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In the High Court of Judicature at Madras

Dated: 23.06.2015

Coram:

The Honourable Mr. SANJAY KISHAN KAUL, Chief Justice
and
The Honourable Mr. Justice T.S. SIVAGNANAM

Original Side Appeal Nos. 90 and 91 of 2015
and M.P. Nos.1 of 2015

M/s. Kotak Mahindra Bank Limited
1st Floor, Ceebros Centre
No.39, Monteith Road, Egmore
Chennai 600 008, rep. by its
Vice President
Mr.G.Ramachandran Srikanth. .. Appellant in both appeals

vs.

1. M/s. Kothari Industrial Corporation Ltd.
Rep. by its Managing Director
Mr. Pradip D. Kothari
No.114, Mahatma Gandhi Street
Nungambakkam, Chennai 600 034.

2. ICICI Bank Limited
Previously known as ICICI Limited
rep. by its General Manager
No.93, Santhome High Road
Chennai 600 028. .. Respondents in both appeals

Prayer: Original Side Appeals filed under Order 36, Rule 9 of Original Side Rules read with Clause 15 of the Letters Patent, to set aside the orders and decrees dated 17.04.2015 passed by the learned Single Judge, in O.A. Nos. 1175 and 1176 of 2009 in C.S. No.1013 of 2009 on the file of this Court.

O.A.No.1175 of 2009: Original application praying that this Hon'ble Court be pleased to grant an order of Interim Injunction restraining the respondents this men, agents servants assigns or any person claiming through or under them from in any manner taking any further action on the basis of the deed of Corporate Guarantee dated 29/12/2001 pending disposal of the suit;



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O.A.No.1176 of 2009: Original Application praying that this Hon'ble Court be pleased to grant on order of Interim Injunction restraining the respondents, their men, agents servants assigns or any person claiming through or under them from in any manner taking any further action on the basis of the Deed of Assignment dated 31.03.2005 pending disposal of the suit

For Appellant : Mr. P.L. Narayanan
For Respondents : Mr. P.V. Balasubramaniam
for Mr. T. Mahendran for R1
M/s. Shivakumar & Suresh for R2

J U D G M E N T

(Delivered by The Hon'ble The Chief Justice)

Admit.

2. Learned counsel for the respondents accepts notice.

3. At request of the learned counsel for the parties, the appeals are taken up for final disposal.

4. The first respondent/original plaintiff has filed a suit for mere declaration to declare the Deed of Assignment dated 31.03.2005 executed by the first defendant in favour of the second defendant as illegal, unenforceable, null and void and not binding on the plaintiff and to declare the Deed of Corporate Guarantee dated 29.12.2001 executed by the plaintiff in favour of the first defendant as illegal, unenforceable, null and void and not binding on the plaintiff or that it has in the alternative become discharged by efflux of time and operation of law.

5. As the interim ex-parte order continued for a number of years without final adjudication, when the matter was listed before the learned single Judge on 17.04.2015, without formal disposal of that application, a direction has been passed that instead of hearing the interim application, the suit should come up for final disposal. It may be noticed that the suit itself is at primary stage and the order dated 17.04.2015, which has been impugned by the appellant in the present appeals, amount to extending the interim order indefinitely till the disposal of the suit without passing an order on merits of the interim relief and without really a final disposal of the application.

6. We find that the aforesaid course of action is unacceptable, as the learned single Judge would have to opine on the issue of interim injunction under the triple parameters required for continuation or confirmation of interim injunction.



7. We may also note that according to the appellant, the suit is barred by limitation, the Assignment Deed was not challenged earlier, despite orders being passed by the Honourable Supreme Court, alleged assets stripping is going on, as also the larger issue, whether the Civil Court would at all have jurisdiction in the matter considering that the appellant has already instituted a legal proceedings before the Debts Recovery Tribunal.

8. We are of the view that the question of maintainability of the suits, especially the plea based on the jurisdiction on account of the proceedings being instituted before the Debts Recovery Tribunal, must also be heard at the threshold, as, if the plaint itself is not maintainable, no purpose would be served by a protracted trial.

9. We, thus, set aside the impugned order and remit the matter back to the learned Single Judge to decide the interim application on merits and also simultaneously hear the suit on the issue of maintainability of the same qua institution of recovery proceedings by the appellant before the Debts Recovery Tribunal at the threshold.

10. The appeals are accordingly allowed, leaving the parties to bear their own costs.

11. The matter shall be placed before the learned single Judge on 09.07.2015.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ATR

To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

+1cc to M/s. Shivakumar & Suresh, Advocate, S.R.No.30697
+2ccs to M/s. P. Elyarajkumar, Advocate, S.R.No.30885

MP(CO)
EU(07/07/2015)

O.S.A. Nos. 90 & 91 of 2015