IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 27.02.2025	PRONOUNCED ON 01.04.2025

CORAM :

THE HON`BLE MR.JUSTICE K.KUMARESH BABU

A.No.6438 of 2024
in
C.S.No.48 of 2023

Vinay Asrani
Represented by its Karta Vinay R Asrani, No.30, 4th Floor, Niagara Apartments, No.1, Sterling Road, Nungambakkam, Chennai 600 034. and 3 Others

Applicant(s)

Vs

M/s.Rajkham Builders Private Limited and 5 others
CIN U45200TN2008PTC067410 Rajkham Srishti, No.105, Arcot Road, Kodambakkam, Chennai 600 024. and 5 Others

Respondent(s)

For Applicant : Mr.CP.Hemkumar for
M/s.Ganesh & Ganesh

For Respondents : Mr.J.Ravindran Sr., counsel for
Mr.M.V.Vijaya Baskar for RR1-3
Mr.R.Vivekananthan for R4

No Appearance for RR5&6

ORDER

This instant application has been filed to direct the respondents/defendants 1 to 4 to furnish security for the remaining suit claim of Rs.1,00,00,000/- along with interest and for an alternative relief.

2) Heard Mr.C.P.Hemkumar, learned counsel appearing on behalf of M/s. Ganesh & Ganesh, learned counsel for the Applicants and Mr.J.Ravindran, learned Senior Counsel appearing for Mr.M.V.Vijaya Baskar, learned counsel for Respondents 1 to 3, Mr.R.Vivekananthan, learned counsel for the fourth respondent.

3) Mr.C.P.Hemkumar, learned counsel for the applicants would submits that the applicants/plaintiffs had instituted a suit for recovery of money on promissory notes executed by the defendants 1 to 4. He further submits that the first respondent borrowed a certain sum from the applicants as follows 1) Rs.35,00,000/- from the third applicant, and 2) Rs.35,00,000/- from the first applicant, and failed to repay the same. The first respondent executed two

Promissory Notes for a sum of Rs.55,00,000/- each along with interest on 20.01.2022. Likewise, the fourth respondent also borrowed a certain sum from the applicants as follows 1) Rs. 55,00,000/- from the second applicant and 2)Rs.55,00,000/- from the fourth applicant and executed two Pro notes for a sum of Rs.50,00,000/- each and two Pro notes for a sum of Rs.5,00,000/- each on 20.01.2022. Altogether, a sum of Rs.2,20,00,000/- has to be paid by the respondents 1 to 4. He further submits that in pursuance to that the first respondent through the second respondent along with the fourth respondent had executed a loan agreement in respect of all the borrowings and promised to repay the principal sum of Rs. 2,20,00,000/- along with interest and agreed to pay the same in six instalments of Rs.45,00,000/- each, from April, 2022.

4) He further submits that the fourth respondent is a builder and he had entered an agreement with the respondents 5 and 6, the land owners of the schedule mentioned property for developing the same. He submits that the fifth and sixth respondents through their power agent fourth respondent have executed an Agreement of Deposit of Title Deeds in favour of the first applicant and deposited the original documents related to the property. He further contends that by this agreement the applicants are the financiers for the

building project that is to be developed by the fourth defendant upon the property belonging to the respondents 5 and 6. The agreement of the deposit of Title deeds has been made only in favour of the first applicant in his individual capacity and there is no security offered in favour of the applicants for the money advanced by them. He further submits that this applicant had already preferred an application for security deposit in A.No.1267 of 2023, this Hon'ble Court vide order dated 03.07.2023 disposed of the application and passed the following orders:

> *"...13. The fourth respondent did not deny his liability to deposit the sum agreed though the applicants have got a larger claim than what is admitted by him. Hence a direction should be issued to the fourth respondent/fourth defendant not to create any third party interest by utilising the title deeds obtained by him.*
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> *14. With these observations, this application is disposed and the fourth respondent/ fourth defendant is restrained from creating any third party interest by utilising the title deeds*

obtained by him in respect of the schedule mentioned property by way of making any sort of alienations or encumbrance until he deposits the money as agreed by him…."

