ORDER BELOW EX:5

1) Plaintiff has filed the suit for the recovery of Rs.9,45,235/- from the defendants along with interest at the agreed rate of 11% from date of suit till its realization from the mortgaged property situated at District Surat, Ta.Choryasi, Village Majura, bearing plot no.B/13 admeasuring about 32.92 sq.mtrs of Jivkor Nagar situated on the land bearing R.S.No.149 T.P.Scheme no.9 Final Plot No.172 (Here in after described as suit property) and also from all movable and immovable properties and of the defendants personally, jointly and severally and had prayed also prayed for permanent injunction restraining the defendants from transferring the said suit property. In the present suit, the plaintiff has filed also filed interim injunction application Under Order 39 Rule 1 & 2 of C.P.C and prayed for interim injunction restraining the defendants no.1 to 3 from transferring the said mortgaged suit property in any manner to any other person

2) On filing of the present suit summons/notices were issued to the defendants under the provisions of Order V of C.P.C which were duly served on defendant no. 1 to 3 which are produced at Ex.6 & 7 and defendant no.4 was served with summons and notice by public notice which is produced at Mark 70/1. But defendants had not appeared before this court in person or through their advocate this hence after giving ample oppournity the ex-parte order was passed below Ex.1 on Dt.28/7/2015 and the suit was ordered to be proceeded ex-parte against the defendants.

3) After that the matter was posted for hearing of plaintiff's present interim injunction application. The arguments advanced by Ld. Advocate for the

plaintiff have been discussed below in reasons to the reply of issues that aroused for determination of present application. As the suit was ordered to be proceeded ex-parte against the defendants there were no arguments on their behalf.

4) On perusal of the interim injunction application and the record of the case following issues had arose for determination of this application.

(a) Whether the plaintiff is entitled to get interim injunction as prayed for?

(b) What order?

05) Findings of the above issues are as follows.

(1) In negative.

(2) As per final order.

R E A S O N S

6) The reasons for the above findings of issues are as follows.

Issue no. 1:

6.1) Ld. Advocate for the plaintiff has argued that, the defendants had availed the Housing loan of Rs.5,50,000/- Rupees five lakh fifty thousand only from the plaintiff bank on 23.08.2001 for the purpose of purchasing a flat against the mortgage of suit property. The defendants have agreed to pay interest at the rate of 12.25% per annum with yearly rest on same day. The defendants have to repay the said terms loan by 120 monthly equated installments each of Rs.8195/- and the first of which being payable on September 2001. The defendants have executed necessary documents on 23.08.2001 drawn in favor of the plaintiff bank and delivered the same to the plaintiff for securing the said facility. The defendants have executed loan agreement and other relevant documents for the purpose of securing the said facility on the same day, the said documents are produced at Mark-3/2 to 3/10. The defendants no.1 to 3 have mortgaged their said property with plaintiff bank by deposit of title deeds by way of equitable mortgage for the purpose of securing the said loan granted to the defendants no.1 to 3. The documents relating to the mortgage deed are produced at Mark-3/11, 3/13 to 3/15. It is further argued that defendant no.4 Guarantor had executed a deed of guarantee on Dt.23.08.2001 whereby he is liable for the repayment of plaintiff's bank dues i.e. balance amount of the said Housing Loan Facility. The Guarantee deed executed by the defendant no.4 is produced at Mark – 3/12. It is further argued that, the defendant has not repaid the dues as per the agreed terms and the balance outstanding in the said housing loan account as on Dt.9.7.2007 is Rs.8,75,879 inclusive of interest which defendants are liable to pay. Further it is argued that as the plaintiff did not want to continue with the said facility plaintiff had written letter/notice to the defendants, which were received by the defendants. The plaintiff bank has also given notice to the defendants under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 on Dt.22.10.2005 which were received by the defendants, but inspite of these notice defendants have failed to comply with said notice and failed to make payment to the plaintiff bank and they are trying to dispose of the suit property, hence the plaintiff have filed this present suit to recover Rs.9,45,235/- along with interest and other cost and running interest @ 11% and 2% penal interest. Further it is argued that the plaintiff has came to know that, defendant is trying to dispose of the said mortgaged suit property with intention to defeat the recovery for the said dues and if the defendants succeeds in disposing off the said mortgaged suit property, the plaintiff will suffer irreparable loss and injury which cannot be compensated in terms of money and if defendants are restrained from transferring the mortgaged suit property the defendant will not suffer any loss or injury and also will not face any inconvenience, hence plaintiff has prima facie case and balance of convenience in favor of plaintiff and if the injunction as prayed for is not granted then and if the defendants succeeds in transferring or alienating the said mortgaged suit property then plaintiff will suffer a great loss and irreparable injury which cannot be compensated in terms of money. Under these circumstances, interim injunction may be granted in favor of plaintiff and the defendants be restrained from transferring or alienating the mortgaged suit property to any person.

