

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

The Hon'ble Mr.Justice **M.V.MURALIDARAN**

CRP.No.1578 of 2016
and
C.M.P.No.8498 of 2016

Kavin Motors

.. Petitioner

Versus

1.The Managing Partner,
P.Senthilkumar,
Shri Saravanagiri Agencies,
Authorised Sub-dealer (YMC) Yamaha Motor Bikes,
Show Room at Alangiam Road,
Dharapuram.

2.The Regional Business Head,
Yamaha Motors India Pvt.Limited,
1056, U.R.House, 3rd Floor,
Avinashi Road, Coimbatore – 641 018.

3.R.Vivek,
Rational Business Head,
Yamaha Motors India Pvt.Limited,
1056, U.R.House, 3rd Floor,
Avinashi Road, Coimbatore – 641 018.

4.The Zonal Head,
Yamaha Motors India Private Limited,
92/A, 1st Floor, Dr.Alagappa Road,
Purasaivakkam, Chennai – 600 084.

5.The Vice President,
Sale and Marketing,
Yamaha Motors India Private Limited,
A3, Ind, Area Noida-Dadri Road,

Surajpur, Gautam Budh Nagar,
Uttar Pradesh.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying against the docket order dated 17.05.2016 and made in I.A.No.220 of 2016 in O.S.No.131 of 2016, on the file of Vacation Civil Judge, Tiruppur cum District Munsif, Dharapuram.

For Petitioner ...Mr.M.Selvam

For Respondent ...Mr.K.Sudhakar

ORDER

Heard the submissions of Mr.M.Selvam, learned counsel appearing on behalf of the Revision Petitioner and Mr.K.Sudhakar, learned counsel appearing on behalf of the Respondent.

2. The Petitioner/1st Defendant viz., Kavin Motor is a registered partnership firm, which is established in the year 2015 with the sole object of selling two wheeler vehicles of Yamaha Motor India Private Limited and for sale of spares and services of the vehicle and which is a leading manufacturer of Motor Bike in India. It is also registered with Commercial Tax Department with C.S.T.No.75759/TN.33096291268

with effect from 23.02.2015. The petitioner has been appointed as a dealer of India Yamaha Motor Private Limited by letter dated 07.04.2015 and since then, they have been acting as the dealer of the same.

3. The case of the respondents is that the first respondent is one of the dealers of the said Yamaha Motors India Private Limited, Dharapuram. When the Yamaha Motors India Private Limited, has decided to set up a new showroom at Dharapuram, the dealership of the 1st respondent was terminated by the Yamaha Motors India Private Limited, on 28.03.2016.

4. As the first respondent did not choose to raise the issue with the Yamaha Motors India Private Limited, has filed a suit O.S.No.131 of 2016, on the file of the Vacation Civil Judge of Tiruppur cum District Munsif, Dharapuram. Along with the said suit, the 1st respondent filed an interlocutory application in I.A.No.220 of 2016, restraining the defendants therein from establishing, starting and running a new show room and service station for Yamaha Bikes in Dharapuram Taluk.

5. Considering the case of the first respondent /plaintiff, the Vacation Civil Judge of Tiruppur cum District Munsif, Dharapuram by an order dated 17.05.2016, granted an order of interim injunction till 13.06.2016, directing the first respondent/plaintiff to comply Order 39 Rules 3 of C.P.C.

6. Challenging the above said order, this petitioner/1st defendant has come before this Court by way of filing the above Civil Revision Petition No.1578 of 2016 for setting aside the order by the Vacation Civil Judge of Tiruppur cum District Munsif, Dharapuram, made in I.A.No.220 of 2016 in O.S.No.131 of 2016, dated 11.05.2016.

7. During the course of the arguments and on perusal of the records, I come to know that the petitioner/1st defendant has filed the Civil Revision Petition challenging the order of injunction notice issued by Vacation Civil Judge of Tiruppur cum District Munsif, Dharapuram Court dated 17.05.2016. On perusal of the said order which is found in Page No.31, it is clear that the notice was issued from the Court to the petitioner/1st defendant and the same was challenged before this Court in the above said Civil Revision Petition. When the order passed

by the Trial Court was not challenged before this Court, how the Civil Revision Petition is numbered by the registry. If the case of the petitioner is that the injunction is operating against him and the very granting the said injunction dated 17.05.2016, would be questioned by him, it is to be noted to have obtained a copy of the order granted by the Court below dated 17.05.2016 and challenged the same before this Court. But without doing so, the petitioner has simply challenged the notice and the injunction notice issued by the Court which is not at all maintainable before this Court and it is liable to be dismissed.

8. Apart from this, even otherwise the petitioner/1st defendant is suffered by the above injunction order in I.A.No.220 of 2016 in O.S.No.131 of 2016, dated 17.05.2016, he has to move the appellate court for filing Appeal or to the trial Court for vacating the order, and he has no right to challenge the said injunction order and Order 39 Rule 3 of C.P.C by filing the above Civil Revision Petition, before this Court.

9. This Court and the Apex Court had categorically held ***in (2001) 1 M.L.J.75(S.C) in A.Venkatasubbaiah Naidu Vs.S.Chellappa and others*** that the aggrieved party can approach

the same Court by filing a vacating injunction of the application. The petitioner has no right to challenge the said order by way of the Civil Revision Petition. The petitioner has two remedies either to approach the appellate Court or to approach the same Court which passes the said order. It is for the petitioner to opt either of the above two remedies and the filing of the Civil Revision Petition is not maintainable.

10. Therefore, I am of the view that this petition is not maintainable, since the order was passed by the trial Court under Order 39 Rule 3 of C.P.C and the petitioner ought to have approached the very same Court for vacating the temporary injunction or filing an appeal before the appellate Court.

11. In the above circumstances, I am inclined to pass the following orders:

(a) This Civil Revision Petition is not maintainable before this Court, since the petitioner/1st defendant having two remedies that one is to file an appeal before the appellate Court and the second is to file the petition to vacate the injunction and hence this petition is dismissed only on the ground of maintainability and it is open to the

petitioner/ first respondent to file an appeal or to file a petition to vacate injunction on merits before the concern Court. The trial Court viz., the Vacation Civil Judge, Thiruppur cum District Munsif Court, Dharapuram is directed to dispose the said application within 15 days from the date of receipt of a copy of this order till such order is to be passed by the trial Court either in the above appeal or in the vacating injunctions, the parties are directed to maintained status-quo which prevailed prior to the institution of suit. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

27.05.2016

Index:Yes/No
Internet:Yes/No

Note: Issue order copy on 03.06.2016

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M.V.MURALIDARAN, J.
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To
The Vacation Civil Judge,
Tiruppur cum District Munsif,
Dharapuram.

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and
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27.05.2016