

(2006) 09 MAD CK 0061

In the Madras High Court

Case No : O.S.A. No's. 294 and 295 of 2005 and C.M.P. No's. 19036 and 19037 of 2005

The Senior Manager, Canara Bank

APPELLANT

Vs

A Pukraj and A. Halith Ahmed

RESPONDENT

Date of Decision : 29-09-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4)

Citation : (2007) 1 CompLJ 256 : (2007) 1 LW 447

Hon'ble Judges : P.K. Misra, J; M. Jaichandren, J

Bench : Division Bench

Advocate : S. Sampath Kumar, for Sampath Kumar and Associates, for the Appellant; M. Sriram and V. Srikanth, AGP for Respondent-1, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—Defendant No. 1 in C.S. No. 837 of 2004 has filed these appeals against the common order dated 22.11.2005 in O.A.

No. 888 of 2004 and Appln. No. 4236 of 2004.

2. The plaintiff/Respondent No. 1 has filed the suit for declaration that the alleged equitable mortgage by deposit of title deeds said to have been

created by the plaintiff on 3.10.2000 in favour of the first defendant in respect of the suit property to secure the loan availed by the second

defendant from the first defendant as illegal, null and void, and for injunction restraining the first defendant from interfering with the peaceful

possession of the suit property and mandatory injunction directing the first defendant to handover the possession of the three rooms sealed by them

on 14.9.2004. The disputed property has been described in the schedule.

3. The substance of the claim of the plaintiff/Respondent No. 1 is to the effect that the disputed property has fallen to the share of the plaintiff in a partition took place between himself and other co-sharers. The plaintiff in connection with some business transaction with Defendant No. 2, given the original documents relating to disputed property to the second defendant. The second defendant had also obtained signatures in some blank papers and printed forms. Subsequently, the second defendant had returned the deed of partition, but had not returned the original patta. While the matter stood thus, the plaintiff received a letter from the first defendant Bank regarding his liability as a guarantor in respect of the loan obtained by the second defendant from the first defendant Bank. The plaintiff had informed the Bank at that stage that he has not executed any guarantee deed nor any letter evidencing deposit of title deeds, but the bank had ignored such representation and sent notice u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as "the Act". On receipt of such notice, as an immediate relief, the plaintiff filed W.P. No. 24279 of 2003 challenging the validity of the Act. Such writ petition along with many other similar writ petitions were disposed of by a Division Bench on 29.4.2004. In the said judgment, the Division Bench has observed that the petitioners can file their objections within 15 days from the date of receipt of the order which should be considered by the Bank. Even though such order was received by the counsel for the plaintiff on 25.8.2004, due to delay in communication, the objection could not be filed within 15 days, but was filed on 17.9.2004. However, the bank taking advantage of non-receipt of the objection within 15 days, passed an order u/s 13(4) of the Act on 14.9.2004 and on the same day the Authorised Officer of the first defendant locked three rooms including the kitchen of the plaintiff. It is averred by the plaintiff that no equitable mortgage had been created by him and, therefore, the bank had no jurisdiction to proceed under the Act. On the basis of the above pleadings, the suit has been filed for the reliefs already indicated.

4. Along with the suit the plaintiff filed Original Appln. No. 888 of 2004 under Order 39 and Rule 1 & 2 CPC for issuing an interim injunction restraining the first defendant bank from interfering with the peaceful possession and enjoyment of the applicant's property. The plaintiff also filed

Appln. No. 4236 of 2004 under Order 39 and Rule 1 & 2 CPC for mandatory injunction directing the first defendant bank to remove the seal of the premises mentioned in the schedule.

5. A written statement has been filed by the first defendant bank denying the allegations in the plaint and it has been stated therein that equitable mortgage has been created and the plaintiff stood as guarantor in respect of the loan obtained by the second defendant. The question of jurisdiction of the Civil Court is also raised. Objection was also filed in the injunction applications.

6. Under the impugned order, the learned single Judge has passed an order of ad-interim injunction directing the bank to restore possession and also forbearing the bank from interfering with the possession in respect of rest of the property. Such order has been challenged in these two appeals.

7. Learned Senior Counsel appearing for the appellant has submitted that the learned single Judge without taking into consideration the various submissions made by the appellant has abruptly passed the order. Learned Senior Counsel further submitted that while considering the question of grant of injunction, the court is required to find out the existence of prima facie case, irreparable loss to be caused to the applicant applying for injunction, if injunction is not granted, as well as balance of convenience. It is submitted by him that in the present case the learned single Judge without analysing these aspects and even without considering the question of irreparable loss had passed the order. Learned Senior Counsel has also submitted that Civil Court has no jurisdiction in such matters. In particular, learned Senior Counsel has submitted that the plaintiff himself has filed a writ petition earlier, wherein the plaintiff had admitted about the loan transaction and the fact that the plaintiff was a guarantor, but suddenly a different stand was taken by the plaintiff in the suit and without considering such aspect, the learned single Judge has passed the order of injunction in a laconic manner without much discussion.

8. Learned Counsel appearing for the first respondent has supported the order stating that it is a fit case where injunction should be granted.

9. While the matter was pending, the Division Bench had called upon the Government Counsel to produce a report from the Sub-Registrar's

Office relating to some of the documents. Such report has been produced in a sealed cover along with the original register.

10. Law is well settled that while considering the question of injunction the Court is required to find out the existence of prima facie case,

irreparable loss to be caused to the applicant if injunction is not granted as well as the question of balance of convenience. (See Dalpat Kumar and

another Vs. Prahlad Singh and others, . While considering the question of prima facie case, the plaintiff is not required to prove his case to the hilt.

However, while considering such question, the Court is required to apply its mind to various materials on record to come to any conclusion as to

whether prima facie case is established or not.

11. In the present case, the learned single Judge after summarising the contentions of the rival parties has simply observed that prima facie case is

established without referring to several documents on record, including the affidavit filed by the plaintiff in the writ petition, which had been filed

earlier. Though the Court is not required to pass a detailed order relating to existence of prima facie case, the order should indicate that relevant

averments and documents have been scanned. Unfortunately, in the present case, we do not find any such effort has been made.

12. Apart from the above, the learned single Judge has not at all considered the question of irreparable injury and similarly there is no discussion

regarding the question of balance of convenience, even though in one sentence the learned single Judge has observed that balance of convenience

is in favour of the plaintiff. The question as to whether the Civil Court has jurisdiction or not seems to have been brushed aside.

13. Since the matter has not been considered in its proper perspective, we feel it in the interest of justice to set aside such order and remit the

matter to the learned single Judge for fresh consideration. The report furnished by the Sub-Registrar is also required to be placed before the

learned single Judge, who may consider such report with a view to find out about the prima facie case. In case it is felt to pass an order of

mandatory injunction directing release of the property, the question of directing the plaintiff to furnish alternative security may also be considered.

The fact that the order has been set aside and the matter has been remitted to the learned single Judge for fresh consideration should not be

construed as expressing any opinion regarding the merits of the contentions of both the parties relating to existence of prima facie case or otherwise

or irreparable loss or balance of convenience and the learned single Judge is free to come to any conclusion in accordance with law. It is reiterated

that the present order should not be construed as reflection of opinion of the Division Bench in any manner. Since the matter is urgent, the learned

single Judge is requested to consider the matter afresh as expeditiously as possible, preferably within a period of eight weeks from the date on

which the matter is listed.

14. In the result, with the above observations, the appeals are allowed and the matter is remitted to the learned single Judge for fresh consideration

in accordance with law. Consequently, the connected miscellaneous petitions are closed. There would be no order as to costs.