THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.M.A.No775 of 2016

ORDER:

Plaintiffs in O.S.No.268 of 2016 on the file of the Court of the Principal District Judge, Visakhapatnam are the appellants in the present CMA, filed under Order 43 Rule 1 of the Code of Civil Procedure.

The circumstances, leading to the filing of the present appeal are as follows:

2. The appellants herein instituted the suit for the following reliefs:

(a) for a declaration that the invocation of pledge in respect of 2,59,86,285 shares of the plaintiff No.1 in the Defendant No.3 company and the purported transfer of such shares to the ownership of the defendants 1 and 2 as between them as has been done is arbitrary, illegal, null and void and unenforceable, and

(b) for a permanent injunction restraining the defendants 1 and 2 from dealing with the said shares or taking any action or exercising any rights in respect of or in relation to or with the help of the said shares in any manner whatsoever including (but not limited to) their sale, transfer, alienation usage etc. directly or indirectly to the detriment, exclusion, disadvantage and derogation of the plaintiffs and their interests including exercising any rights whatsoever in any meeting in relation to the same.

(c) No relief is claimed against Defendant No.3.

(d) For costs of the suit; and

(e) For such other or further relief/s as the Hon'ble Court may deem fit and proper in the circumstances of the case".

3. Along with the suit, the plaintiffs/appellants herein filed I.A.No.1255 of 2016 under the provisions of Order 39 Rules 1 and 2 read with Section 94 and 151 of CPC for the following relief:

"To grant an exparte temporary injunction restraining the defendants 1 and 2 from dealing with the said shares or taking any action or exercising any rights in respect of or in relation to or with the help of the said shares in any manner whatsoever including (but not limited to) their sale, transfer, alienation usage etc., directly or indirectly to the detriment including interfering and derogation of the plaintiffs and their interests including interfering with the plaintiffs rights in any meeting in relation to the same pending disposal of the suit as otherwise the petitioner/plaintiff will be put to irreparable loss and hardship".

4. Initially, on 21.6.2016, the learned Principal District Judge granted an order of status quo. Resisting I.A.No.1255 of 2016, 1st defendant filed an affidavit in reply and the 2nd defendant adopted the same by way of filing additional affidavit. The learned Principal District Judge, by way of an order dated 24.8.2016 dismissed I.A.No.1255 of 2016. This appeal challenges the validity and legal sustainability of the same.

5. Heard Sri D.V.Sitharama Murthy, learned senior counsel, representing Sri N.Ashwani Kumar, learned counsel for the appellants and Sri S.Niranjan Reddy, learned senior counsel, representing Sri Avinash Desai, learned counsel for respondents 1 and 2 apart from perusing the material available before the Court.

6. <u>Submissions/contentions of the learned counsel for appellants:</u>

(1) The order under challenge is erroneous, contrary to law, weight of evidence and probabilities of the case.

(2) The Court below failed to take into consideration that the 2nd defendant who is the "pledgee" under amended and restated agreement for pledging of shares dated 30.6.2014 did not invoke the pledge and on the contrary, the 1st defendant invoked the pledged shares.

(3) The transfer of pledged shares by the 1st defendant is contrary to Section 176 of Indian Contract Act, 1872, as such, balance of convenience is in favour of

the appellants for grant of injunction, restraining the defendants 1 and 2 from dealing with the pledged shares.

(4) The appropriation of shares by the 1st defendant is contrary to Section 176 of the Indian Contract Act, 1872 and agreement dated 30.6.2014.

(5) The notice dated 19.5.2016 alleged to have been given by the 2nd defendant was not served on the appellants/plaintiffs and the 2nd defendant failed to produce any endorsement or acknowledgement to the said effect.

To bolster his contentions and submissions, the learned counsel places reliance on the judgments in Balkrishan Gupta v. Swadeshi Polytex Ltd.[1], Ram Kishun v. State Of U.P.[2] and GTL Limited v. IFCI Ltd. and others[3].