5) He further contends that in paragraph 7 of the above order, this Hon'ble Court has recorded that the fourth respondent had admitted his liability for a sum of Rs.1,70,18,226/- along with interest in Crl.M.P.No.3557 of 2023 and agreed to deposit the same. The fourth respondent made a transfer for a sum of Rs.60 Lakhs to the first and third applicant on 12.03.2024. Thereafter, the fourth respondent has filed an application A.No.2975 of 2024 seeking for permission of this Hon'ble Court to deposit the admitted liability of Rs.1,10,00,000/- without disclosing the fact that he had given an undertaking to deposit the said sum before 15.07.2023. This Hon'ble Court directed the fourth respondent to make the deposit of Rs.1,10,00,000/- and to file compliance by 11.09.2024. Thereby, the fourth respondent deposited the said amount and filed a compliance memo and this Hon'ble Court has closed the application. He further submits that Criminal Revision was filed challenging the order of the learned Magistrate to return the original documents to the fourth respondent and in the same order to deposit the

original documents back to the file of the learned Magistrate was made. Hence, the fourth respondent moved the Hon'ble Supreme Court in SLP (Crl) No.11477-11479 of 2023 and an order of stay was granted as against the order passed in Crl.R.C.No.899 of 2023 on 15.09.2023. In furtherance of this, the applicants are left with No security for the suit claim. He submits that the fourth respondent wants to take advantage of the order passed in A.No.1267 of 2023 as he no more will be considered to be restrained from creating any third party interests of the property which is mentioned in the schedule to the petition in A.No.1267 of 2023. He further submits that to safeguard and interests of the applicants in the suit, the respondents have to be directed to furnish security for the whole of the suit claim. Hence, he prays to direct the respondents to furnish the security deposit.

6) Mr.J.Ravindran, learned Senior Counsel for the respondents 1 to 3 submits that this application deserves dismissal in limine, since the applicants filed this application seeking to furnish security for the second time. He further submits that this Hon'ble Court in A.No.1267 of 2023 after considering the facts passed an order dated 03.07.2023, wherein this Hon'ble Court directed the fourth respondent to deposit the liability agreed by him to a tune of

Rs.1,70,00,000/-. He further contends that the applicants have not preferred any appeal as against the said order and filed second petition to furnish security deposit which is not legally maintainable. He claimed that the applicants have not averred the necessity to bring the application as against the respondents 1 to 3. He further submits that the applicants suppressed the fact that they have initiated insolvency proceedings against the first respondent company. He submits that the fourth respondent preferred an application in A.No.2975 of 2024 to deposit the sum of Rs.1,10,00,000/- and the same was allowed by order dated 28.08.2024. Thereafter, the fourth respondent deposited a sum of Rs.1,10,18,226/- on 10.09.2024 in this Hon'ble Court and the respondents 1 to 3 also made a bank transfer of Rs.60,00,000/- on 03.12.2023 which totally comes to Rs.1,70,18,226/-. Further, he submits that there is no averment to bring the present application under the scope of Order XXXVIII Rule 5 of CPC and lacks bonafide. Therefore, he prays to dismiss the application as devoid of merits.

7) Mr.R.Vivekananthan, learned counsel for the fourth respondent submits that adopt with the contentions of the learned Senior Counsel and further contends that though the applicants have jointly sued for alleged sum

of Rs.2,70,00,000/-, for the reasons best known to them in A.No.6436 of 2024 and 6437 of 2024, only the applicants 2 and 4 alone seek payment out to their bank account, leaving the applicants 1 and 3. He further submits that no appeal has been preferred as against the orders in A.No.1267 of 2023 or A.No.2975 of 2024. Further an application for direction to furnish the security deposit for the second time is not legally maintainable, when the admitted liability amount was already deposited by the fourth respondent. Further, the applicants have not made out a case to furnish security deposit. Hence, He prays to dismiss the application.

8) I have heard the rival submissions made by the learned counsels appearing on either side and perused the materials placed on record.

9)The primordial contention of the respondents in this application is that when the applicant had earlier approached this Court by way of an Application in A.No. 1267 of 2023, seeking for a similar prayer for the entire suit claim and failing which, to attach the Suit Mentioned Property as security and therefore, the present Application being a second application for the same relief, ought not to be entertained.