6.2) As per the settled principles of law by various judgments of Hon'ble High Court of Gujarat & Hon'ble Supreme Court of India it is crystal clear that while deciding the interim injunction application the plaintiff has to establish all the three ingredients viz, prima facie case, balance of convenience and irreparable loss are in favor of plaintiff at one and the same time. If any of the ingredients are not satisfied then interim injunction as prayed for cannot be granted. Hence in light of this settled position of law if we consider the arguments of plaintiff and the documents produced in its support then, it appears that defendants no.1 to 3 have availed housing loan of Rs.5,50,000/- from the plaintiff bank and has agreed to pay interest @ of 12.25% per annum and defendant no.1 to 3 had also agreed to pay monthly installment of Rs.8,195/- to the plaintiff , but the defendants has not repaid the dues as per the agreed terms. The plaintiff has produced copy of Loan agreement for individuals at Mark-3/2, Letter of installment at Mark-3/3, Letter of Cost at Mark-3/3, Offer letter at Mark-3/4, Undertaking cum authority letter from borrower at Mark-3/7, Draft affidavit cum declaration at Mark-3/8, Declaration cum undertaking at Mark-3/9, Power of attornies given by defendants are produced at Mark-3/10 & Mark-3/11, General Form of Guarantee at Mark-3/12, Undertaking to create equitable mortgage at Mark-3/13, Memorandum of deposit of title deed at Mark-3/15, Letter of acknowledgement of debt at Mark-3/16. The defendants in this case have not appeared before this court in person or through their advocate hence there is no reason to disbelieve the averments of the plaintiff made in the plaint and the genuineness of the documents produced in its support. Therefore it can be believed that the defendant no. 1 to 3 has availed loan of Rs.5,50,000/- from the plaintiff bank and they have agreed to pay interest at the rate of 12.25% per annum and has agreed to pay monthly installment of Rs.8,195/- and defendant no.4 has executed a guarantee deed in favor of plaintiff bank hence all the defendants are jointly and severally liable to pay the outstanding amount to the plaintiff bank. Further the plaintiff has produced copy of statement of account of defendants vide Mark- 3/1, which shows that the balance outstanding in the said Housing loan account of the defendants is Rs.9,45,235/-. Thus on perusal of the documents plaintiff has succeeded in establishing their prima facie case.

6.3) But perusal of the plaint in para 07, the plaintiff has stated that, the plaintiff bank had given notice to the defendants under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 on Dt.22.10.2005. Thus looking to these averments made by plaintiff himself in the plaint, they have equally efficacious relief available and have also started proceeding under that act. Therefore when the equally efficacious remedy is available interim injunction is not granted as prayed for as per the provisions of Specific Relief Act. Further if interim injunction as prayed for is not granted the plaintiff will not face any inconvenience because plaintiff bank has the alternate remedy. Therefore looking to the circumstances of the case, the plaintiff is unable to show that balance of convenience lies in favor of the plaintiff.

6.4) Further the plaintiff has filed this suit for recovery of dues from the defendants. Hence on looking to the relief claimed by the plaintiff, main relief is to recover money from the defendants. The main relief which has been sought by the plaintiff is in terms of money, therefore it cannot be said that if interim injunction is not granted as prayed for, the plaintiff will suffer loss which cannot compensated in terms of money. Further if interim injunction is not granted in favor of the plaintiff, the loss which may be suffered by the plaintiff can be computed in terms of money, and therefore it cannot be said that the plaintiff will suffer irreparable loss. Therefore looking to the circumstances of the case the plaintiff is unable to show that if interim injunction is not granted in favor of the plaintiff as prayed for, plaintiff may suffer irreparable loss.

6.5) Thus as discussed earlier plaintiff have succeeded in establishing the prima facie case, but has been unable to show that balance of convenience lies in his favor and also unable to show that if interim injunction is not granted in his favor as prayed for, he may suffer irreparable loss. Thus as mentioned above as the plaintiff has not been able to establish that, balance of convenience and irreparable loss is in his favor hence interim injunction as prayed for cannot be granted.

6.6) Further in view of the settled principles for granting of interim injunction by Hon’ble Gujarat High Court & Hon’ble Supreme Court the prima facie case by itself is not sufficient to grant injunction. The Court has further to satisfy that non-interference by itself would result in irreparable injury to the party seeking relief and that there is no other remedy available to the party except one of granting injunction, and needs protection from consequence of apprehended injury.

6.7) Thus as the plaintiff is unable to show that balance of convenience lies in his favor and also unable to show that if interim injunction is not granted in his favor as prayed for, he may suffer irreparable loss, therefore the interim injunction cannot be granted in favor of the plaintiff as prayed for, hence I reply issue no. 1 in negative and in larger interest of justice in reply to issue no.2 I pass following order.

O R D E R

The plaintiff's interim injunction application at Exh.5 is hereby rejected. The ad-interim injunction granted ex-parted on Dt.24.3.2008 stands vacated.

Cost will follows the result of the suit.

Pronounced and signed in the open court on the 30th day of September 2015.

Date :30.09.2015
Place: Surat

(Vaibhav Vasant Mondhe)
Code No.G.J.00852
18th Additional Sr.Civil Judge,
Surat