; since the respondents have committed default in making the repayment as agreed by them, the applicants have filed this application.

4. The respondents 1 to 3 have filed their counter by stating that the they have not borrowed any amount either from the first applicant or from any of the applicants; since the 5 and 6th respondents through fourth respondent have already executed a Agreement of Deposit of Title Deeds, there is no necessity to furnish any further security and hence the application should be dismissed.

5. The fourth respondent had filed an individual counter by stating that during February, 2022, he approached the applicants to give No Objection Certificate for registering the flats built in the schedule mentioned property; but the applicants / plaintiffs demanded exorbitant interest for issuing No Objection Certificate and that forced him to lodge a complaint under Exorbitant Interest Act and a case has been registered against the applicant / plaintiffs in Cr.No.258/2022 for the offences under Section 406 and 420 IPC and Section 3 and 4 of Tamil Nadu Prohibition of Charging of Exorbitant Interest Act, 2003; the same was challenged by the applicants by filing a Criminal Original Petition in Crl.O.P.No.530 of 2023 for quashing the same and the said petition is pending; the applicants have not filed any proof to show that any consideration was passed in favour of respondents 5 and 6 for executing the deed of mortgage by depositing title deeds; the Agreement of Deposit of Title Deeds would only show that the 5 and 6th respondents have borrowed a sum of Rs.2,20,00,000/- from one Vinay Asrani in his personal capacity who is not a plaintiff in this case. Hence the application filed by the applicants should be dismissed.

6. The learned counsel for the applicants submitted that the applicants are money lenders and they are Hindu Undivided Family; only in view of the development of the building belonged to the respondents 5 and 6 by the fourth respondent, the applicants have lent a huge money on several occasions and for which the respondents 1 to 4 have also executed promissory notes on various occasions and further the fourth respondent as power agent for 5 and 6th respondent had executed a Agreement of Deposit of Title Deeds in respect of the schedule mentioned property; but the respondents 4 to 6 have filed an application before the Special Judge for exclusive trial of CCB, CBCID cases in Crl.M.P.No.3557 of 2023 and managed to get back the title deeds in respect of the petition mentioned properties without depositing any money; hence the order to furnish security should be ordered to protect the interest of applicants.

7. The learned counsel for the 4th respondent submitted that in the petition filed by the fourth respondent in Crl.M.P.No.3557 of 2023 itself he had admitted the liability of Rs.1,70,18,226/- along with interest, but the applicants demand exorbitant interest exceeding the actual amount due to be paid to them. However, it is fairly conceded by the learned counsel for the fourth defendant that the fourth defendant is willing to deposit the

admitted amount before 15.07.2023.

8. Records would show that the applicants happened to be the financiers for the respondents 1 to 4 who involve themselves in a building project undertaken at the property belonging to the defendants 5 and 6. The defendants 5 and 6 through their power agent, fourth defendant had also executed the Agreement of Deposit of title deeds in favour of the third applicant and the first applicant in his individual capacity on 21.01.2022. However the problem appears to have arisen after the fourth respondent had finished his construction and requested a No Objection Certificate from the applicants.

9. It is alleged by the fourth respondent that the applicants have demanded exorbitant interest at that point of time and that lead to a criminal complaint which is registered as Cr.No.258 of 2022. However during the FIR stage itself the fourth respondent who was a *de facto* complainant in Cr.No.258 of 2022 had filed a petition before the learned Metropolitan Magistrate, CCB & CBCID cases, Egmore, Chennai for depositing the admitted liability and prayed to get back the title deeds of the schedule mentioned property. The learned trial Judge had ordered to

cause the production of title deeds involved in Agreement of Deposit of Title Deeds dated 21.01.2022 and accordingly the concerned police who had already seized the documents from the applicants have produced them before the Court. However the Court seems to have passed an order to return those documents to the fourth respondent without asking him to deposit the amount admitted and undertaken by him in his very application itself.

10. Subsequently, the applicant has filed a Criminal Revision Petition in Crl.R.C. No.899 of 2023 before this Court to challenge the above order by which the title deeds have been returned to the fourth defendant. However an interim order has been passed by this Court on 25.05.2023 to the following effect:

> *" 4. Notice to the second respondent returnable by 20.06.2023. Private notice is also permitted. Meanwhile, there shall be an order of interim stay of the order of the learned Special Judge in Crl.M.P.No.3557 of 2023 dated 20.04.2023. The Second Respondent is directed not to cause third party interest."*

11. The learned counsel for the applicants insisted that the said order does not specify anything about the schedule mentioned property which is the subject matter of the mortgage by deposit of title deeds.

When the fourth respondent himself has admitted that he is liable to pay a certain sum of money and expressed his willingness to deposit the same, the learned trial Judge ought to have received the said amount and then returned the title deeds.

12. Leaving aside the dispute between the parties as to the quantum of money that is liable to be paid by the respondents 1 to 4 to the applicants, the fact remains that there is a loan agreement between the applicants and the respondents 1 to 4 and the respondents 5 and 6 through the fourth defendant as power agent had deposited the title deeds of the schedule mentioned property as security for certain finance facility availed from the applicants. In such case it may not be fair on the part of the respondents 1 to 4 to take any chance to encumber the schedule mentioned property by utilizing the title deeds which has been obtained by them by virtue of the order of the trial Court dated 20.04.2023 in Crl.M.P.No.3557 of 2023. There is also an interim order passed on 26.06.2023 in Crl.R.C. No.899 of 2023 by directing the fourth defendant to deposit the loan amount with interest as decided by the trial Court on or before 15.07.2023. But the trial Court even before deciding the quantum had chosen to return the title deeds.

13. The fourth respondent did not deny his liability to deposit the sum agreed though the applicants have got a larger claim than what is admitted by him. Hence a direction should be issued to the fourth respondent / fourth defendant not to create any third party interest by utilizing the title deeds obtained by him.

14. With these observations, this application is disposed and the fourth respondent / fourth defendant is restrained from creating any third party interest by utilising the title deeds obtained by him in respect of the schedule mentioned property by way of making any sort of alienations or encumbrance until he deposits the money as agreed by him.

03.07.2023

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