

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
09.10.2020	16.10.2020

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

O.A.Nos.1120 and 1121 of 2019,
A.Nos.628, 1893 and 2156 of 2020
in C.S.No.708 of 2019 and
O.A.Nos.1120 and 1121 of 2019,
A.Nos.1893 and 2156 of 2020

Mr. T.A.S.Rathnakumar
S/o Late T.A.S.Ambi alias Gnanasundaram Alias Ambiraj
No.9 & 10, TAS Enclave
10th Main Road Extension,
A.K. Block, Anna Nagar,
Chennai, Chennai 600040. ... Applicant / Plaintiff

vs

1. Karanam Madhu
H.No.4, 3rd Street,
Sri Balaji Nagar, Katpadi
Vellore – 632 007.

2. The Manager,
Punjab National Bank
Luz Church Road, Mylapore
Chennai 600004.

3. The Sub-Registrar,
No.60, T.N.S.C. Buildings,
J.J. Complex, Jawaharlal Nehru Road,
2nd Floor, Thirumangalam,
Chennai 600040.

... Respondents/Defendants 1 to 3

A.Nos.628 of 2020

The Manager,
Punjab National Bank
Luz Church Road, Mylapore
Chennai 600004.

...Applicant / Defendant 2

vs.

1. Mr. T.A.S.Rathnakumar
S/o Late T.A.S.Ambi alias Gnanasundaram Alias Ambiraj
No.9 & 10, TAS Enclave
10th Main Road Extension,
A.K. Block, Anna Nagar,
Chennai, Chennai 600040. ... Respondent 1 / Plaintiff

2. Karanam Madhu
H.No.4, 3rd Street,
Sri Balaji Nagar, Katpadi
Vellore – 632 007.

3. The Sub-Registrar,
No.60, T.N.S.C. Buildings,
J.J. Complex, Jawaharlal Nehru Road,
2nd Floor, Thirumangalam,
Chennai 600040. ... Respondents2&3 / Defendants 1&3

Prayer in O.A.No.1120 of 2019: Original Application filed under section XIV Rule 8 of Original side Rules r/w Order XXXIX Rule 182 of C.P.C. to grant an interim injunction restraining the Respondents/Defendants, from dealing with schedule property in manner and their men, agents, legal representatives, successors in office or anyone acting on their behalf from interfering with the peaceful possession and enjoyment of the plaintiffs property, pending disposal of the suit.

Prayer in O.A.No.1121 of 2019: Original Application filed under section XIV Rule 8 of Original side Rules r/w Order XXXIX Rule 182 of C.P.C. to grant an interim injunction restraining the Respondents/Defendants or her agents, servants, men, representatives, exeutors, administrators, assigns, attorneys, etc., from encumbering or alienating the schedule mentioned

property in any manner whatsoever, pending disposal of the suit.

Prayer in A.No.628 of 2020: Original Application filed under section XIV Rule 8 of Original side Rules r/w Order VI Rule 17 of C.P.C.to reject the plaint in C.S.No.708 of 2019 on the ground of territorial jurisdiction as well as in terms of Section 34 of SARFAESI Act and Section 18 of Recovery of Debts and Insolvency Act.

Prayer in A.No.1893 of 2020: Original Application filed under section XIV Rule 8 of Original side Rules r/w Order VI Rule 17 of C.P.C.to permit the Plaintiff to amend the plaint in C.S.No.708 of 2019.

Prayer in A.No.2156 of 2020: Original Application filed under section XIV Rule 8 of Original side Rules r/w Order VI Rule 17 of C.P.C. Seeking permission of this Court to amend the plaint in C.S.No.708 of 2019.

For Applicant in : Mr. Sharath Chandran
OA.1120, 1121/2019,
A.1893, 2156/2020 &
For 1st Respondent in
A.628/2020

For 2nd Respondent in : Mr. M.L. Ganesh
OA.1120, 1121/2019,
A.1893, 2156/2020 &
For Applicant in
A.628/2020

For 1st Respondent in : Set ex-parte
OA.1120, 1121/2019,
A.1893, 2156/2020 &
for 2nd Respondent in
A.No.628/2020.

