

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.PD.No.4107 of 2015
and M.P.No.1 of 2015

1.M/s.3M India Limited
Concorde Block UB City
24, Vittal Mallya Road
Bangalore-560 001

2.M/s.3M India Limited
11th Floor, Seshachalam Centre
636/1, Anna Salai
Next to Rain Tree Hotel
Chennai-600 035

..Petitioners

-Vs-

1.M/s.Icorrpro Projects India Limited
Rep. by its Managing Director
Mr.Johnson RK Durai
Having its Office presently at
No.14, Periyar Street
2nd Cross Street, Sri Ganesh Nagar
Kolathur, Chennai-600 099

2.M/s.The Karur Vysya Bank
Rep. by its Branch Manager
44/1, Thiru Complex
Pantheon Road, Egmore
Chennai-600 08

..Respondents

Civil Revision Petition filed under Section 227 of the Constitution of India, praying to set aside the order dated 23.09.2015 passed in I.A.No.13931 of 2015 in O.S.No.5516 of 2015 by Assistant City Civil Court, Chennai.

For petitioners : Mr.Menon Karthik

For respondents : Mr.A.L.Sundaresan, Senior Counsel
for Mr.K.R.Ramesh Kumar for R1
No appearance for R2.

ORDER

Heard.

2. The petitioners herein have come forward with this Civil Revision Petition challenging the impugned order passed on 23.09.2015 in I.A.No.13931 of 2015 in O.S.No.5516 of 2015 by the II Assistant Judge, City Civil Court, Chennai. For convenience sake, the parties are referred to here under according to their litigative status before the trial Court.

3. It is stated in this Civil Revision Petition that the 1st respondent herein/plaintiff filed a suit in O.S.No.5516 of 2015 for bare injunction restraining the 1st and 2nd defendants/petitioners

herein from encashing the conditional and revocable Bank Guarantee No.KE31BGF143240003 dated 20.11.2014 for a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs Only) in favour of the first defendant.

4. It is further stated that along with the suit, the plaintiff also filed an I.A.No.13931 of 2015 seeking interim injunction restraining the third defendant/2nd respondent herein, from releasing the Bank Guarantee No.KE31BGF143240003 dated 20.11.2014 for a sum of Rs.25,00,000/- in favour of M/s.3M India Limited, the 1st and 2nd defendants.

5. Before the trial court, when the I.A., was posted on 23.09.2015, counsel on behalf of R1 and R2 undertook to file vakalat. For R3 notice served and set exparte. The trial court observed that since the relief was only against R3, the petition was allowed. Against the said order dated 23.09.2015, this Civil Revision Petition is filed before this Court.

6. The learned counsel appearing for the petitioners herein/defendants 1 and 2 would submit that he appeared before

the trial court and undertook to file vakalat and as such without considering his submission and without giving opportunity, merely because R3 was served with notice and called absent, he was set *exparte* and I.A.No.13931 of 2015 was allowed granting the interim injunction in favour of the plaintiff and the observation that the Interlocutory Application relief was only against R3, is against principles of natural justice. Thus, the learned counsel for the petitioners herein/defendants 1 and 2 prayed for setting aside the said order and sought for an opportunity to be given to defendants 1 and 2, to contest the I.A., on merits. Hence, the petitioners herein sought for setting aside the order dated 23.09.2015.

7. The learned counsel for the petitioners/defendants 1 and 2 relied on the following citations in support of his argument that civil revision petition is maintainable as against the order passed under Order 39 Rule 1 of C.P.C.:-

(1) 2000 (II) CTC 235 [The Andhra Social & Cultural Association, rep. By B.Veeriah General Secretary Vs. R.Karuppan]

(2) (1999) 4 Supreme Court Cases 710 [Industrial Credit and Investment Corporation of India Ltd.,]

Relying on the above decisions, the learned counsel for the

petitioners herein/defendants 1 and 2 submitted that the aggrieved party can maintain Revision Petition against the ex parte order passed by Civil Court and when there is error or the order is passed in violation of the mandatory provisions of order 39, Rule 3 of Civil Procedure Code. The learned counsel, relying on decision cited in ***(1999) 4 SCC 710 [INDUSTRIAL CREDIT AND INVESTMENT CORPORATION OF INDIA LTD., VS. GRAPCO INDUSTRIES LTD., AND OTHERS]***, further submitted that as per the law laid down by the Supreme Court, the High Court can interfere with interim orders of the courts and tribunals under Article 227 of the Constitution of India, if the order is made without jurisdiction. In the said decision, in Paragraph 14, it is stated as under:-

