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O.S.A.Nos.108 & 110 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

O.S.A.Nos.108 & 110 of 2021

and

C.M.P.Nos.5037 & 5130 of 2021

The Manager,
Punjab National Bank,
Luz Church Road,
Mylapore,
Chennai – 600 004.

... Appellant
in both appeals

Vs.

1.T.A.S.Rathnakumar

2.Karanam Madhu

3.The Sub-Registrar,
No.60, TNSC Buildings,
J.J. Complex, Jawharlal Nehru Road,
2nd floor, Thirumangalam,
Chennai – 600 040.

... Respondents
in both appeals



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Original Side Appeals in O.S.A.Nos.108 and 110 of 2021 filed under Order XXXVI Rule 1 of Original Side Rules against the order dated 16.10.2020 in O.A.Nos.2156 of 2020 and 628 of 2020 respectively in C.S.No.708 of 2019 on the file of this Court.

For Appellant : Mr.M.L.Ganesh
For R1 : Mr.Prashant Rajagopal
For R3 : Mrs.R.Anitha
Special Government Pleader
R2 : Left without instruction

COMMON JUDGMENT

(Judgment was delivered by **S.S. SUNDAR, J.**)

These two Original Side Appeals are directed against the common order passed by the learned Single Judge of this Court in O.A.Nos.2156 of 2020 and 628 of 2020 in C.S.No.708 of 2019, dated 16.10.2020.

2.Brief facts that are necessary for the disposal of these two appeals are as follows :



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2.1.The appellant in these two appeals is the 2nd defendant in the suit in C.S.No.708 of 2019 filed by the 1st respondent. It is not necessary to refer to the entire pleadings in the suit filed by the 1st respondent except a few facts which are sufficient for the present.

2.2.The plaintiff executed a sale deed in respect of vacant land measuring an extent of 1560 sq.ft. in Anna Nagar in favour of the 1st defendant in the suit on 12.03.2016. Though the sale deed refers to substantial payment which was acknowledged under the deed, it refers to payment of part of consideration by way of two cheques. It is the case of plaintiff that the purchaser, namely the 1st defendant, did not honour the cheque for a sum of Rs.25 Lakhs dated 11.03.2016. Stating that a part of sale consideration, namely a sum of Rs.25 Lakhs, is not paid, it is the contention of the plaintiff there is a statutory charge by virtue of unpaid sale consideration. The case of the plaintiff in the plaint is also that, out of total sale consideration of Rs.3,18,00,000/-, only Rs.75,00,000/- have been paid and there is balance of sale consideration to the tune of Rs.2,43,00,000/-



which is not paid. It is the specific case of the plaintiff that there is a statutory charge in respect of unpaid sale consideration of Rs.2,43,00,000/-.

2.3.However, the suit was originally filed for cancellation of sale deed dated 12.03.2016 which is registered as Doc.No.1186 of 2016 executed by the plaintiff in favour of 1st defendant, which is registered in the office of the 3rd respondent. The further relief prayed for in the suit was to declare the memorandum of deposit of title deeds, dated 12.03.2016, executed by the 1st defendant in favour of the 2nd defendant, the appellant herein, as null and void.

2.4.During the pendency of the suit, probably due to advice, the plaintiff, who is the 1st respondent herein, filed an application in O.A.No.2156 of 2020 for amendment of plaint to insert an alternative prayer to declare that the plaintiff is entitled to a statutory charge over the schedule property to an extent of Rs.2,43,00,000/- being the value of unpaid sale consideration under the sale deed dated 12.03.2016. The appellant herein, who is the 2nd defendant in the suit, filed O.A.No.628 of 2020 for rejection



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of plaint under Order VII Rule 11 CPC on the ground that the suit is barred under Section 34 of SARFAESI Act, as well as under Section 31(b) of Recovery of Debts due to Banks and Financial Institutions Act, 1993. The plaintiff has filed another application in A.No.1893 of 2020 for amending the prayer by deleting the prayer for declaring the sale deed as null and void.

3.It is to be noted that the proposed amendment in A.No.2156 of 2020 was nothing but to amend the prayer in the plaint and the corresponding pleading in the body of the plaint. By amendment, the plaintiff sought for insertion of specific averment to the effect that the plaintiff is entitled to a statutory charge in Para No.10 of the plaint and also sought for an alternative prayer to be included in the plaint to declare that the plaintiff is entitled to a statutory charge over the schedule property to an extent of Rs.2,43,00,000/- being the value of unpaid sale consideration under the sale deed dated 12.03.2016. The further amendment is consequential to the amendment introducing the alternative prayer.