COMMON ORDER

Original Application Nos.1120 and 1121 of 2019 are filed for

interim injunctions from interfering with the peaceful possession and enjoyment and from encumbering or alienating the plaintiffs property pending disposal of the suit respectively. Application Nos.1893 and 2156 of 2020 are filed seeking permission to amend the plaint in C.S.No.708 of 2019 and Application No.628 of 2020 is filed to reject the plaint.

2. The prayer in the A.No.2156 of 2020 seeking permission to delete some sentences in paragraph 12 and insert the following:

“The plaintiff is, therefore, entitled to a statutory charge, as pleaded in paragraph 10, and is entitled to have it declared by way of the unpaid sale consideration. This charge emanates from a separate and distinct contract between the plaintiff and the 1st Defendant and does not concern the 2nd Defendant at all.”

Also seeking permission of this Court to delete the paragraph 17 and insert the following as paragraph 17 in the plaint:

“17. The plaintiff values the suit for the purpose of Court fee and jurisdiction at Rs.2,43,00,000 (Rupees two crores forty three lakhs only) and pays court fee of Rs.2,46,525/- (Rupees two lakhs forty six thousand five hundred and twenty five only) under Section 25(d) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 read with Appendix IA of the High Court Fee Rules. Total Court

Fee paid is Rs.3,21,900/- Excess court fee is Rs.78,900/-”

3. The main suit originally filed to cancel the sale deed executed in favour of the 1st Defendant and also to declare the memorandum of deposit of title deeds dated 12.03.2016 executed by the 1st Defendant in favour of the 2nd Defendant, in the office of the 3rd Defendant is null and void. The suit has been filed originally on the ground that the 1st Defendant insisted the Plaintiff to sell the property. Accordingly, he sold the property. However, the amount assured as a sale consideration has not been paid. Cheques issued by the 1st Defendant not honoured. Except Rs.75 lakhs remaining sale consideration of Rs.2,43,00,000/- remains unpaid. Therefore, declaration sought to cancel the sale deed.

4. The 1st Defendant remained ex-parte. 2nd Defendant bank filed an application in A.No.628 of 2020 to reject the plaint on the ground of territorial jurisdiction as well as in terms of Section 34 of SARFAESI Act and Section 18 of Recovery of Debts and Insolvency Act.

5. 2nd Respondent/2nd Defendant bank also field a counter for amending the plaint on the ground that insertion of the prayer viz., statutory charge over

the suit property is unsustainable in law. Even the entire sale consideration has not been paid, it could not be a ground for cancellation of the sale deed. Only remedy for the plaintiff to recover the balance sale consideration and the same cannot be cancelled. It is further submitted that since they have already filed application to reject the plaint the amendment cannot be permitted.

6. It is the contention of the applicant/bank in A.No.628 of 2020 that the suit has been filed at the behest of the 1st Defendant to thwart the applicant bank from enforcing SARFAESI Act. Further, it is the contention that the Plaintiff has executed the sale deed on 12.03.2016 but chosen to file the suit only on 18.11.2019 only after notice under 13(4) of SARFAESI Act, issued. It is also the contention of the Applicant that they have advanced loan of 2.50 crores pursuant to the execution and registration of sale deed dated 12.03.2016. Hence, the suit seeking for declaration of Memorandum of Deposit of title deeds is not maintainable.

7. The above application has been opposed by the Plaintiff on the ground that the suit is not barred under any law in force much less under the provisions of Section 18 of Recovery of Debts to Banks and Financial

Institutions Act 1993 and Section 34 of the SARFAESI Act, 2002. It is his further contention that due to non payment of entire sale consideration by the 1st Defendant, a vendor's lien also exists on the property in their favour.

8. It is the contention of the learned counsel appearing for the Plaintiff that though suit has been filed for cancelling of the sale deed in view of the law laid down by the Supreme Court in *Dahiben vs. Arvindbhai Kalyanji Bhanusali (D) thr. L.Rs. and Ors. [2020 (4) KLT 453]* sale deed cannot be cancelled for even for non payment of consideration. The only remedy in such case is recovery for money. Therefore his contention is that as far as the unpaid sale consideration is concerned the statutory charge is already created the moment the document has registered as per Section 56 of the Transfer of Property Act. Therefore he seeks to amend the prayer only in respect of declaration for statutory charge and delete prayer for cancellation of sale deed and MOD. Hence his contention is that the 1st Defendant somehow or other managed to get the sale deed registered in his favour only in order to cheat the applicant as well as the bank. In fact there was collusion between the bank and the 1st Defendant, the bank has even sanctioned the loan one month prior to the so called sale by the 1st Defendant. On the same day the Memorandum of Deposit of Title Deeds also said to have been registered.

