

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
CHENGALPATTU DISTRICT.**

Present : Tmt.J.Mavis Deepika Sundaravadhana, M.A., M.L.,
Principal District Judge, Chengalpattu.

Wednesday the 28th day of August 2024

I.A.No.9/2024
in
I.A.No.2/2021
in
O.S.No.157/2021

1. M/s. Repco Home Finance Ltd.,

Represented by its Branch Manager,

Kelambakkam Branch,

Chennai - 603 103.
2. M/s. Repco Home Finance Ltd.,

Represented by its Managing Director,

Guindy, Chennai - 600 032.

. . . Petitioners / Respondents / Defendants 2 and 3.

/Vs/

1. M/s. Cee Dee Yes Infrastructure Solutions Private Limited,

Represented by its Managing Director

Brunth D. Sundar,

Adayar, Chennai - 600 020. **. . . Respondent / Petitioner / Plaintiff.**
2. R.Sivakumar,

Cee Dee Yes Chennai Pattinam Project,

Ammapet - 603 108.

Nellikuppam, Kancheepuram District.

3. C.Monesh

... Respondents/Defendants 1 and 4.

This petition came up before me in this court for final hearing on 31.7.2024, in the presence of Tvl.A.Ilangovan and N.T.Kareem Basha, Advocates for the petitioners, and Tvl.N.Premkumar, P.Gurusamy, R.Prasanna Vineeth Durai, M.Chinnathambi and Rajasekar, Advocates for the 1st respondent, the other respondents formal parties, upon perusing the entire records and having stood over for consideration till this day, this court delivers the following,

ORDER

This petition is filed by the petitioners under Order 9 Rule 7 CPC, to set aside the exparte order dated 19.4.2021 passed against the petitioners/ 2nd and 3rd defendants in I.A.No.2/2021 in O.S.No.157/2021.

2. The case of the petitioners in brief :

The petitioner is the Assistant General Manager / Authorized Officer of the petitioners / 2nd and 3rd defendant filed this petition on behalf of petitioners / 2nd and 3rd defendants. The petitioner / plaintiff filed an Interlocutory application for interim injunction restraining the petitioners from interfering with the peaceful possession and enjoyment of the plaintiff's right, title and interest in the suit property till the disposal of

the suit, that too without any due process of law. The petitioner has been set exparte in the said IA for non-appearance in IA 2/2021 on 19.4.2021. The petitioner has not received any notice in the said IA. The non-appearance is neither willful nor wanton. Hence, the petition.

3. The averments of counter filed by the 1st respondent in brief :

It is pertinent to note that the 1st respondent / petitioner sent a notice dated 16.9.2021 to all the defendants intimating the filing of the suit and the interim application in IA 1/2021 and 2/2021 and more particulars the petitioners / 2nd and 3rd defendants have duly received the said notice on 23.9.2021. The petitioner ought to have filed counter affidavit in IA 1/2021 and 2/2021 along with this set aside application which is mandatory. Moreover the petitioner has not filed counter in IA 1/2021 and 2/2021 along with this application. Further the affidavit does not disclose any valid reason about the non-appearance of the petitioner before this court on 19.4.2021. The 1st respondent / plaintiff came to know from the reliable source that the 4th defendant, colluding with the petitioners / defendants 2 and 3 and trying to encumber the suit property and to disturb his possession of the suit property and he filed IA seeking ad interim injunction against the defendants. Hence, prayed for dismissal of petition.

4. The point that arises for consideration is whether the application is liable to be allowed.

5. Point :

This application is filed to set aside the exparte order dated 19.4.2021 in IA 2/2021. The said IA 2/2021 was filed by the plaintiff under Order 39 Rule 1 CPC and for ad interim injunction. Notice was served to the 2nd to 4th respondents, but they failed to file counter, therefore they were set exparte. Now the petitioners who are the respondents in the IA 2/2021 prayed to set aside the exparte order.

6. The petitioner are Repco Bank represented by the Branch Manager and Managing Director. A counter is filed by the 1st respondent / plaintiff objecting these applications that there is no valid ground to set aside the exparte order. The objection in the counter mainly with respect to the facts involved in the rectification. There is no valid acceptable objection with respect to the prayer to set aside the exparte order. The petitioner Bank claiming that they are taking SARFAESI action against the plaintiff. The claim in the counter by the 1st respondent / plaintiff that the petitioners are colluding with the 4th respondent to encumber the suit property has to be gone into and to be decided only at the time of trial. Therefore, the suit is not maintainable. However, in the interest of justice, the petition will be allowed on payment of cost.

7. **As the result petition will be allowed on payment of cost of Rs.1000/- to the respondent to be paid on or before 3.10.2024,**

otherwise petition stands dismissed. Call on 4.10.2024.

Dictated by me to the steno-typist, computerized by her directly, corrected and pronounced by me in open court, on this the 28th day of August 2024.

Principal District Judge,
Chengalpattu.

Both side witness and exhibit :
Nil.

Principal District Judge,
Chengalpattu.