“14. The High Court also said that on merits as well the Tribunal was wrong in granting an ex parte order. It is not that the High Court itself considered the merits of the case. The objection of the High Court was two fold:(1) The Tribunal did not give any reasons, and (2) it was an omnibus order and that there was no reference even to prayers in the application and that the prayers stood allowed “in terms of entire hog”. Criticism of the High Court appears to be correct on that account. The judgment of the High Court, however, does not refer at all to the facts of the case and it proceeds more

on abstract principles of law. There was no bar on the High Court to itself examine the merits of the case in the exercise of its jurisdiction under Article 227 of the Constitution if the circumstances so require. There is no doubt that the High Court can even interfere with interim orders of the courts and tribunal under Article 227 of the Constitution if the order is made without jurisdiction. But then a too technical approach is to be avoided. When the facts of the case brought before the High court are such that the High Court can itself correct the error, then it should pass appropriate orders instead of merely setting aside the impugned order of the Tribunal and leaving everything in a vacuum. "

8. Resisting the above arguments, learned counsel for the plaintiff/1st respondent submitted that the defendants 1 and 2 ought to have preferred Civil Miscellaneous Appeal against the order passed under Order 39 Rule 3 of Code of Civil Procedure. He further submitted that in view of the civil miscellaneous appeal remedy available for the petitioners herein/defendants 1 and 2, this civil revision petition is not maintainable. As a residual argument, the learned counsel for the plaintiff submitted that defendants 1 and 2 could very well file application to set aside the order dated 23.09.2015 and instead of doing so, he has come forward with this

civil revision petition and thus, prayed for dismissal of this revision petition.

9. I have considered the rival submissions of both sides and perused the typed set of papers.

10. The first respondent herein/plaintiff filed a suit in O.S.No.5516 of 2015 for bare injunction restraining the 1st and 2nd defendants/petitioners herein from encashing the conditional and revocable Bank Guarantee No.KE31BGF143240003 dated 20.11.2014 for a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs Only) in favour of the first defendant. The plaintiff also filed an I.A.No.13931 of 2015 seeking interim injunction restraining the third defendant/2nd respondent herein, from releasing the Bank Guarantee No.KE31BGF143240003 dated 20.11.2014 for a sum of Rs.25,00,000/- in favour of M/s.3M India Limited, the 1st and 2nd defendants.

11. On a perusal of the relief sought for in the petition under Order 39 Rule 1 and 2 of Civil Procedure Code i.e., in I.A.No.13931 of 2015 in O.S.No.5516 of 2015, it is seen that it is the master mind

of the counsel appearing for the Plaintiff that who has cleverly projected the application as if the said relief is against only R3, but, the prayer is also for injunction restraining the first and second defendants. It is further seen that counsel on behalf of R1 and R2 appeared and undertook to file vakalat for R1 and R2. It is also pertinent to note that R1 and R2 are parties to the proceedings and as such, they should also be heard in the proceedings.

12. In my considered view, the order dated 23.09.2015 passed in I.A.No.13931 of 2015 in O.S.No.5516 of 2015 is liable to be set aside for the reason that the trial court, without giving opportunity to defendants 1 and 2 passed the said order and further they are parties to the proceedings.

13. In fine, following the principles of law laid down by the Supreme Court in the decision reported in **(1999) 4 SCC 710 [INDUSTRIAL CREDIT AND INVESTMENT CORPORATION OF INDIA LTD., VS. GRAPCO INDUSTRIES LTD., AND OTHERS]** and for the reasons stated above, the matter is remitted to the trial court and the trial court is directed to give opportunity to the petitioner to file his counter and dispose of the same within one

month from the date of receipt of a copy of this order.

14. In the course of hearing, the learned counsel for the first respondent also undertook to extend the Bank Guarantee, which is the subject matter of the suit in O.S.No.5516/2015 till the disposal of the I.A.No.13931 of 2015.

15. Thus, till the disposal of the main petition, the endorsement made by counsel shall form part of the order. It is also made clear that till the disposal of the application in I.A.No.13931 of 2015, the Bank Guarantee shall not be encashed.

16. Accordingly, the order passed in I.A.No.13931 of 2015 in O.S.No.5516 of 2015 dated 23.09.2015 is set aside. The Civil Revision Petition is allowed. No costs.

06.11.2015

nvsri

R. MALA, J.

nvsri

C.R.P.(PD).No.4107 of 2015

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