

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE M.M.SUNDRESH

O.S.A. Nos.39 and 40 of 2016

M/s.Deccan Chronicle Holdings Ltd.
Rep. By its Authorised Signatory,
Mr.R.Guruprasad, Asst. General
Manager (Administration)

.. Appellant in
both OSAs./Plaintiff

-vs-

1.YES Bank Limited
Rep. By its Executive Vice President
& Regional Business Leader-Emerging,
Corporation Banking, Mr.K.Vijayakumar.

2.M/s.JM Financial Asset Reconstruction
Pvt. Ltd., Rep. By its Director,
Mr.Satish Kumar Gupta.

.. Respondents in
both OSAs./Defendant

Appeals filed under Order 36 Rule 9 of the O.S.Rules read with Clause 15 of the Letters Patent against the common order dated 29.12.2015 made in O.A.Nos.489 and 490 of 2013 in C.S.No.442 of 2013 on the file of original side of this Court.

OA No.489 of 2013: This Original Application praying this court to grant an order of interim injunction restraining the 1st respondent bank from in any manner alienating or encumbering the suit properties morefully discribed in the petition schedule, to any third parties pending disposal of the above suit.

OA No.490 of 2013: This Original Application praying this court to grant an order of interim injunction restoring the 1st respondent/1st defendant Bank. Their man /servants, agents and representatives from in any manner interfering and/or disturbing the Applicant/Plaintff Company peaceful possession and enjoyment of the Schedule properties includinng its basic amenities such as water, Electricity, Sewerage etc. morefully described in the petition schedule pending disposal of the above suit.

For Appellant : Mr.Vijayanarayan, S.C.
For Mr.Badrinatarajan

For Respondents : Mr.Karthik Seshadri,
for M/s.Iyer & Thomas.

* * * * *

J U D G M E N T

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

A suit has been filed by the appellants praying for a decree of declaration qua the Deeds of Conveyance favouring the first respondent dated 21.09.2012 duly registered before the Sub Registrar, Mylapore, as also for permanent injunction restraining from in any manner interfering with the peaceful possession and enjoyment of the suit scheduled properties. Along with the plaint, two applications were filed under Order 39 Rules 1 & 2 of the Code of Civil Procedure, 1908. These applications have been dismissed by the impugned order dated 29.12.2015.

2.The facts leading to the litigation are that the original plaintiff / appellant primarily engaged in carrying on business of publication of Daily Newspaper 'Deccan Chronicle' is also simultaneously carrying on other businesses with subsidiary companies. One such company is the Deccan Chronic Sporting Ventures Ltd., which was a franchisee under the Board of Control for Cricket in India owning the cricket team 'Deccan Chargers'. It is the case of the plaintiff-company that they approached the first respondent bank to avail of various credit facilities and in pursuance to such request, a short term loan of Rs.50 crores, as also another sum of Rs.50 crores as working capital demand loan were granted in the year 2010. These loans were secured by way of personal guarantees. There were, however, defaults in these loans, it appears, almost from the inception and it is an averment in the plaint that in the year 2011, they faced a serious financial constraints. The liability was assessed at Rs.144 crores by the first respondent, which the plaintiff alleges was on account of exorbitant interest rates (never disputed).

3.It appears that on account of accumulating liability, the first respondent bank insisted on other securities and in the month of June, 2012, a demand was specifically made for creation of an equitable mortgage in respect of immovable properties,

which is stated to have been created by deposit of title deeds in respect of different flats numbering seven located at Ramaneeyam Abbotsberry situated in Old Door No.74, New Door No.42, C.P. Ramaswamy Road, Alwarpet, Chennai. The financial position, however, did not improve, which resulted in the transfer of these flats for consideration in the name of the first respondent in September, 2012 and that consideration was adjusted against the dues payable. This transaction was in pursuance to the Board's resolution of the plaintiff company dated 07.09.2012 prior to the execution of sale deeds on 21.09.2012.

4.The plaint alleges that this execution was on account of the fact that the first respondent 'exercised undue influence and coerced the plaintiff company'. What is the nature of this undue influence or coercion has not been set out, except the economical bargaining power being adverse to the plaintiff company.