7. Submissions/contentions of the learned counsel for Respondents:

(1) There is no error nor there exists any infirmity in the impugned order, as such, the order under challenge is not amenable for any interference of this Court under Order 43 Rule 1 of CPC.

(2) The plaintiffs failed to establish the existence of necessary ingredients of Order 39 Rules 1 and 2 of CPC in their favour, namely, prima facie case, balance of convenience and irreparable loss.

(3) Since the defendants 1 and 2 are proceeding strictly and scrupulously as per the provisions of the Indian Contract Act, 1872, the plaintiffs are not entitled for any indulgence of this Court under Order 43 Rule 1 of CPC.

(4) The entire attempt of the plaintiffs is to stall the process of sale of pledged shares to recover the outstanding amounts due to the 1st defendant by 3rd defendant.

[1] (1985) 2 SCC 167
[2] AIR 2012 SC 2288
[3] MANU/DE/3341/2011

(5) The plaintiffs, in the capacity of "pledgor" and "guarantor" failed in repaying the outstanding amounts of Rs.615,84,58,915-08 plus interest on actuals upto the date of payment default.

(6) The pledge of shares has been invoked by the 2nd defendant by a letter dated 19.5.2016 and the appellants/plaintiffs have suppressed the said letter and on the said ground alone, the injunction application is liable to be rejected.

(7) The 1st defendant addressed a letter dated 11.3.2016 to the 3rd defendant, 2nd petitioner and Smt.Renuka Maganti informing default by 3rd defendant.

(8) In view of the defaults committed, the account of the 3rd defendant was classified as "Non-Performing Asset" by notice dated 6.4.2016 addressed by 1st defendant.

(9) Under the pledge agreement, the pledgor/1st plaintiff expressly agreed that on occurrence of any event of default, the Security Trustee i.e. 2nd defendant, acting for the benefit of secured lendor i.e. 1st defendant, will proceed to sell shares and take all steps to complete and register the transfer of pledged shares after giving (30) days notice to pledgor.

(10) The Security Trustee i.e. 2nd defendant is bound by the express instructions given by the secured lendor i.e. 1st defendant in regard to enforcement of the pledged securities.

(11) The Advocates of defendants 1 and 2, by way of letter dated 20.4.2016 acceded to the request of the 3rd defendant and the defendants 1 and 2 granted 30 days time to pay outstanding amounts and also informed the 3rd defendant that in the event of failure to repay the outstanding amounts, the defendants 1 and 2 will enforce the pledge under clauses 7 and 10 of the pledge agreement.

(12) On 18.5.2016, in accordance with the terms and conditions of the Security Trustee agreement, the 1st defendant addressed a letter to the 2nd defendant instructing for invocation of pledged securities and pursuant to the same, the 2nd defendant by way of letter dated 19.5.2016 invoked the pledge on 19.5.2016 and informed the same to the plaintiffs.

(13) On 19.5.2016, information was also passed on to the depository participants about invocation of pledge by filing a requisite form.

(14) On 13.6.2016, Axis Bank Capital Limited in its capacity as sole and exclusive Financial Advisor published an advertisement in an English daily, inviting expression of interest in respect of pledged securities.

(15) The contention of the plaintiffs that the pledge has been invoked by the 1st defendant is false and incorrect and in fact, the 2nd defendant invoked the pledge and accordingly intimated to the depository participants by filing a requisite form (Form-W).

8. In the above background, now the issues that emerge for consideration of this Court are;

(1) Whether the questioned order in this appeal is in accordance with law?

(2) Whether the order under challenge warrants any interference of this Court under Order 43 Rule 1 of CPC?

9. The information available before this Court manifestly discloses that to strengthen their case, the plaintiffs/appellants herein filed Exs.P1 to P11 documents and on the other hand, the defendants 1 and 2, in support of their case, filed Exs.R1 to R14.