At any event sale consideration narrated in the sale deed has not been fully paid and cheque referred in the sale consideration to the tune of Rs.25 lakhs and other cheque of Rs.7.5 lakhs is not even encashed. That itself prima facie to indicate that the entire sale consideration have not been paid. Therefore, the plaintiff is certainly entitled to enforce the statutory charge created under law. Such extent he is entitled to amend the prayer. It is his contention that the allegation of the respondent that the Plaintiff and the 1st Defendant have colluded and filed the suit has no basis. Merely because the SARFAESI notice has been issued, the Plaintiff cannot force to go the DRT. The DRT cannot grant declaratory relief creating statutory charge. Hence it is his contention that the intention of the Plaintiff is not to thwart to sale of property by the bank. But only to enforce the charge. Therefore, he submitted that the amendment has to be allowed. Further civil court alone having jurisdiction to decide the right of the plaintiff as to the charge over the property. The suit cannot be rejected merely on the ground the 2nd Defendant executed Memorandum of Deposit of Title Deeds on receiving certain loans from the bank. Hence, prayed for allowing the applications for amendment. He placed reliance of the following judgements:

*1. Arasa Kumar V. Nallammal [2004 SCC
online Mad 250]*

2. *Padma Ashok Batt v. Orbit Corporation Ltd.*,
[2017 SCC Online Bom 7740]

3. *Axis Bank Ltd v. Madhav Prasad Aggarwal* **[2018
SCC Online Bom 3891]**

4. *Madhav Prasad Aggarwal v. Axis Bank Ltd.*, **[(2019)
7 SCC 158]**

5. *State Bank of India v. G. Moorthi* **[(2019) SCC
Online Mad 863]**

6. *Ramaswami Chettiar v. Lodd Krishnadoss Vari* **[AIR
1925 Madras 35]**

7. *Baldeo Singh v. Dwaraka Singh* **[AIR 1978 Pat 97]**

8. *State Bank of India vs. G. Moorthi and another*
**[OSA No.178 of 2019 dated 09.07.2020 High Court
Madras]**

9. *Vidhyadhar vs. Manikrao and another* **[(1999) 3
SCC 573]**

10. *Nahar Industrial Enterprises Ltd., vs. Hongkong
and Shanghai Banking Corporation***[(2009)8SCC 646].**

9. Learned counsel appearing for the Bank has vehemently contended that the suit itself filed at the behest of borrower. Para 9 and 10 it is stated by the plaintiff that the defendant has cheated him. Despite that no complaint lodged and even after the non-payment of money keeping quiet for more than three years clearly shows that there is a collusion between the plaintiff and the 1st Defendant. Further, possession notice is issued as early as 07.12.2018, whereas suit has been filed with much delay i.e., on 23.07.2019. It is the contention that the plaintiff even being a third party he can go before the Tribunal to agitate his rights. Hence this Court has no jurisdiction to entertain the suit. If the prayer for amendment is allowed and the suit is continuing which in fact impact the process under SARFAESI Act. It is his contention that as per Section 31(B) of the SARFAESI Act, notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors security interest is created, shall have priority and shall be paid in priority over all other debts. Hence his submission that the suit cannot be maintained before this court, in view of the bar under 34 of the SARFAESI Act. Amendment in the SARFAESI Act is also clearly indicate that the suit is not maintainable. Section 2(e) of the SARFAESI Act gives priority over other Acts.

10. In support of his contention he placed reliance of the following judgments:

1. *Authorised Officer, State Bank of India vs. Allwyn Alloys Pvt. Ltd.*, [(2018(5)CTC 225)]

2. *Sree Anandakumar Mills Ltd., vs. IOB*
[Manu/SC 0638/2018]

3. *R.Subramanian vs. HSBC Ltd., and others*
[Manu/TN/0959/2018 MHC]

4. *Bank of Baroda vs. R.Subramanian*
[2017(5)CTC 302]

5. *Central Bank of India vs. Gomathy Ammal*
[2017(5)CTC 302]

6. *Jagadish Singh vs. Heeralal and others*
[2014(1)LW 108]

7. *Minor Krithanyaa vs. State Bank of India*
[Manu/SCOR/27005/2012]

8. *State Bank of India vs. Minor Krithanyaa*
[Manu/TN/3290/2011]

9.Thulasi vs. IOB [Manu/TN/1939/2011].

