IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.04.2025**

CORAM

THE HONOURABLE MR JUSTICE A.A.NAKKIRAN

A NO. 4040 of 2024
AND
CS NO. 99 OF 2016

A.Chellakumar
S/o.C.Arunachalam, No.76, 18th Street, S Block,
Anna Nagar, Chennai 600 040.

Applicant(s)

Vs

Ashis Kumar Chakaraborty and 2 others
S/o.S.K.Chakaraborty, All are residing at No.AM 73, Block 2976-A, 14th Main Road, Anna Nagar, Chennai 600 040. and 2 Others

Respondent(s)

Prayer: This application is filed to direct the Respondents/Defendants to furnish security for a value of Rs.47,00,000/- interest at Rs.76,14,000/- total 1,23,14,000/- along with interest at 18 percent per annum from the date of suit.

For Applicant(s): M/s.T.E.Ekambaram
For Respondent(s): M/s.V.G.Anbarasu
For R1 To R3

ORDER

The application has been filed to direct the respondents/defendants to furnish security for a value of Rs.47 lakhs (+ interest Rs. 76,14,000/- =total 1,23,14,000/-) along with interest 18% p.a from the date of the suit failing which orders may be passed for attachment before judgment in respect of the properties morefully described in the schedule herein in the Judge's summons and pass such further orders that may deem fit and proper in the circumstances of the case and render justice.

2. The learned counsel for the applicant submitted that the respondents having received a sum of Rs.47 lakhs as advance towards sale consideration of 4 crores on 24.12.2015, failed to execute sale deed in favour of the applicant. Pending suit, the suit property was brought on auction sale under SARFAESI Act and out of the sale proceeds, the loan account of respondents with Deutsche Bank was fully discharged and the remaining sale proceeds to the tune of Rs.1,58,88,208.32 was paid to the respondents.

3. It has been further submitted that in the remaining sale proceeds, they have purchased a residential flat at Maduravoyal and re-settled the same in favour of their son and daughter. Such transfer is hit by provisions under section 53 of Transfer of Property Act. The settlees having no better title in a gratuitous transfer, as such, the property is answerable to the debts incurred by Settlors who are the respondents herein. Hence, the applicant prays this court to pass an order directing the respondents to furnish security to the tune of Rs.1,23,14,000/- being 47 lakhs (advance) + Rs.76,14,000/- (interest) along with interest at 18% p.a. from the date of suit, failing which, to order attachment before judgment in respect of schedule mentioned property to the application.

4. The learned counsel for the respondents submitted that though the sale amount is fixed at 4 crores, as per the oral agreement between the applicant and respondents, the sale consideration was fixed only at Rs.4.75 crores and the applicant having agreed to pay the same on or before the date of registration, failed to pay the amount, thereby comply with the conditions of agreement of sale, therefore, the respondents cancelled the agreement of

sale dated 01.10.2015 and intimated the same to the applicant/plaintiff. As the plaintiff failed to pay the balance sale consideration in time, the property was brought under auction under SARFAESI Act for the dues and the same was sold by DRT for the lowest price. In fact, due to the delay caused by the applicant/plaintiff, the respondents met loss of Rs.70 lakhs as interest to the bank.

5. It is further contended that the agreement of construction and sale deed is for the property purchased by the respondents in the year 2013, but due to dispute between the builder and purchasers, documents were executed only in the year 2017. The schedule property was purchased out of the funds derived from selling the ancestral property of the respondents. On 24.09.2020, the 1st respondent underwent an open heart surgery, hence for the benefit of their children's future, the respondents 1 and 2 executed a settlement deed in favour of their children, therefore, the same is not a fraudulent transfer and such settlement will not attract Section 53 of Transfer of property Act, nor the provisions of Benami Transaction Act. The respondents are not liable to pay the alleged amount to applicant/plaintiff, as such they are not liable to pay any interest. Now the children of the

respondents have become the absolute owners of the schedule mentioned property and they have no rights to sell the property. In the circumstances, the respondents are not required to furnish any security, moreover, when the property mentioned in the application is not in their names and the same stands in the names of their children. Thus they prayed for dismissal of the application.

6. Heard both sides and perused the materials available on record.

7. Having regard to the facts and circumstances of the case and also considering the main suit is pending for final disposal, this Court is not inclined to go into merits of the case. However, having perused the letter dated 24.12.2015 sent by the defendants, had stated that as per agreement of sale, after deducting a sum of Rs.3 Lakhs for default in performing the agreement and a sum of Rs.20 Lakhs as interest imposed by the Bank, totaling in all a sum of Rs.23 Lakhs from advance amount and a sum of Rs.17 Lakhs will be sent by Demand Draft. Further, in the similar manner, the respondents has stated in the Written Statement that they come forward to pay a sum of Rs.17 Lakhs to the plaintiff on certain condition.

A.A.NAKKIRAN, J.

lbm

8.Under such circumstances, this Court is inclined to direct the respondents to furnish security to the tune of Rs.17 Lakhs on or before 04.06.2025 failing which there shall be an order of attachment.

9. Accordingly, the application is partly allowed.

23-04-2025

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