



WEB COPY



A.Nos.2042, 2043, 3336 & 3049 of 2024
in C.S.Nos.187 & 414 of 2016
& A.No.2044 of 2024

Reserved on: 10.07.2024

Pronounced on: 02.08.2024

P.B.BALAJI, J.,

The application in A.No.2042 of 2024 has been filed to permit the applicant/plaintiff to deposit a sum of Rs.1,56,16,088/- (Rupees One Crore Fifty Six Lakhs Sixteen Thousand and Eighty Eight) to the credit of C.S.No.414 of 2016.

2.The application in A.No.2043 of 2024 has been filed to direct the respondents 1 and 2/defendants 1 and 2 to furnish security to satisfy the suit claim of Rs.4,41,09,401/- (Rupees Four Crores Forty One Lakh Nine Thousand Four Hundred and One) within 7 days hereof, failing which to order attachment of the property morefully described in the schedule to the accompanying judges summons, pending disposal of the above suit.

3.The Application in A.No.3049 of 2024 has been filed to direct payment out of Rs.1,93,83,912/- (Rupees One Crore Ninety Three Lakhs Eighty Three Thousand Nine Hundred and Twelve) with accrued interest



thereof, deposited in O.A.No.693 of 2023 in C.S.No.414 of 2016.

WEB COPY

4.The application in A.No.3336 of 2024 has been filed to transfer and hold/lien the amount of Rs.1,93,83,912/- with accrued interest, if any deposited by the respondent/defendant to the credit of C.S.No.414 of 2016 by directing it to be deposited in an interest bearing account in any nationalized Bank, till the disposal of the above suits in C.S.No.187 of 2016 and C.S.No.414 of 2016 on its merits.

5.In view of the fact that the issues are common in all these applications, they were taken up together for arguments.

6. I have heard Mr.V.Raghavachari, learned Senior Counsel for Mr.M.Venkatakrisnan, learned counsel for the applicant in A.No.3336 of 2024 and respondents in A.Nos.3049, 2042 & 2043 of 2024 and Mr.P.L.Narayanan, learned Senior Counsel for Mr.P.T.Rakesh, learned counsel for the applicant in A.Nos.3049, 2042 & 2043 of 2024 and respondent in A.No.3336 of 2024.

7. The plaintiff, as applicant has filed A.Nos.3049 & 3336 of 2024, in and by which he seeks a direction to withhold a sum of



Rs.1,93,83,912/- with accrued interest as lien to the credit of C.S.No.414 of 2016 and to deposit the said amount in the interest bearing account in any Nationalized Bank till disposal of C.S.No.187 of 2016 and C.S.No.414 of 2016.

8. A.No.2042 of 2024 is taken out by the plaintiff in C.S.No.414 of 2016 seeking permission to deposit a sum of Rs.1,56,16,088/- to the credit of C.S.No.414 of 2016. In A.No.2043 of 2024, an application has been filed in C.S.No.414 of 2016 by the plaintiff seeking a direction to the respondents 1 and 2 to furnish security to the suit claim of Rs.4,41,09,401/-, failing which, order attachment of the property morefully described in the schedule in the Judges Summons.

9. I have heard the learned Senior Counsel on either side.

10. There are two suits filed by the parties against each other. In C.S.No.414 of 2016, the plaintiff has sought for the relief of recovery of Rs.4,41,09,401/- and in the alternative for cancellation of the Sale Deed dated 28.04.2020 bearing Doc.No.1225 of 2014 on the file of the SRO, Mylapore.

11. The suit in C.S.No.187 of 2016 has been filed by the plaintiff/purchaser seeking recovery of possession and damages for illegal



use and occupation.

WEB COPY

12. Both the suits are in respect of the very same property. The parties were already before the Additional Master and trial had commenced. During the said period, Axis Bank, Mylapore Branch brought the suit property for sale, as the plaintiff/auction purchaser in C.S.No.187 of 2016 had defaulted in payment of the loan amount.

13. The plaintiff in C.S.No.414 of 2016 approached this Court for protection of her possession in O.A.No.693 of 2003 and this Court, in and by an order, issued a direction to the applicant/plaintiff in C.S.No.414 of 2016 to deposit a sum of Rs.1,93,83,912/- within one month and subject to such deposit, a status-quo order was directed to be maintained as against the plaintiff in C.S.No.414 of 2016, especially, direction being issued to M/s.Axis Bank Limited. The said order came to be complied with by the plaintiff by depositing a sum of Rs.1,93,83,912/- on 16.10.2023. The Bank has also been impleaded as a party defendant in C.S.No.414 of 2016. It appears that in the meantime, the plaintiff in C.S.No.187 of 2016 has independently approached the Bank and settled the loan account by way of one time settlement. Now, the application for payment out has been filed in



A.No.3049 of 2024 on the ground that the Bank has also executed a registered receipt dated 25.04.2024 and the loan amount has been closed and the purpose of deposit of Rs.1,93,83,912/- has become infructuous, as it was only deposited to satisfy the conditional order of injunction against the Bank.

14. The said application is opposed by the respondent/plaintiff in C.S.No.187 of 2016 who has in parallel taken out the application in A.No.3336 of 2024 in C.S.No.187 of 2016 to hold the said amount as a lien, till disposal of the suits.

15. Mr.P.L.Narayanan, learned Senior Counsel would submit that the amount was deposited only in pursuance of a conditional order passed by this Court in an injunction application taken out by the applicant and therefore, there can be no lien/attachment of the said amount and now that the Bank's dues have been admittedly cleared, the applicant is entitled to payment out. He would therefore seek for the application for payment out being allowed and A.No.3336 of 2024 being dismissed.