*10.United Bank of India vs. Satyawadi Tandon
and others [Manu/SC/0541/2020]*

*11. Standard Chartered Bank vs. Dharmindar
Bhoi and others [2013(7)MLJ - 171]*

*12.Sri Chandra and S.Chitra vs. K.Nagarajan
and others [Manu/TN/1517/2012]*

*13.State Bank of India vs.G.Moorthi and
another [2019(2) CTC 737]*

11. First we deal with the amendment applications. The amendments are sought mainly on the ground that originally the relief is prayed to declare the sale deed is null and void on the ground of want of consideration. Now the same is sought to be changed in view of the judgment of Honourable Supreme Court in **Dahiben Vs. Aravindhbhai Kalyanji Banusali (D) thr.L.R.s and Ors. [2020 4 KLT 453].**

12. It is the contention of the learned counsel for the applicant in the amendment application that as the Honourable Supreme Court has

categorically held that mere want of consideration is not ground to seek a declaration to cancel the registered sale deed. Only the remedy is available for the plaintiff for recovery of the balance sale consideration. In the above judgement the Honourable Apex Court had held that even the consideration has not paid fully same is not a ground for cancellation of the sale deed. The Plaintiff have other remedies in law for recovery of balance consideration. Hence, his main contention that such a view of the position in law, the plaintiff seeks an amendment of prayer for deleting the original prayer and to modify the prayer for declaring statutory charge with interest thereon.

13. Whereas it is the contention of the learned counsel appearing for the 2nd Respondent/Bank that the since bank has Memorandum of Deposit of Title Deeds in their name, if such prayer is allowed it will affect the rights of the bank. It is his contention that the suit is a collusive in nature and barred by limitation. Though in the original plaint declaration is sought in respect of the both documents viz., the Sale Deed dated 12.3.2016 and the Memorandum of Deposit of Title Deed dated 12.03.2016. Now the plaintiff, in view of the law laid down by the Apex Court, wants to totally delete the prayers and include the statutory charge towards the unpaid consideration. Thought it is much emphasised by the Bank that the suit has been filed collusively, on

perusal of the plaint documents particularly notice issued by the bank to Sub-Registrar on 19.1.2019 will indicate that the loan was sanctioned on 21.12.2015 at the request of the borrower even before the property was transferred in favour of the borrower by the present plaintiff. The above itself makes it clear that the bank has sanctioned the loan to the borrower even without title standing in the name of 1st Defendant. Further the fact that sale deed was registered on 23.3.2016 in favour of the borrower on the same day the same time Memorandum of Deposit of Title Deeds also registered in favour of the bank, even before the sale deed is released in favor of the purchaser. The sale deed has registered as document No.1186 of 2011 and the Memorandum of Deposit of Title Deeds bearing document No.1187 fo 2016. Both the documents were presented in the same time. During the submissions of both sides, it is also came to the light that the Chief Manager of the bank at the relevant point of time has sanctioned many loans like that was brought under police investigation and criminal prosecution is pending.

14. Be that as it may. Though it is the contention of the bank that the suit itself is collusive in nature it is to be noted that the bank sanctioned the loan without verifying the title. However, the Memorandum also executed in their favour. This fact is not disputed. The very allegation of the plaintiff that

though the sale consideration shown in the sale deed, the same has not been fully paid. The cheque referred in the sale deed has not been encashed. Though it is the contention of the plaintiff that a sum of Rs.2,43,00,000/- remained unpaid that is highly improbable, as no prudent man would wait for such a long period without taking any action. The suit has been laid in the year 2019 only, despite the sale deed has been registered in the year 2016. Therefore the contention of the plaintiff that entire sale consideration of Rs.2,43,00,000/ has not been paid is a prima facie, lead to inference that such contention is not believable.