10. The primary purpose of granting interim relief under Order XXXIX is to evolve a workable formulae by keeping in mind the pros and cons of the matter by striking a delicate balance between two conflicting interests, i.e., injury and prejudice, likely to be caused to the plaintiff if the relief is refused; and injury and prejudice likely to be caused to the defendant if the relief is granted. It is a settled and well established principle of law that as a matter of course, a person is not entitled for the relief of injunction and discretion conferred on the Court is required to be exercised in favour of plaintiff in the event of same being denied, it would result in irreparable loss and damage to the person asking for and such relief of injunction can be granted in order to meet the ends of justice.

11. In State of Karnataka v. State of Andhra Pradesh[4], Food Corporation of India v. Yadav Engineer and Contractor[5], Wander Ltd. v. Antox India P. Ltd.[6] and Dorab Cowasji Warden Vs. Coomi Sorab Warden[7], the Hon'ble Apex Court held that the power to grant injunction is discretionary as also equitable and temporary injunction cannot be claimed as a matter of right nor the Court grant such injunction as a matter of course and being an equitable relief, before deciding the injunction application, the Court would keep in mind several aspects and a Court of equity would exercise discretionary power in granting temporary injunction only if equity and good conscience require to issue such order and the Court is satisfied that its intervention is necessary in the interest of justice. For obtaining interim relief of temporary injunction under Order XXXIX of CPC, the person applying for has to show prima facie case in support of the right claimed, balance of convenience and irreparable loss. The existence of prima facie case is a sine-qua-non or a condition precedent for the purpose of exercising power to grant injunction

[4] 2000(9) SCC 572
[5] 1982(2) SCC 499
[6] 1990 (Supp) SCC 727
[7] 1990(2) SCC 117

under Order XXXIX. The person applying for injunction is obligated to demonstrate before the Court that in the event of refusal to grant injunction, he will have to suffer irreparable injury and he is also obligated to demonstrate that the balance of convenience is in his/her favour. Therefore, while considering the applications filed under Order XXXIX Rules 1 and 2 of CPC, the Courts are required to examine as to whether the three indispensable ingredients namely, prima facie case, balance of convenience and irreparable loss and injury do exist in the case of person applying for.

12. The issues in the present Civil Miscellaneous Appeal are required to be verified, examined and analysed in the above background.

13. The 1st defendant in the instant case is a Commercial Bank and the 2nd defendant is a Trustee constituted obviously for the benefit of 1st defendant. There is absolutely no controversy on the reality that the 1st defendant lent certain loans and sanctioned certain credit facilities under Ex.R1-Term Loan agreement dated 28.6.2014 on the strength of hypothecation and mortgage on the movables and immovable properties and also on the strength of the personal guarantee of 2nd plaintiff and his wife. There is also no dispute with regard to the fact that the 3rd defendant committed default in payment of outstanding amounts which prompted the 1st defendant bank to issue a letter dated 11.3.2016 (Ex.R4), informing that the 3rd defendant committed default in payment of outstanding amounts. The said letter was addressed to the 3rd defendant, 2nd plaintiff and his wife Smt.Renuka Rani Maganti. The material available before this Court further discloses that by way of Ex.P6=R6 legal notice dated 15.4.2016, the defendants 1 and 2 expressed their intention to sell or otherwise dispose of the pledged securities to recover the amounts due. It is also required to be noted that by way of Ex.R7 reply dated 16.4.2016, 3rd defendant requested the defendants 1 and 2 to grant 30 days time for making