5.Another aspect raised by the plaintiff is that the possession of the property was not delivered to the first respondent though it is undisputed that the sale deeds contain an averment that possession has been handed over and they were based on some assurance that they would be re-conveyed back once the liability was extinguished. We may note that various technical objections are also sought to be raised qua the manner in which the equitable mortgage was created by deposit of title documents and registered with the Registrar of Companies and was sought to be converted into sale deeds. It is the aforesaid transfers which are sought to be cancelled by the plaint verified on 03.07.2013.

6.We may note for completion of record that the plaintiff also had filed a suit being O.S.No.3218 of 2013 for permanent injunction restraining the respondents from disturbing the plaintiff's possession before the City Civil Court to the effect that the plaintiff should not be dispossessed except by due process of law. On the other hand, the claim of the first respondent is that they were in possession in pursuance to the sale deeds and they filed a contra suit being C.S.No.740 of 2015 before this Court restraining the plaintiff from in any manner interfering with their possession. Suffice to say that even over the possession, a dispute is sought to be raised.

7.We are informed by the learned counsel for the first respondent on the basis of the pleadings that proceedings have been initiated in the Debts Recovery Tribunal, Hyderabad, for recovery of the balance amount after adjusting the amount received as consideration for the flats (para 18 of the plaint).

In fact, it is stated before us that the total defaults to various financial institutions would cross Rs.1,000 crores and thus, the plaintiff faces a huge liability issue.

8.We have heard the learned counsel for parties and perused the impugned order.

9.We are constrained to say that the suit proceedings amount to an abuse of process of Court. The plaintiff, by no stretch of imagination, can be called either economically or otherwise a weak party incapable of defending its interest. It appears to have borrowed heavily from various financial institutions including the first respondent, but was not able to discharge its dues. It had to repay the loans. It first mortgaged the flats as there were failure to pay debts, which can be construed as an endeavour to postpone legal action by the first respondent by providing additional security for increasing debts. Since still the amounts were not cleared, to dilute the liability, these flats were transferred for consideration. As to what should have been the consideration, it is for the parties to agree. The consideration was reduced from the debt owing and it is another matter that even this consideration was not enough to liquidate the liability. Having filed a suit earlier when the same cause of action was available and after failing to get an order of injunction, the subsequent one was filed.

10.The sale deeds executed contain an identical clause of handing over possession. We are of the view that once the sale deed is executed and registered, nothing contrary can be pleaded to what is already being specified therein in view of Section 92 of the Indian Evidence Act, 1872. Thus, even the story of possession being retained by the plaintiff does not hold good and is an endeavour to create a question mark on the possession issue of the property even when the sale deed has specified to the contrary.

11.The plea of economical duress and pressure can hardly be accepted. This is a plea to be rejected at the first blush as it is a matter of two private parties contracting and abiding by their respective contract. The fact that the plaintiff owes huge amount in the market can hardly be called an economical duress. Business can produce profit or loss. The plaintiff has been unsuccessful in the business. The plaintiff would hardly have shared the profits if it had made money.

12.The result of the aforesaid is the very first element of application under Order IX Rules 1 and 2 of Code of Civil Procedure, 1908, of a prima facie case is not made out much less

the other two parameters. Once a party does not have a prima facie case, merely because the matter pertains to immovable property will not entitle interim relief, as a matter of course.

13. We must say that an oral plea was made by the first respondent to, in fact, reject the plaint itself as noticed in the impugned order, but the same was not accepted only on the ground that at that stage there was no application before the learned Single Judge under Order 7 Rule 11 of the Code of Civil Procedure, 1908. All we can say is that the plaintiff has been fortunate. We make it clear that it is for the first respondent to exercise the option of moving such an application in accordance with law, if it so chooses. We say so only in view of the discussion in the impugned order. It is not as if every suit must go on and the Court has the option to even dismiss the suits which are an abuse of process of Court. We say no more.

14. We may notice that both sides have referred to a catena of judgments before the learned Single Judge which have been well discussed in the impugned order, including the issue of the judicial proceedings for interlocutory injunction being an abuse of process of Court. In this behalf, we may refer to the following paras of the decision of the Hon'ble Apex Court in Maria Margarida Sequeira Fernandes vs. Erasmo Jack De Sequeira (Dead) Through LRs., (2012) 5 SCC 370,

'80. The High Court of Delhi in a case Thomas Cook (India) Ltd. v. Hotel Imperial, 2006 (88) DRJ 545 held as under:

'28. The expressions 'due process of law', 'due course of law' and 'recourse to law' have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed 'forcibly' by the true owner taking law in his own hands. All these expressions, however, mean the same thing -- ejection from settled possession can only be had by recourse to a court of law. Clearly, 'due process of law' or 'due course of law', here, simply mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner.