15. Be that as it may. The documents filed by the Plaintiff indicate that one of the cheques bearing No.680222 for a sum of Rs.25 lakhs referred in the sale deed dated 12.3.2016 is remained unencashed. The original cheque is also filed as a document. The other cheque for a sum of Rs.7,20,000/- also filed. The cheque amount of Rs.25,00,000/- referred as a consideration in the sale deed has not encashed. These document prima facie indicate that though part of the sale consideration has not been paid by the purchaser. It is the contention urged by the applicant that with regard to other sale consideration is also able to prove in the trial.

16. Therefore, considering the nature of the document particularly the cheque bearing No.680222 for a sum of Rs.25 lakhs remain unencashed and another cheque bearing No.680224 for Rs.7,20,000/- also not encashed, *prima facie* indicate that the entire sale consideration has not been paid. Therefore, this court is of the that the some portion of the sale consideration has not been paid. It is also submitted by both sides that the borrower is on the run and his whereabouts has not known. In such a view of the matter when the plaintiff is able to show that the some portion of consideration has not been fully paid. As far as the amount has not paid, there shall be a statutory charge towards the amount in respect of sale consideration remained unpaid. Section 54 (b) of the Transfer of Property Act reads as follows

"(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part ."

17. Therefore, the *prima facie* some amount has not been paid. Thought it is indicated as a sale consideration in the sale deed, at least for unpaid amount the Plaintiff is certainly entitled to charge for the amount. It is

also to be noted that the charge is a statutory charge for the unpaid amount. It

cannot be taken away merely on technical grounds. Merely because the plaintiff has come to the Court with some delay the same is not a ground to non-suit him. It is trite law that to enforce the charge the period of limitation is 12 years.

18. Therefore, amending the prayer will not prejudice anyone. It is the contention of the Bank that Recovery of Debts and Bankruptcy Act 1993, Section 31(b) was introduced in the year 2016 itself, which came into force on 1.9.2016, wherein the same indicate that secured debt shall have a priority over other debts and including Government dues. Therefore, the Plaintiff is not entitled to charge over the property. It is to be noted that the Section 31(b) deals with priority to secured creditors under Recovery of Debts and Bankruptcy Act 1993 came into effect 1.9.2016. Whereas the sale deed was executed on 12.03.2016 much prior to the Act came into force and statutory charge already created by virtue of Section 55 (4)(b) of the Transfer of Property Act, before the provision Section 31(B) introduced under Recovery of Debts and Bankruptcy Act. Therefore, the statutory rights already created cannot be taken away by a subsequent legislation which came into effect only on 1.9.2016 at the most Section 31(B) can be applied only prospective cannot be given retrospective effect. Similar provision is also introduced in

SARFAESI Act i.e., Section 26(e) which also came into effect in the the month of February 2020. Therefore those provisions will not erase the statutory charge already created. The Plaintiff has *prima facie* established in this application that atleast Rs.25 lakhs shown in the particular cheque remains unpaid to him. Therefore, the charge automatically created for that amount which remains unpaid. Therefore, the provisions relied upon by the learned counsel for the bank is not helpful to the bank in anyway resisting the amendment. The amendment is not to restrain the bank from taking any action, but only for seeking declaration of statutory charge for unpaid sale consideration. It is the contention of the counsel of the bank that such amendment is allowed and suit is pending the bank will not be in a position to deal with the property, therefore the suit is not maintainable. It si to be noted the relief now sought in the way of amendment is not against the bank or not against any action taken in SARFAESI Act by the secured creditor. Therefore, the bank cannot resist the suit between the seller and purchaser for unpaid purchase money. Since the plaintiff has also submitted that they have not insisting any interim orders, the application filed by the for the interim relief is also not pressed. They only proceed against the borrower for unpaid consideration, threfore, this court is of the view that the bank will not be prejudiced.

19. Considering the above aspect, this court is of the view that by allowing the applicant to amend the prayer will not take away the rights of the bank to proceed under the SARFAESI Act to realise the money. However, taking note of the nature of the prima facie evidence produced by the plaintiff that part of the consideration has not paid, to balance the rights of both sides this court is of the view that the bank can very well proceed to deal with the property and even to bring the property for sale to realise their money. For that, this court is of the view that any such sale is conducted by the bank, the bank shall deposit Rs.50 lakhs in a interest bearing Fixed Deposit till the final disposal of the suit. The remaining amount can be realised by the bank towards their debt. In the event of the plaintiff succeeds in the suit, the plaintiff can realise that amount otherwise the above amount deposited also can be realised by the bank.