10)This Court had granted leave to join multiple causes of action that had arisen in the Suit by the four plaintiffs. The first respondent had borrowed a sum of Rs.35,00,000/- each from the first and third applicants and for the non-payment of the said amount, he had executed two promissory notes for a sum of Rs.55,00,000/- each by restructuring the loan by including the principal and interest. In all, the first respondent is due a sum of Rs.1,10,00,000/- to the first and third applicants. The fourth respondent had borrowed a sum of Rs.55,00,000/- from the second and fourth applicants each and had executed four promissory notes. In Application No.1267 of 2023, the applicants have sought for a direction to direct the respondents 1 to 4 for furnishing the security for the Suit claim of Rs.2,70,00,000/- which included the principal and interest. The respondents 1 to 3 have disputed the borrowings. The fourth respondent had admitted to the borrowers. This Court considering all these facts and also taking into consideration, the criminal proceedings in which orders were also passed and issues subjudice before the Hon'ble Apex Court, in Application No.1267 of 2023, by order dated 03.07.2023, disposed of the said application restraining the fourth respondent from creating any third party interest by utilizing the title deeds obtained by him in respect of the Suit

Schedule Mentioned properties until he deposits the money as agreed by him. Thereafter, application had been taken out by the fourth respondent seeking permission of this Court to deposit the admitted liability in Application No.2975 of 2024. By order dated 28.08.2024, this Court had permitted the fourth respondent herein to deposit the said amount of Rs.1,10,00,000/- to the credit of the Suit without prejudice to the contentions raised by the respective parties. This Court by order dated 11.09.2024, recording the memo filed by the respondent giving liberty to the applicants for seeking appropriate relief had closed the said application. On further Application in A.No.6436 & 6437 of 2024, this Court had permitted the 2nd and 4th Applicants to withdraw a sum of Rs.55,09,113/- each from the amount deposited by the fourth respondent. Thereafter, the instant Application had been taken out by the applicants seeking a direction to direct the respondents 1 to 4 to furnish a security for a remaining sum of Rs.1,00,00,000/-within the time fixed, failing which the Suit Schedule Property to be attached.

11)When the said Application was taken up for hearing on 29.01.2025, this Court had passed the order restraining the respondents from alienating or creating any encumbrance in the property, by taking into consideration that the title deeds of the property were in the custody of the respondents and that if any alienation is permitted, it would defeat the interest of the plaintiffs.

12)It is also to be noted that the applicants have been disputing the admitted amount as claimed by the fourth respondent. It is also admitted that the fourth respondent herein had preferred a complaint against the applicants herein in CCB Criminal No.258 of 2022. Pursuant to his complaint, the Police has also investigated the offence and had ceased various documents from the applicants. The fourth respondent had moved an application in Crl. M.P.No.3577 of 2023, wherein he had admitted to have borrowed a sum of Rs.1,70,00,000/- and had agreed to deposit the said amount in lieu of him being restored with the property documents, which he had admittedly deposited with the applicants. For better appreciation, the relevant averments in his affidavit in Crl.M.P.No.3557 of 2023 is extracted hereunder:-

> *7. I further state that the below mentioned particulars are with regard to the amount due was borrowed by the accused persons along with the interest from the year of 2018 to 2022 is as detailed below:*

i) Amount due as on 21.09.2018 *ii) Amount borrowed as on 19.04.2022*	*1) Rs.60,00,000/-* *2)Rs.1,10,00,000/-*
i) Interest for Rs60 Lakhs from 24.09.2018 to 30.07.2022 @ of 9% per annum *ii) Interest for Rs.1.10 Crore from 20.01.2022 to 30.07.2022 @ 9% per annum*	*1)Rs.20,68,976* *2)Rs.5,36,250*
Deduct interest for Rs.60,00,000/- has been paid form 24.09.2018 to 02.10.2021	*Rs.25,87,000/-*
Total Amount to be deposited (Principal + Interest)	*Rs.17,018,226.00*

8. I further state that since I am ready to deposit the principal amount in full satisfaction of the loan received by me from the accused persons together with the interest contemplated under the Money Lenders Act before this Hon'ble Court , I am preferring this application under Section 5 r/w Section 6 of Tamil Nadu Prohibition of charging Exorbitant Interest Act, 2003 and thereby seeking permission to deposit the loan amount before this Hon'ble Court and direct the respondents 2 to 5 to restore my Property Documents which is in the possession of the accused persons.

Therefore, prayed this Court for the following prayers:-

a) To permit the petitioner to deposit a sum of Rs.1,70,18,226 (Rupees One Crore Seventy Lakhs Eighteen Thousand Two Hundred and Twenty Six only) on the file of this Hon'ble Court in CCB Crime No.258 of 2022

b)to restore the below mentioned documents to the petitioner which is in the custody on the file of this Hon'ble Court in CCB Crime No.258 of 2022.

.....

