IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 10 .06.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.S.No. 25 of 2024

1. Alcance Academy Educational Trust
   Rep. By its Founder and Managing Trustee
   Mr.G.Kathirvel
   S/o. Mr.Ganapathiappan
   having Office at
   No.D2-07, 7th Floor, D Tower,
   E Residenecs, Woods Road,
   Chennai – 600 002.

2. M.Parkavi ... Plaintiffs

Prayer : Plaint filed under Order VII Rule 1 CPC read with Order IV Rule 1 of OS Rules read with Section 92(f) of the Code of Civil Procedure, to pass a Judgment and Decree in favour of the plaintiffs permitting and authorising the plaintiff Trust, represented by its Managing Trustee, Mr.G.Kathirvel to mortgage the suit schedule property belonging to the plaintiff Trust in favour of HDFC Bank Limited as a security for the overdraft facility sanctioned by HDFC Bank Limited to the plaintiff Trust.

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For plaintiffs : Mr. G.Raja

ORDER

The suit has been filed taking advantage of Section 92(f) of the Code of Civil Procedure by the two plaintiffs, in effect the Educational Trust seeking permission to mortgage the suit schedule property belonging to the trust in favour of HDFC Bank Ltd., as a the security for over draft facility which had been agreed to be sanction by the HDFC Bank Ltd., to the plaintiff Trust.

2. Even before examining the averment made in the plaint, it would be advantageous to examine Section 92(f) of the Code of Civil Procedure. Section 92 of the Code of Civil Procedure deals with public charities. It further provides that a public charity may institute a suit to obtain a decree including among other reliefs, under subsection (f) for any part of the trust property to be let, sold, mortgaged, or exchanged.

3. This provision is taken recourse to by the plaintiffs herein seeking to mortgage a flat which is owned by the trust and which has been more fully described in the schedule. The flat is situated in the 7th Floor and bears No. D-2 and D-7 in D Tower, E Residences, Woods Road, Chennai – 600 002 measuring an undivided extent of 1198 sq.ft., out of a larger land area and 2733 sq.ft., of carpet area with three car parkings. It is situated in the Express Avenue Building. The plaintiffs are not mortgaging the properties where the college is situated or the lands which are used for educational purposes.

4. The first plaintiff is Alcance Academy Educational Trust and the second plaintiff is one of the trustees. The office premise of the trust is in the aforementioned schedule mentioned property. It had been stated in the plaint that the trust is running a business school called Indian School of Science and Management for more than 10 years offering MBA program in various specializaitons. It is at Taramani. The program is a two year full time Master in Business Administration. The college is accredited to Alagappa University. It is also stated that about 2800 students are studying and the college has a good record of placements. It had been stated that to develop the Business School further, over draft facility is required and HDFC Bank had come forward to sanction over draft facility of Rs.3/- crores and for that purpose, the plaintiffs have to mortgage the office premises, namely, the flat at Express Towers as described above. It is also stated that the income from the college is about Rs. 2/- crores for the last financial years.

5. After following due procedure, the plaintiffs were directed to tender evidence. The first plaintiff G.Kathirvel examined himself as PW-1. The copies of the trust deeds dated 06.01.2012 and 08.11.2023were marked as Exs. P-1 and P-2. The accreditation to Alagappa University was marked as Ex.P-3. The documents relating to the particular property namely the flat were marked as Exs.P-4 and P-5. The sanction letter of HDFC Bank was marked as Ex.P-6. The resolutions of the Board of Trustees were marked as Exs.P-7 and P-8. The income tax returns for three financial years were marked as Exs. P-9 to P-1.

6. The learned counsel for the plaintiff took the Court through the sanction form in Ex.P-6 and pointed out that the plaintiffs are only seeking an over draft facility and are not mortgaging any portion of the college premises at Taramani but rather only the office premises at Chennai and that the property is being offered only as security and that the plaintiff would take ever endeavour to ensure that the over draft facility is not misused and that caution would be exercised while drawing money through the over draft facility.

7. Taking into consideration the evidence and the documents produced, the suit is decreed as prayed for. The plaintiffs are directed to submit accounts with respect to the drawals from the over draft facility availed by them consequent to their decree. They may file a statement every financial year for the next three financial years. If the accounts are filed, the learned Assistant Registrar (Original Side I) may accept the same and record them on the file of this suit. No costs.

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Index:Yes/No
Web:Yes/No

Speaking/Non Speaking Order

1. **<u>List of Witnesses examined on the side of the Plaintiffs:-</u>**

1. P.W.1 – Mr.G.Kathirvel

2. List of Exhibits Marked on the side of the Plaintiffs:-

1. Ex.P1 =photocopy of the Trust Deed dated 06.01.2012;

2. Ex.P2 =photocopy of the supplemental Trust Deed dated 08.11.2023;

3. Ex.P3 = Alagappa University Approval Letter No. ISSM dated 14.03.2023;

4. Ex.P4 = photocopy of the sale deed dated 02.09.2022;

5. Ex.P5 = photocopy of hte Construction Agreement dated 03.09.2022;

6. Ex.P6 = Sanction Letter of HDFC Bank dated 27.10.2023;

7. Ex.P7 = Board Resolution dated 03.11.2023;

8. Ex.P8 = Board Resolution of the Trust authorising manaing Trustee dated 09.11.2023;

9. Ex.P9 = Income Tax Return Acknowledgment with audited Balance Sheet of the plaintiff Trust for the Financial Year 2021-2022 (Certificate U/s 65-B of I.E. Act produced);

10. Ex.P10 = Income Tax Return Acknowledgment with audited Balance Sheet of the plaintiff Trust for the Financial Year 2022-2023 (Certificate U/s 65-B of I.E. Act produced)

11. Ex.P11 = Income Tax Return Acknowledgment with audited Balance Sheet of the plaintiff Trust for the Financial Year 2023-2024 (Certificate U/s 65-B of I.E. Act produced)

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C.V.KARTHIKEYAN, J.

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