20. It is the contention of the learned counsel appearing for the bank that Section 17 and 18 of the SARFAESI any person includes third party also they can very well move the DRT for seeking relief of charge. Therefore, Civil Court has no jurisdiction. Though Section 17 and 18 indicate that any person may move DRT against any order passed under Section 17 deals with

the rights of the third party to move against the measures referred to Sub-Section 4 of Section 13. It is relevant to note that relief sought in the suit is not against any measures taken by the bank under Section 13(4) of the SARFAESI Act. What is sought to be agitated before this Court is unpaid sale consideration. It is an independent right, such right can be decided only by the Civil Court. The applicant is not seeking any right as against the bank to decide the charge. His main allegation is against the 1st Defendant as to the non payment of certain part of sale consideration. It is a right to be ascertained to establish as against 1st Defendant. Only Civil Court can go into such issues. In one of similar matter the third party has moved before the DRT for claiming charge over the property. It appears DRT has rejected the application filed by the third party on the ground that only Civil Court can entertain the above issue. The Tribunal has no right to get into that issue.

21. In *M/s.Hanudev Incestments Pvt. Ltd., vs. JM Financial Asset Recontruction Company Ltd., and other [DRT-III, Chennai S.A.S.R.No.6146 /2017 dated 25.07.2017]* an application filed by a third party for charge over the movable and immovable properties of the borrower.

In the above case, the Tribunal has held that the tribunal has no jurisdiction

and only the Civil Court can go into the grant of declaration. The relevant portion of the order is as follows:

"It is the case of the appellant that contrary to the said conclusions, the first respondent institution had issued the sale notice specifically stating in the said notice that the sale is exclusive of said charges existing in favour of the first appellant. Therefore although the procedure adopted by the first respondent is not under question before this Tribunal, as it is the quantum and the subsistence of charge in favour of the appellant are the issues which need to be answered, this Tribunal is of the opinion that the present appeal shall sustain before this Tribunal notwithstanding the fact that their contemplated relief lies elsewhere other than before this forum.

Although the appellant's prayer for recognition of their subsisting charge is beyond the scope of this Tribunal as it is predominantly the jurisdiction of a competent Civil Court to grant a relief of declaration, this appeal is registered only for the limited purpose of examining the veracity of the sale notice now being contemplated to be challenged as to its sustainability in view of express elimination of the encumbrance of the appellant by the first respondent financial institution which leads to other issues contrary to the contention

of the appellant."

22. In such view of the matter, merely because any person aggrieved by any measure referred under Section 13, 14 can approach Tribunal and file appeal under Section 18. It cannot be concluded that the third party who has independent right of statutory charge over the property sold to the borrowers, his right can be agitated only by the Tribunal Court and not by Civil Court.

23. Though several judgments have been cited by the respondent bank to contend that civil court has no jurisdiction, in a judgment in ***Authorised Officer, State Bank of India vs. Allwyn Alloys Pvt. Ltd., [2018 (5) CTC 225]*** the Apex Court has held that when the rights of the parties already decided by the Tribunal and Appellate Tribunal on merits, again the parties cannot be directed to the Civil Court. सत्यमेव जयते

24. In Sri ***Anandakumar Mills Ltd., vs. IOB [Manu/SC/0638/2018: 2018 (10) SCJ 514]*** the Honourable Supreme Court has held that Civil Court has no jurisdiction as against the action taken by the bank.

25. In ***R. Subramanian vs. The Hongkong and Shanghai Banking Corporation Ltd., [2018 (2) CTC 535]*** the Division Bench of this Court has rejected the plaint on the ground that the appellant has already approached the DRT for the similar issue and filed the present suit.

26. In ***Bank of Baroda vs. R. Subramanian [2017 (5) CTC 198]*** wherein I have considered the similar matter and rejected the suit which has filed to seek declaration the bank guarantee was void *ab initio*.

27. The facts of the above cases are not applicable to the present case. Here the suit is only with regard to statutory charge in respect of unpaid sale consideration. The suit is not against any measures taken by the bank.