16. Per contra, Mr.V.Raghavachari, learned Senior Counsel



appearing for the respondent in the payment out application and the applicant in the application seeking lien of the amount would submit that the plaintiff in C.S.No.414 of 2024 who happens to be the defendant in C.S.No.187 is a rank trespasser and he has been enjoying the property despite a valid sale in favour of the plaintiff in C.S.No.187 of 2016 and the suit has been filed not only for recovery of possession but also for damages for illegal use and occupation. He would further submit that since the amount has been deposited and is available to the credit of the one of the suits, it should be held in lien since the decree for damages for use and occupation is also sought for and in the event of succeeding the suit, the plaintiff in C.S.No.187 of 2016 will be in a position to satisfy the decree to be passed in respect of damages for illegal use and occupation.

17. Mr.V.Raghavachari, learned Senior Counsel would place reliance on the following decisions:

1.1983 (4) SCC 417 (M/s.H.M.Kamaluddin Ansari and Co., Vs. Union of India and Others).

2.2016 (11) SCC 720 (Gangotri Enterprises Limited Vs. Union of India and Others).

3.2020 (2) SCC 540 (State of Gujarat through Chief Secretary and Another Vs. Amber Builders).



Relying on the above decisions, the learned Senior Counsel would submit that the interim relief as sought for in A.No.3336 of 2024 can be granted and the payment out application has to be dismissed.

18. In A.Nos.2042 & 2043 of 2024, the applicant is the plaintiff in C.S.No.414 of 2016 and in A.No.2042 of 2024, the prayer sought for is to permit the applicant/plaintiff to deposit Rs.1,56,16,088/- to the credit of C.S.No.414 of 2016.

19. In A.No.2043 of 2024, the applicant/plaintiff in C.S.No.414 of 2016 has sought for a direction to the respondents 1 and 2/ defendants 1 and 2 to furnish security to satisfy the suit claim of Rs.4,41,09,401/-, failing which they have prayed for an order of attachment.

20. I have heard the learned Senior Counsel on either side on these applications as well.

21. In view of the fact that the loan account has already been closed, pending application in A.No.2042 of 2024, nothing survives for consideration in A.No.2042 of 2024.



WEB COPY

22. Insofar as A.No.2043 of 2024 is concerned, the arguments that have been advanced in the payment out application and the application to hold the amount as lien are adopted by the learned Senior Counsel in the present application. Additionally, Mr.P.L.Narayanan would submit that the plaintiff has no security for the suit claim and hence this application has to be ordered.

23. Admittedly, the suit claim is made on the footing that despite the registration of Sale Deed for Rs.3,50,00,000/-, the actual sale consideration agreed between parties was Rs.8,00,00,000/- and in order to recover the deficit sale consideration, the suit has been laid. It is a matter for trial and admittedly, the applicant/plaintiff in C.S.No.414 of 2024 has executed a registered Sale Deed in favour of the contesting respondents, who are husband and wife being defendants 1 and 2 and till such time, any decree is passed, post trial, declaring the Sale Deed as null and void, the respondents are lawful title holders of the suit property. Therefore, there is no question of directing them to furnish security for an amount which is yet to be proved by the plaintiff to be due and payable to her.



24. In such view of the matter, no direction to furnish security can be issued as prayed for. Similarly, the same argument will hold good in respect of the application filed by the plaintiff in C.S.No.187 of 2016 seeking lien of the amount deposited by the plaintiff in C.S.No.414 of 2016. Today, the plaintiff's suit for relief of recovery of possession and damages for illegal use and occupation is pending trial. There is no ascertained amount which is due and payable by the respondent i.e., by the respondent in A.No.3336 of 2024.

25. First and foremost, the plaintiff has to make out a case for relief of recovery of possession and thereafter, entitlement to damages for illegal occupation would be gone into and only at that juncture, the quantum of damages for use and occupation would be arrived at by the Court, for which parties will have to necessarily lead oral and documentary evidence. Today, there is no admitted liability or ascertained sum of money due and payable by the respondent. Therefore, the application to transfer and hold the amount of Rs.1,93,83,912/- as lien does not arise. Though the learned Senior Counsel relied on three decisions, I find that in all those cases, the Hon'ble Supreme Court was dealing with arbitration disputes where there was a contract relating to damages payable and under those circumstances,



the Court held that interim relief can be granted. However, the facts of the present case are entirely different.

26. The amount for which lien is sought to be created or held is not ascertained as on date and it is subject to the applicant / plaintiff succeeding in the suit ultimately. Therefore, there can be no impediment for permitting the amount deposited by the plaintiff in C.S.No.414 of 2016 to seek withdrawal of the said amount, which was only paid as a condition to save the property from Bank auction. In any event, the suit is of the year 2016 and trial is nearing completion and at this juncture there cannot be an interim order as prayed for in A.No.3336 of 2024.

27. In fine,

i) A.No.2042 of 2024 is dismissed as infructuous; (ii) A.Nos.2043 & 3336 of 2024 are dismissed and iv) A.No.3049 of 2024 is allowed.

02.08.2024

ata

Note : Issue order copy on 05.08.2024.



WEB COPY



P.B.BALAJI, J.

ata

A.Nos.2042, 2043, 3336 & 3049 of 2024
in C.S.Nos.187 & 414 of 2016
& A.No.2044 of 2024



WEB COPY



02.08.2024