

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

FAO.No. 196 of 2015 ()

AGAINST THE ORDER DT.5.6.2015 IN I.A.NO.1355/2015 IN I.A.NO.2825/2014
IN O.S.NO.161 OF 2014 ON THE FILES OF 3RD ADDL.SUB COURT,ERNAKULAM

APPELLANTS/PETITIONERS/DEFENDANTS 1 TO 3:

1. M/S.ITMA HOTELS INDIA (P) LTD.
PONNURUNNI NORTH, VYTTILA, KOCHI
REPRESENTED BY ITS MANAGING DIRECTOR, MRS.MERIN JOSE
AGED 55 YEARS, W/O M.MJOSE, JOMER SYMPHONY, PONNURUNNI
VYTTILA, ERNAKULAM-682019.

2. M/S. JOMER PROPERTIES AND INVESTMENTS (P) LTD.
JOMER ARCADE, EDAPPALLY
REPRESENTED BY ITS MANAGING DIRECTOR, M.M.JOSE
AGED 57 YEARS, S/O MATHEW, JOMER SYMPHONY, PONNURUNNI
VYTTILA, ERNAKULAM-682019.

3. M.M.JOSE, AGED 57 YEARS
S/O MATHEW, MATHEW VIHAR, JOMER SYMPHONY
PONNURUNNI, VYTTILA, ERNAKULAM-682019.

BY ADVS.SRI.P.VISWANATHAN
SRI.SUNIL N.SHENOI

RESPONDENT/RESPONDENT/PLAINTIFF:

M/S.LATHA RAMAN JAIGOPAL, AGED 48 YEARS
W/O JAIGOPAL G. RAO, PROPRIETRIX, M/S. CRAFT HOUSE
BHAVANS ROAD, THRIPUNITHURA, KOCHI-682306.

R. BY ADV. SRI.V.ABRAHAM MARKOS (CAVEATOR)
ADV. BINU MATHEW,
ADV. TOM THOMAS
ADV. ABRAHAM JOSEPH MARKOSE
ADV. ISSAC THOMAS
ADV. NOBY THOMAS CYRIAC

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION
ON 08-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ANTONY DOMINIC & P.V ASHA, JJ.

F.A.O No.196 of 2015

Dated this the 8th day of October, 2015

JUDGMENT

Antony Dominic, J.

This appeal is filed by defendants 1 to 3 in O.S.No.161 of 2014 on the file of the Sub Court, Ernakulam, challenging the order passed by that court in I.A.No.1355 of 2015 in I.A.No.2825 of 2014. By the order impugned, the court below rejected I.A No.1355 of 2015, where the appellant sought an order vacating the order of injunction passed in I.A.No.2825 of 2014. We heard the learned counsel for the appellants and the learned Senior Counsel appearing for the respondents.

2. O.S.No.161 of 2014 was filed by the respondent herein, for recovery of an amount of Rs.1,58,05,547/- together with interest and cost, allegedly due towards the work done on the basis of a work order issued by the appellants herein. It would appear that in the suit, the court below had appointed an Advocate Commissioner, who had submitted his report, availing

assistance of an expert, regarding the nature and quantity of the work done by the respondent/plaintiff. In the suit, on I.A.No.2825 of 2014, the plaintiff had obtained an order of injunction restraining the defendants from making improvements in a building situated in the property in question. It is also seen that subsequently by an order dated 22.07.2014, the order of injunction was made absolute. It was still later that, I.A.No.1355 of 2015 was filed by the appellants - defendants 1 to 3 in the suit, seeking to vacate the order of injunction. That I.A was disposed of by the trial court, requiring the appellants to furnish the plaint amount as security. It is this order, which is under challenge in this appeal.

3. As we have already stated, the suit in question was filed for recovery of more than Rs.1.58 crores. By the order impugned in this appeal, the court below has directed the appellants to furnish the plaint amount, as a condition for vacating the order of injunction. In our view, the condition thus imposed in the order impugned is too onerous and the resultant position is that the defendants who are the owners of the property in question are restrained from making further improvements in the building which, according to them, is being

developed to make it a luxury hotel.

4. Having considered the rival contentions, we are of the view that the continuance of the order now passed by the court would not be of any advantage to the plaintiff and at the same time can be of disastrous consequences to the appellants/defendants. In so far as the plaintiff is concerned, their claim is for recovery of the amount due allegedly towards the work done. The report of the Advocate Commissioner, which is prepared with the assistance of an expert, shows that the nature and quantity of the work done by the plaintiff has already been assessed. Although the appellants are stated to have filed an objection to the report, which is highlighted before us for maintaining the order of injunction, on instructions, the learned counsel appearing for the appellants submitted that they are not disputing either the quantity of the work or the nature of the work assessed by the Advocate Commissioner. In our view, this undertaking given before us should allay the apprehension that the plaintiff may have, regarding the objection that was filed by the defendants against the Commissioner Report in the trial court. This therefore means that sufficient materials are already available before the court below to quantify the work done or to

assess the nature of the work done and possibly, the amount due. Hence, we do not think that any useful purpose would be served in maintaining the order of injunction and in our view, balance of convenience is certainly in favour of the appellants. Taking note of all these circumstances, the order in I.A No.1355 of 2015 in I.A.No.2825 of 2014 in O.S.No.161 of 2014 on the file of the Sub Court, Ernakulam, is set aside.

5. We are told that the pleadings of both sides are complete. Considering the nature of the dispute and also the nature of the controversy, we feel it only appropriate to direct the trial court to dispose of the suit itself, as expeditiously as possible.

We therefore direct that the Sub Court, Ernakulam, will dispose of the suit as expeditiously as possible, on production of a copy of this judgment.

With the above observations, this appeal is disposed of.

Sd/-
ANTONY DOMINIC
Judge
Sd/-
P.VASHA
Judge

rtr/

/true copy/