Now, this 'due process' or 'due course' condition is satisfied the moment the rights of the parties are adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the

person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. What is important is that in either event it is an action before the court and the court adjudicates upon it. If that is done then, the 'bare minimum' requirement of 'due process' or 'due course' of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a court seeking a protective remedy such as an injunction and it fails in setting up a good case, can it then say that the other party must now institute an action in a court of law for enforcing his rights i.e., for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway? I would think not. In any event, the 'recourse to law' stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Thus, in the present case, the Plaintiff's failure to make out a case for an injunction does not mean that its consequent cessation of user of the said two rooms would have been brought about without recourse to law."

We approve the findings of the High Court of Delhi on this issue in the aforesaid case.

...

83. Grant or refusal of an injunction in a civil suit is the most important stage in the civil trial. Due care, caution, diligence and attention must be bestowed by the judicial officers and judges while granting or refusing injunction."

15. We can thus hardly find any fault in the impugned order of the learned Single Judge to interfere with the same in appeal.

16. We may in the end observe the disturbing fact, i.e. use of advocates for creating an unsavory situation at the site qua the issue of possession. This is hardly the job of advocates to either grab or prevent or disturb the possession. We are, in fact, informed that the counsel who instituted the suit on behalf of the plaintiff, at present, stands suspended by the Bar

Council of Tamil Nadu, albeit of another cause.

17.The appeal being completely meritless, the same is dismissed with costs quantified at Rs.25,000/-.

Sd/-
Assistant Registrar(CS-VI)

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Sub Assistant Registrar

sra

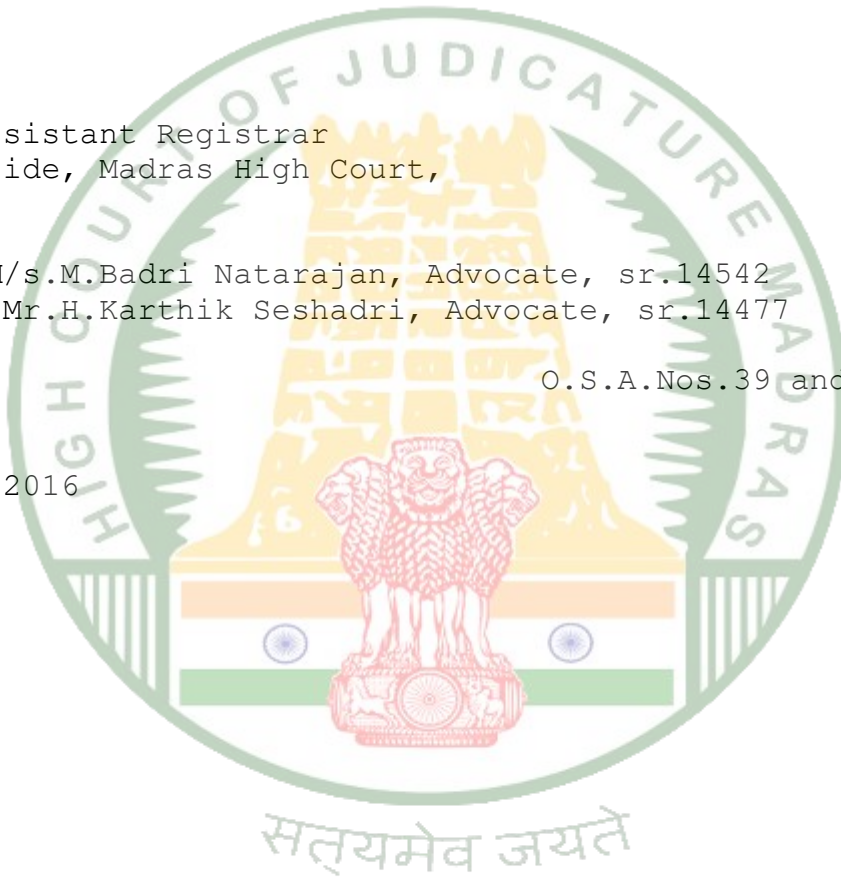
To

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

+1 cc to M/s.M.Badri Natarajan, Advocate, sr.14542
+2 ccs to Mr.H.Karthik Seshadri, Advocate, sr.14477

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