

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.12.2016

Coram

The Honourable MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.No.1903 of 2015

and

M.P.No.1 of 2015

Sree Venkatachala Flat Owners Association (SVFOA)

Represented by its Authorised Secretary

No.27, Thyagaraya Road,

T.Nagar, Chennai 600 017

... Petitioner

vs.

Appaswamy Towers 'A' Block

Welfare Association (ATABWA)

Represented by its Authorised Secretary

No.27, Thyagaraya Road,

T.Nagar, Chennai 600 017

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 21.01.2015 passed in Memo dated 20.11.2014 in O.S.No.3929 of 2013 by the learned V Assistant City Civil Judge, Chennai.

For Petitioner : Mr.T.Mohan

For Respondent : Mr.Santhanaraman-No Appearance

ORDER

The revision has been filed by the first defendant challenging the order dated 21.01.2015 passed in a memo filed by the plaintiff.

2. The suit is filed by the proposed association, which is not a legal entity, for permanent injunction restraining the Bank of India, T.Nagar, Chennai from releasing the funds (in S.B.Account No.13212 and 5227 as well as Term Deposits aggregating to Rs.10,62,321/- as on 31.03.2013) to the defendant's association; permanent injunction restraining the defendant Association from stopping the amenities to the flat owners of 'A' Block (plaintiff Association); permanent injunction restraining the defendant Association from removing the cars of the flat owners of 'A' Block (plaintiff Association) which are parked in the common area and to maintain the status quo and ; permanent injunction restraining the defendant association from interfering with the affairs of the plaintiff's association. Pending decision in the suit, the plaintiff also had filed I.A.Nos.10222 to 10225 of 2013 seeking for injunction restraining the Bank of India from releasing the funds to the defendant's

association; permanent injunction restraining the defendant Association from stopping the amenities to the flat owners of 'A' Block; permanent injunction restraining the defendant from removing the cars of the flat owners of the 'A' Block (plaintiff association) which are parked in the common area and to maintain the status quo and permanent injunction restraining the defendant Association from interfering with the affairs of the plaintiff's association.

3. The counter affidavit has also been filed in detail by the defendant. It is also seen from the records that the written statement has also been filed by the defendant.

4. While so, the plaintiff, for the reasons best known, had filed a memo dated 20.11.2014 stating that pending decision in the suit, the defendant should not insist for payment of maintenance charges once more to their association and therefore, the common facilities provided as on date should continue to be provided by the defendant pending final orders in the suit. In the said memo in paragraph 2, it is prayed that an order of status-quo be granted and to close all the I.As mentioned and

post the suit for trial at an early date.

5. The defendant also had filed a reply to the memo contending that already issues were framed and the suit is posted for trial in the special list on 06.01.2015. Since the main suit itself is posted for trial, the interim applications need to be closed and the matter has to be proceeded with the suit. However, the learned V Assistant Judge, City Civil Court, Chennai has passed an order on 20.11.2014 as follows:-

"status-quo prevailing as on date" to be maintained with regard to the common area and common amenities till the disposal of the suit. This order is passed without prejudice to the rights of both parties to the suit and this memo ordered accordingly and closed."

6. The said order is now challenged by the defendant calling it an abuse of process of law. Already the applications are pending and a counter has been filed. Instead of passing a speaking order, the learned trial Judge has ordered status-quo on the memo, which is not maintainable in law.

7. A perusal of the records reveal that after the suit is posted in the special list for trial, the order of status-quo has been ordered by the learned trial Judge hastily without considering the merits and demerits of the case. When no relief was granted in any of the interlocutory applications and issues were already framed and the parties were directed to go for trial, the learned trial Judge entertained the memo and passed an order, which is erroneous and contrary to the procedures prescribed in the Code of Civil Procedure. While ordering status-quo, the learned trial Judge should have atleast given the reasons for the same, when the defendant has filed his objections by way of a reply.

8. Though notice seems to have served on the respondent and the counsel has also entered appearance, he did not appear in previous hearings. Today, when the matter is posted for hearing under the caption "for orders", there is no representation for the respondent. Hence, this Court is constrained to pass the following order without

hearing the respondent.

(i) The order passed in the memo dated 21.01.2015 is set aside and the Civil Revision Petition is allowed.

(ii) As all interlocutory applications are already closed, the parties are directed to proceed with trial.

(iii) Since the suit is of the year 2013 and as the issue involved is very narrow, the trial should be completed on or before 30.04.2017.

No costs. Consequently, connected miscellaneous petition is closed.

14.12.2016

srn

To

The V Assistant Judge,
City Civil Court, Chennai.

PUSHPA SATHYANARAYANA.J

srn

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