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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 No. 92 of 2015
and M.P. No.1 of 2015

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

.. Appellant

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. State Bank of India
rep. by its General Manager
No.16, College Lane
Nungambakkam, Chennai - 600 034.

.. Respondents

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 order and decree dated 17.04.2015 passed by the learned Single Judge, in O.A. No. 1077 of 2009 in C.S. No.938 of 2009 on the file of this Court.

Original Application praying that this Hon'ble court be pleased to pass on order of Interim Injunction restraining the respondents, their men agents servants, representations against or any person claiming through them from in any manner dealing with or acting on the schedule mentioned properties belong to the applicant, pending disposal of the suit.

For Appellant	:	Mr. P.L. Narayanan
For Respondents	:	Mr. P.V. Balasubramaniam
		for Mr. T. Mahendran for R1
		Mr. M.L. Ganesh
		for Mr. S. Arunkumar for R2



J U D G M E N T
(Delivered by The Hon'ble The Chief Justice)

Admit.

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2. Learned counsel for the respondents accepts notice.

3. At request of the learned counsel for the parties, the appeal is 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 23.03.2006 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 grant permanent injunction restraining the defendants from in any manner interfering with the plaintiff's right over the suit schedule properties on the basis of the Deed of Assignment dated 23.03.2006.

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 appeal, 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 suit, 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 appeal is accordingly allowed, leaving the parties to bear their own costs. Consequently, M.P. No.1 of 2015 is closed.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

+ 1 cc to M/s. M.L. Ganesh, Advocate Sr.30773

O.S.A. No. 92 of 2015

MP(CO)
Eu 7.07.15