THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2025

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

O.A. No.58 of 2025

Urumanan Mookan

Applicant

Vs

1. Sudha Sreeraj
2. Sakthi R. Shri Lakshmi

Respondents

For Applicant : Mr.A. Abdul Hameed
Senior Counsel
for Mr. N. Baaskaran

For Respondents : Mr.S. Mukunthan
Senior Counsel
for Mr.Sam Jayaraj
for M/s.Sarvabhuman Associates

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The applicant is having the benefit of an interim injunction order in this application since 24.01.2025. The applicant had entered into an Agreement for Sale with the 2nd respondent's father under an Agreement for Sale dated 23.02.2022. The applicant has paid an advance of Rs.6.5 Crores to the 2nd respondent's father, while entering into the Sale Agreement. However, the respondents contended that a sum of Rs.6.5 Crores was not paid, but only a sum of Rs.1.5 Crores was paid as an advance by the applicant. Admittedly, even the said sum of Rs.1.5 Crores has not been refunded to the applicant by the respondents. To protect the interest of the applicant, this application has been filed seeking for an order of interim injunction to restrain the respondents from in any way alienating or encumbering the property morefully described in the schedule to the Judges Summons, which is the subject matter of the Sale Agreement, dated 23.02.2022.

2. The learned Senior Counsel appearing for the respondents would submit that the property was already mortgaged to a bank, which the applicant was very well aware at the time of signing the Sale Agreement, dated 23.02.2022. However, the same is disputed by the learned Senior Counsel appearing for the applicant.

3. The learned Senior counsel appearing for the respondents would further submit that the property is now with the possession of the bank, viz., Federal Bank, pursuant to SARFAESI Proceedings initiated by the bank against the respondents. An order of sale has also been passed by

the Debt Recovery Tribunal(DRT). However, as seen from the documents filed by the respondents before this Court, the sale has been challenged by the respondents before the DRT, Coimbatore and a stay has been obtained by the respondents on 21.08.2023 in S.A. No.586 of 2023 with regard to the sale.

4. Admittedly, since an interim stay has been obtained by the respondents in S.A. No.586 of 2023 before the DRT, Coimbatore on 21.08.2023 as on date, the property has not been sold to the bank under the SARFAESI Proceedings. Since the mortgage in favour of the bank is prior to the date of the Sale Agreement, which is the subject matter of this application, necessarily, any interim injunction granted by this Court is subject to the earlier mortgage created in favour of the bank. However, since the applicant's interest has to be protected in view of the admitted fact that a sum of Rs.1.5 Crores has not been repaid by the respondents to the applicant, the interim injunction granted by this Court on 24.01.2025 will have to be made absolute. However, it is made clear that the interim injunction granted by this Court is subject to the mortgage already created by the respondents in favour of the bank, which is the subject matter of the SARFAESI Proceedings before the DRT, Coimbatore.

5. For the foregoing reasons, the interim injunction order granted by this Court on 24.01.2025 in favour of the applicant is made absolute and accordingly, this application is allowed as prayed for. However, the interim injunction order granted is subject to the mortgage created by the respondents with Federal Bank, which is the subject matter of the SARFAESI Proceedings before the DRT, Coimbatore.

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ABDUL QUDDHOSE, J.

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