IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2016

CORAM

THE HONOURABLE Dr. JUSTICE S.VIMALA

CRP(NPD). No.355 of 2016

M/s.Ashok Leyland Limited
No.1, Sardar Patel Road,
Guindy,
Chennai-600 032. .. Petitioner/Plaintiff

Vs

1. M/s.Renault Nissan Automative India Pvt Ltd.
Plot No.1, SIPCOT Industrial Park
Oragadam, Mattur Po.
Kancheepuram District.

2. M/s.Ashok Leyland Nissan Vehicles Ltd.,
Kochar Towers,
No.19, Venkat Narayana Road,
T.Nagar, Chennai – 600 017. .. Respondents/Defendants

PRAYER : Civil Revision Petition filed under Article 227 of the Constitutition of India praying to pass orders setting aside the order dated 04.02.2016, passed in O.S.Sr.No.766 of 2016, on the file of the Hon'ble District Judge II, Kancheepuram and direct taking up of the plaint in O.S.Sr.No.766 of 2016 on record.

For Petitioner : Mr.P.S. Raman, Senior Counsel
for M/s.Rank Associates

ORDER

"Flagrant violation of law as well as errors of law apparent on face of record would justify High Court interfering with orders in exercise of revisional powers" - Ruled the Supreme Court in a case of " *The Managing Director, Nadipissai Pulavar K.R.Ramaswamy Sugar Mills, Mayiladuthurai Vs. A.Fareed Nawa and another, reported in [MANU/TN/0123/1996].*

2. Challenging the impugned order dated 04.02.2016, passed by the District Court, Kancheepuram, holding that the suit is not maintainable before the said Court and returning the plaint for presentation before proper forum as amounting to flagrant violation of law, this revision petition has been filed by the plaintiff.

3. The petitioner herein, as plaintiff, filed the suit seeking the relief of injunction restraining the first defendant from in any manner dealing with, using, and/or disposing of the items imported by the second defendant under the Export Promotion Capital Goods (EPCG) Scheme, which are installed within the premises of the first defendant.

4. The plaint was returned on 02.02.2016, raising the following questions and the plaintiff has represented the same after complying the returns and it reads as under:

Sl. No.	*Return (02.02.2016)*	*Compliance (03.02.2016)*
1.	There is no agreement between the plaintiff and the defendants. Hence, how the plaintiff has locus standi to file this suit against the defendant.	Being a shareholder of the second defendant, it is open to the plaintiff to pray for prohibitive reliefs to safeguard the interest of the defendant. Plaint averments to the above effect may kindly be referred.
2.	When the plaintiff has 51% share in the second defendant company, why the second defendant has not filed the suit as a plaintiff?	Since the second defendant is not even able to convene a Board Meeting due to the non co-operative attitude of the other J.V. Partner, the second defendant is not able to initiate any action. Therefore, the plaintiff as a share holder is constrained to file the suit.
3.	How this suit is maintainable before this Court when there is a difference of opinion between board member of D2 and non co-operation of Board Members	Only a civil court will be competent to try the present suit, since the relief is not arising out of any company dispute, within the second defendant company.
4.	Why the Bank and Customs Authorities are not added as a party to be stated?	Since no relief is being sought against Bank or Customs authorities, they are not necessary parties.
5.	How this Civil Court has jurisdiction to entertain the suit when there is a dispute between the companies to be stated.	Being a common law remedy and not a company law issue, only this Hon'ble Court being a competent court can assume juridiction.

4.1. Again the plaint has been returned on 04.02.2016 and the impugned order by the Court reads as under :

> "Heard. Records perused. Though the plaintiff sought relief under Specific Relief Act, the averments set out in the plaint shows that there is a dispute between companies of the first defendant and second defendant i.e., implementation of agreement by Board of Directors of the first defendant and second defendant companies. ***Hence, this suit is not maintainable before this Court. Present the plaint before proper Forum.***"

4.2. The order passed by the Court below is peculiar, in the sense that the Court has not rejected the plaint, but, the Court has passed an order giving a finding that the suit is not maintainable. Under such circumstances, this Court has to exercise the powers under Article 227 of the Constitution of the India.

5. The circumstances under which the powers under Article 227 of the Constitution of India can be exercised, is pointed out in paragraph-15 of the Judgment in the case of ***Hindustan Petroleum Corporation Limited, rep. by its Sr.Regional Manager-Retail, Coimbatore Retail Region, A.P.Arcade (Singapore Plaza), Coimbatore Vs. C.M.Hariraj and others*** reported in

MANU/TN/0287/2002 and the circumstances are as under:

> "(i) lack of jurisdiction, erroneous assumption of jurisdiction or excess of jurisdiction or refusal to exercise jurisdiction;
>
> (ii) Grave dereliction of duty or flagrant violation of law or error of law apparent on the face of the record as distinguished from a mere mistake of law or an erroneous decision of law;
>
> (iii) violation of the principles of natural justice;
>
> (iv)perverse finding founded on no material whatsoever, and
>
> (v)arbitrary or capricious exercise of authority or discretion".

6. It is the contention of the learned counsel for the revision petitioner that there is a fundamental mistake in appreciating the jurisdiction of the Civil Court and that the Court, instead of stating under which provision the jurisdiction of the Civil Court is barred, has raised a question as to how the Civil Court has jurisdiction and that the said order is against the provisions of Section 9 of the Code of Civil Procedure.

6.1. Section 9 of the Code of Civil Procedure reads as under:

> " **9. Courts to try all civil suits unless barred**
>
> The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature

excepting suits of which their cognizance is either expressly or impliedly barred.

1[Explanation I].- A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

2[Explanation ll].- For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]."