necessary arrangements for resolving the issue. By way of Ex.R8 reply dated 20.4.2016 the request made by 3rd defendant was considered and was acceded to. In the said letter dated 20.4.2016, the defendants 1 and 2 also made it clear at paragraph 5 that if the entire outstanding amounts are not repaid by 15.5.2016, they will have no choice, but to enforce the pledge under Clause 7 (Sale of Shares) and Clause 10 (Enforcement of Pledge) of the Pledge Agreement while asking to treat the said letter as notice of invocation of pledge under the said clauses. By way of Ex.R9 letter dated 18.5.2016, 1st defendant instructed 2nd defendant to invoke the pledged shares. Subsequently, by way of notice dated 20.5.2016, i.e. Ex.R12, the defendants 1 and 2 informed the plaintiffs and 3rd defendant that in order to safeguard their interest as a secured lendor, they will temporarily move the possession and custody of pledged shares from the Demat Account. The contention, touching the non-service of Ex.R10 notice dated 19.5.2016 pales into insignificance in view of the above situation.

14. In fact, a perusal of the order under challenge candidly discloses that the learned Principal District Judge did take into consideration all the documents available on record and arrived at a conclusion in favour of defendants 1 and 2. The contention of the learned Senior Counsel, appearing for the appellants that the 2nd defendant did not invoke the pledge and the 1st defendant invoked the same contrary to the agreement cannot be sustained in view of the above documentary evidence available on record. In fact, only after giving sufficient opportunity to the 3rd defendant and the plaintiffs and other guarantors, the defendants 1 and 2 resorted to the action under challenge. Since the defendants 1 and 2 resorted to the impugned action strictly in accordance with the clauses in various agreements, as rightly found by the learned Principal District Judge in the impugned order, this Court is not inclined to meddle with the well articulated order passed by the learned District Judge. It is also evident from the impugned

order that the learned Principal District Judge considered various clauses in Exs.R2 and R3 and also the other documents thoroughly and turned down the contention, touching invocation of pledged shares. The further contention of the learned counsel for the appellants that the action under challenge is contrary to Section 176 of the Contract Act, in the facts and circumstances of the case, cannot be sustained.

15. Coming to the judgments cited by the learned counsel for the appellants--- in *Balkrishan Gupta v. Swadeshi Polytex Ltd.*, (1 supra), the Hon'ble Apex Court dealt with the appointment of receiver under Section 182-A of U.P. Land Revenue Act 1901 and the rights of a company as a member holding shares of another company. The principle laid down in the said judgment, in the considered opinion of this Court would not render any assistance to the appellants having regard to the facts and circumstances of the case on hand. Yet another judgment cited by the learned counsel for the appellants is in the case of *Ram Kishun v. State Of U.P.* (2 supra). In the said case, the Hon'ble Apex Court laid down certain guidelines to the financial institutions while resorting to recovery of loans. In the instant case, since the defendants 1 and 2 scrupulously adhered to the procedure laid down in the agreement entered into, the said judgment also would not render any assistance to the appellants. The Judgment of the Delhi High Court in *GTL Limited v. IFCI Ltd. and others* (3 supra) which is sought to be pressed into service by the learned counsel for appellants would not help the appellants in view of express terms of the agreements and in view of factual variation.

16. In the considered opinion of this Court, the appellants herein have failed in establishing the existence of three necessary and indispensable ingredients of Order XXXIX Rules 1 and 2 of Code of Civil Procedure namely, prima facie case, balance of convenience and irreparable loss in their favour.

17. For the aforesaid reasons, this Civil Miscellaneous Appeal is dismissed, confirming the order and decreetal order passed by the Court of the Principal District Judge, Visakhapatnam in I.A.No.1255 of 2016 in O.S.No.268 of 2016 dated 24.8.2016. Having regard to the nature of controversy and the facts and circumstances of the case and the amount involved in the case, the appellants are granted one month's time from today to clear the amounts due to the defendants 1 and 2. It is further made clear that the defendants 1 and 2 shall not take any further action for a period of one month from today. As a sequel, the miscellaneous applications, if any, shall stand closed and the Interim Orders passed pending C.M.A. shall stand dissolved. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 17.10.2016
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.M.A.No775 of 2016

17.10.2016