28. Absolutely there is no dispute with regard to the above judgments. But the facts remains in this case, the rights of the parties cannot be agitated before the bank. In fact as referred above, DRT itself rejected the similar relief, directed the party to go to the civil court and relief sought in the suit only against the fist defendant for creating statutory charge. As already indicated this Court has ordered the bank to proceed with the sale of the

property which was mortgaged in their name and realise the amount subject to the condition of depositing Rs.50 lakhs out of sale consideration in an interest bearing deposit till the suit is over. If the plaintiff is not succeeding the suit, the bank is at liberty to realise that amount also and apart from the above Rs.50 lakhs other sale proceeds can be realised by the bank towards loan. The learned counsel for the applicant has not pressed the Applications for interim injunction. Recording his submission, the above applications are dismissed as not proess.

29. Accordingly the Amendment Applications in **A.No.2156 of 2020 and A.No.1893 of 2020 are allowed.** and the application in **A.No.628 of 2020 filed for rejection of suit is dismissed** and the other two Applications in **A.Nos.1120 and 1121 of 2019 seeking Interim Injunctions** filed against the bank are also **dismissed as not pressed.**

30. To carry out the amendment and to file Amended Plaintiff Copy, post the suit on 24.11.2020

16-10-2020

Index : Yes/No

Internet : Yes

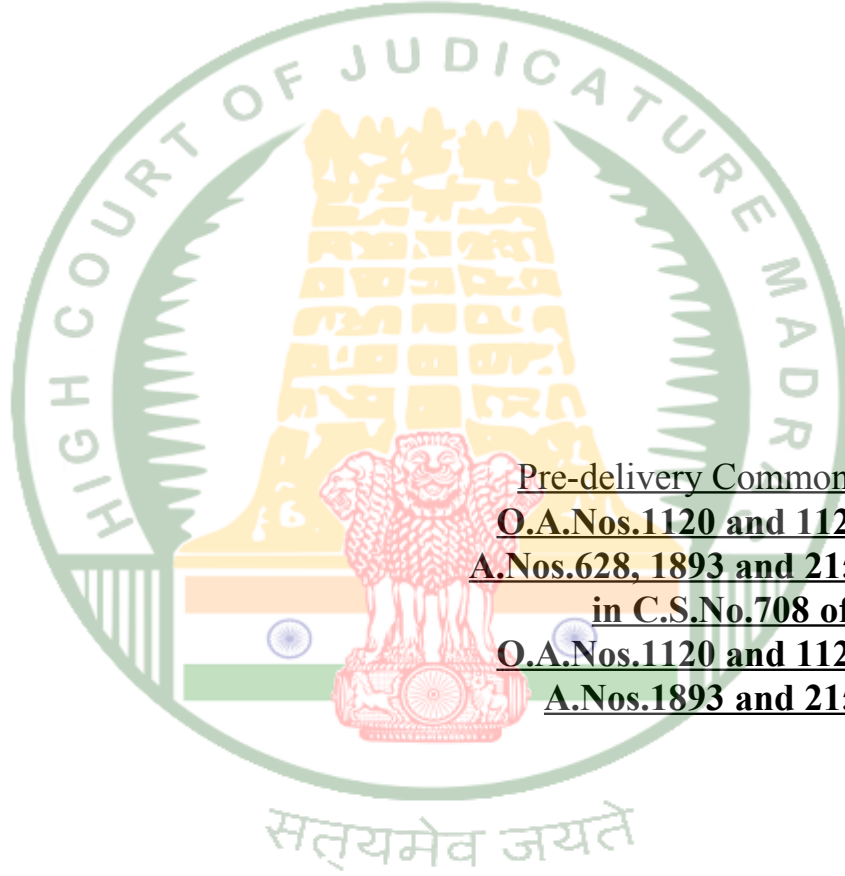
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<http://www.judis.nic.in> Note : Registry is directed to amend the plaint as ordered.

O.A.Nos.1120 and 1121 of 2019, A.Nos.628, 1893 and 2156 of 2020 in C.S.No.708 of 2019 and
O.A.Nos.1120 and 1121 of 2019, A.Nos.1893 and 2156 of 2020

N.SATHISH KUMAR, J.

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Pre-delivery Common Order in:
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