6.2. The scope and ambit of Section 9 of C.P.C. have been explained in the case of ***Moran Mar Baselious Marthoma vs State Of Kerala*** reported in ***AIR 1995 SC 2001*** which is extracted hereunder:

> "...The heading which is normally key to the Section brings out unequivocally that all civil suits are cognizable unless barred. What is meant by it is explained further by widening the ambit of the Section by use of the word `shall' and the expression, `all suits of a civil nature' unless `expressly of impliedly barred'.
>
> Each word and expression casts an obligation on the court to exercise jurisdiction for enforcement of

right. The word `shall' makes it mandatory. No court can refuse to entertain a suit if it is of description mentioned in the Section. That is amplified by use of `expression, `all suits of civil nature'. The word `civil' according to dictionary means, `relating to the citizen as an individual; civil rights'. In Black's Legal Dictionary it is defined as, `relating to provide rights and remedies sought by civil actions as contrasted with criminal proceedings'. In law it is understood as an antonym of criminal. Historically the two broad classifications were civil and criminal. Revenue, tax and company etc, were added to it later. But they too pertain to the larger family of `civil'. There is thus no doubt about the width of the word `civil'. Its width has been stretched further by using the word `nature' along with it. That is even those suits are cognisable which are not only civil but are even of civil nature.

6.3.It was held in the case of ***Ganga Bai vs. Vijay Kumar*** reported in ***AIR 1974 SC 1126***, that a suit for maintainability requires no authority of law and it is enough that no statute bars the suit.

6.4. It would be appropriate to refer the decision reported in ***AIR 2000 SC 2220 (State of Andra Pradesh vs. Manjeti Laxmi Kantha Roa),*** wherein, it was held that the presumption regarding jurisdiction is in favour of existence, rather than exclusion of jurisdiction. The test adopted in examining such jurisdiction reads as under:

> (i) whether the legislative intent to exclude arises explicitly or by necessary implication, and (ii) whether the statute in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it.

In order to bring about implied bar, there shall be a provision giving finality to the order of the Tribunal or the authorities, having all the remedies available to a party before the civil Court.

7. At this juncture, it is also necessary to point out the grounds under which the Civil Court can reject the plaint.

11. Rejection of plaint.- The plaint shall be rejected in the following cases:—

> (a) where it does not disclose a cause of action;
>
> (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
>
> (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the

requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.

8. From a perusal of Order VII Rule 11 of C.P.C., the plaint can be rejected on the grounds that, a) the plaint does not disclose a cause of action; b) the relief claimed is undervalued; c) the plaint is insufficiently stamped; d) where the suit appears to be barred by law (Ex.) limitation, barred under specific provision of law (ex.) Article 105(2) of the Constitution; e) where the plaintiffs have not filed a duplicate;and f) non-compliance of Rule 9.

9. None of the grounds permissible for rejection of plaint have

been made out in the return endorsement of the Court below, excepting the maintainability on the cause of action. For the queries raised by the Court already the plaintiff has given answers. The Court has raised the issue regarding locus standi, which will have an impact on the cause of action.

9.1. Locus Standi denotes a right of appearance in a Court of justice; right to bring an action and to be heard. A person must have a sufficiency of interest to sustain his standing to sue.

9.2. The Plaintiff has given the details regarding his interest in filing the suit. Sufficiency of interest is the matter to be proved by evidence. It is for the contesting defendants to raise the issue regarding sufficiency of cause of action.

10. The Court below has committed serious error in raising questions, pertaining to the merits of the matter. Therefore, the impugned order passed by the Court below finding that the suit is not maintainable is liable to be set aside and it is set aside accordingly.

10.1. A perusal of the impugned order and the previous return by the Court did not indicate that any of the grounds under Order VII

Rule 11 is made out in the plaint, excepting the cause of action. The plaint discloses cause of action. Therefore, the Court below is directed to take the case on file leaving it open to the defendants to raise those issues if the defendants find it appropriate to raise the same.

11. The right of the shareholder to approach the Civil Court in order to protect the interest of the Company, in which, he is holding the shares, depends upon the scope of remedy available under the Company Law.

12. The learned counsel for the plaintiff has submitted that the relief that the plaintiff is seeking is the common law relief and not any relief pertaining to company law. Prima facie, the Court can go only by the averments made in the plaint. The Court has not pointed out any provision of the Law under which the remedy sought for, by the plaintiff is barred. More over, the plaintiff is asking for the relief not against his own company, in which, he is the shareholder, but he is asking the relief of injunction against the third party. Therefore, when the remedy sought for is a civil remedy and when the presumption is in existence of juridiction which is not shown to be barred under any other enactment there is no impediment for the Court to take the case on file. The Court can decide the maintainability of the suit subject to the issues raised by

the defendants, taking into account the dictum laid down in the decision ***Dhulabhai*** *Vs* ***State of M.P***.(AIR 1969 SC 78) which deals with the principles relating to exclusion of jurisdiction of Civil Courts, apart from the decisions that may be relied upon by both sides.

12. In the result, the order dated 04.02.2016 passed in O.S.Sr.No.766 of 2016 is set aside and the Civil Revision Petition is allowed. The learned District Judge II, Kancheepuram is directed to take the said O.S.Sr. on record and to proceed in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

08.02.2016

ds/ogy/arr

Note : (1) Registry is directed to return the original plaint
and connected documents to the petitioner.

(2) Issue order copy on 09.02.2016

To:

1. M/s.Renault Nissan Automative India Pvt Ltd.
Plot No.1, SIPCOT Industrial Park
Oragadam, Mattur Po.
Kancheepuram District.

2. M/s.Ashok Leyland Nissan Vehicles Ltd.,
Kochar Towers,
No.19, Venkat Narayana Road,
T.Nagar, Chennai – 600 017.

3. The District Judge II, Kancheepuram

S.VIMALA,J

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