13)The Criminal Court by order dated 20.04.2023, holding that it was not possible to determine the amount of loan received by the petitioner therein, had allowed the Application partly with the direction to return the documents listed in serial No.1 to 11 and rejecting the request in respect of serial No.12. It is to be noted that there has been no direction for deposit of the amount.

14)Being aggrieved, the applicant herein had preferred Criminal Revision in Crl.R.C.No.899 of 2023. This Court by its order dated 25.05.2023, had granted stay of the same with the further direction to the fourth respondent herein not to create any third party interest. Thereafter, by a further order dated 17.08.2023, this Court allowed the Criminal Revision Petition with a direction to the fourth respondent to return the original documents to the concerned Court. This order had been challenged by the fourth respondent in SLP (Criminal) Nos.11477-11479 of 2023, and the Hon'ble Apex Court had granted a stay of the direction to return the documents.

15)In the interregnum, this Court in Application in A.No.1267 of 2023, on 03.07.2023, had passed an order restraining the respondents from alienating the property until the fourth respondent deposits the money as agreed by him. While passing the said order, this Court had recorded the statement made by the learned counsel appearing for the fourth respondent admitting his liability to a sum of Rs.1,70,18,226/- along with interest and his willingness to deposit the said admitted amount. For better appreciation, the relevant paragraph is extracted hereunder:-

> *7.The learned counsel for the 4 th respondent submitted that in the petition filed by the fourth respondent in Crl.M.P.No.3557 of 2023 itself he had admitted the*

liability of Rs.1,70,18,226/- along with interest, but the applicants demand exorbitant interest exceeding the actual amount due to be paid to them. However, it is fairly conceded by the learned counsel for the fourth defendant that the fourth defendant is willing to deposit the admitted amount before 15.07.2023.

16)However thereafter, the fourth respondent had taken out an Application to deposit a sum of Rs.1,10,00,000/- claiming to be the admitted amount. This has been opposed to by the applicant as that is not the admitted amount. Without prejudice to the contentions, he was permitted to deposit the said amount and on deposit the said application stood closed.

17)It is also further to be noted that while closing the said Application filed by the fourth respondent, this Court had granted liberty to the applicant to file appropriate application for appropriate relief.

18)The instant application had been taken out seeking for a direction to the respondents to furnish security for a sum of Rs.1,00,00,000/- failing which to attach the said property. The same has been opposed to on the ground that the second application filed for the same relief cannot be entertained. This Court is unable to comprehend the objections raised by the learned counsel appearing for the respondents.

19)The Application in A.No.1267 of 2023, was disposed of by restraining the respondents from dealing with the property without the admitted amount deposited. The said order also records that the fourth respondent had admitted to a liability of Rs.1,70,18,226/-, together with interest, which he also undertook to deposit before this Court. However, he had only deposit a sum of Rs.1,10,00,000/-. In such view of the matter, the interim protection granted to the plaintiffs on 03.07.2023, continues even on this date. In the said order, this Court had also recorded a finding that there is a dispute that had been raised by the defendants 1 to 3 in respect of their borrowers from applicants 1 & 3.

20)It is to be further noted that this Court in its order dated 03.07.2023, had disposed of the application only on the undertaking given by the fourth respondent and has not adjudicated the prima facie liability of the defendants 1 to 3. As held supra, the fourth respondent had also not honoured his undertaking given to this Court as recorded in its order, as extracted supra. The said liability given under the said undertaking is also substantiated by the averments made by the fourth respondent in the affidavit filed in Crl.M.P.No.3577 of 2023.

21) In revoke the leave Application, there is an admission of fact of a borrowal of Rs.35,00,000/- by the first respondent from the first applicant and a further borrowal of Rs.35,00,000/- from the third applicant. They have not specifically denied the execution of the promissory note, which can be also only tried during the final arguments in this case.

22)Since the fourth respondent had not deposited the admitted amount as indicated supra, and that the Suit is based upon a promissory note, this Court is *prima facie* satisfied that the applicants are bound to be protected. In such view of the matter, there shall be a direction to the respondents to furnish a security for a sum of Rs.1,00,00,000/- on or before 30.04.2025, failing which the Suit Schedule Mentioned Property shall stand attached. Accordingly, this application stands allowed on the above terms.

01.04.2025

Index : Yes / No
Internet :Yes / No
Pbn

K.KUMARESH BABU.J.,

Pbn

Pre-Delivery Order in
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01.04.2025