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4.Be that as it may, this Court finds that the prayer that is now introduced by way of amendment is the relief which is appropriate and the plaintiff will be entitled to the relief, if he proves that substantial part of consideration is not paid. However, we are not deciding whether such pleading and prayer contrary to the written statement is sustainable or not. Therefore, on the facts pleaded in the plaint and the cause of action, the amendment introducing the alternative prayer cannot be rejected in limini. The contention of the appellant/2nd defendant Bank that the suit is liable to be dismissed as it is barred by virtue of Section 34 of SARFAESI Act and on the ground that the right of Secured Creditor will prevail under Section 31(b) of Recovery of Debts due to Banks and Financial Institutions Act, 1993, cannot be sustained even on the admitted facts. However, the learned counsel for the appellant Bank states that the issue now raised by the appellant by way of defence may be relegated to the trial Court for a decision after complete trial. To this course, the learned counsel for the 1st respondent/plaintiff has no serious objection.



5.It is well settled that an application under Order VII Rule 11 CPC can be decided only on the basis of the averments made in the plaint and not on the basis of defence that are raised in the written statement. Secondly, it is also settled that, when contentious issues raised are required to be decided on the appreciation of evidence let in, the Court will always prefer to decide the issues on merits at the appropriate stage after trial. Therefore, this Court, without expressing any opinion on the merits of the contentions or grounds raised by the appellant, relegates the matter to the trial Court to decide all the issues.

6.The learned Single Judge allowed the amendment application in O.A.No.2156 of 2020 giving sufficient reasons and this Court is unable to find any irregularity or error in allowing the application for amendment. This Court has already expressed that the amendment is in tune with what the plaintiff is entitled to, if he really proves the allegation that a huge sum of Rs.2,43,00,000/- is not paid, even though such payment is acknowledged under the sale deed. It is to be noted that atleast part of payment was only by way of cheque and therefore, the plaintiff should be given a fair



opportunity to prove his contentions that a huge amount which is shown as part of sale consideration, is not paid.

7.As regards the application in A.No.628 of 2020 under Order VII Rule 11 CPC, the learned Single Judge held that there is a statutory charge in respect of unpaid sale consideration and that therefore, the suit is not against any measures taken by the Bank under the SARFAESI Act. Even though this Court is unable to find any irregularity or illegality in the order of the learned Single Judge, the learned counsel for the appellant Bank requests this Court that the appellant may also be given liberty, in view of certain precedents, to establish his case as to the maintainability of the suit.

8.In view of the above, these Original Side Appeals are disposed in the following lines :

- i. **O.S.A.No.108 of 2021 is dismissed**, confirming the order of the learned Single Judge in O.A.No.2156 of 2020 in C.S.No.708 of 201, dated 16.10.2020 holding that the amendment is appropriate, proper and permissible.



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- ii. **O.S.A.No.110 of 2021 is also dismissed**, however, with liberty to the appellant/2nd defendant to raise all their objections before the trial Judge. Since it is now admitted before this Court that the appellant has not filed any independent written statement in the suit, the appellant is now permitted to file a written statement raising all the grounds they have raised in the application under Order VII Rule 11 CPC. However, we express no opinion on the merits of any of the objections raised by the appellant. It is open to the trial Judge to consider all the objections independently and decide the same, uninfluenced by any of the observations which we have made in this judgment.
- iii. Since we have upheld the order of learned Single Judge allowing the amendment, we also uphold the direction of the learned Single Judge in Para No.19 directing the appellant Bank to deposit Rs.50,00,000/- in an interest bearing Fixed Deposit till the final disposal of the suit. The learned counsel appearing for the appellant Bank now states that the appellant has deposited the said amount of Rs.50,00,000/- in an interest bearing Fixed Deposit, as directed by the learned Single



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Judge in Para No.19 of the impugned order.

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iv. No costs. Consequently, connected miscellaneous petitions are closed.

(S.S.S.R., J.) (K.R.S., J.)
06.08.2024

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

The Sub-Registrar,
No.60, TNSC Buildings,
J.J. Complex, Jawharlal Nehru Road,
2nd floor, Thirumangalam,
Chennai – 600 040.



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and
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