

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.4737 of 2015

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful 1st defendant is directed against the orders dated 06.08.2015 of the learned II Additional Senior Civil Judge holding Full Additional Charge of the Post of the learned V Additional Senior Civil Judge (Judge, Fast Track Court), Vijayawada passed in I.A.No.26 of 2015 in O.S.No.1405 of 2007 filed by the 1st defendant under Order XVI Rules 1 and 5 read with Section 151 of the Code of Civil Procedure, 1908 requesting for permission to summon the Branch Manager, State Bank of Hyderabad, Dharmavaram Branch (20902) to produce the statement of current account of the 4th defendant Company and to give evidence.

2. I have heard the submissions of the learned senior counsel appearing for the revision petitioner/1st defendant ('1st defendant', for brevity) and the learned senior counsel appearing for the respondents 1 and 2/plaintiffs ('plaintiffs', for brevity). Respondents 3 to 7 are stated to be not necessary parties. I have perused the material record.

3. As a prelude to this order, it is necessary to state that the plaintiffs brought the suit against the defendants for the following reliefs:-

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- (a) to declare the alleged vacation of the plaintiffs through their alleged resignation letters (document Nos.12 and 13) as directors of the 4th defendant company with effect from 01.06.2007 and the corresponding Form No.32 filed by the 1st defendant before the 5th defendant (Document No.11) as void and consequently their continuity as directors in the board of the 4th defendant company;
- (b) to declare the intended transfer of the plaintiffs' equity share holding in the 4th defendant in favour of the 1st Defendant through

blank signed non-judicial stamp papers and the blank signed share transfer deeds as void and consequently their continuity as members of the 4th defendant company;

- (c) to declare the alleged appointment of the 3rd defendant as additional director of the 4th defendant company w.e.f. 05.03.2007 as void and consequently the corresponding Form No.32 filed by the 1st defendant before the 5th defendant (document No.10) as void;
- (d) to declare the Meetings of the Board of Directors of the 4th defendant allegedly convened and held by the 1st defendant on 05.03.2007, 26.04.2007, 01.06.2007 and 02.07.2007 as void;
- (e) to declare the Extra-ordinary General Meeting of the 4th defendant allegedly convened and held by the 1st defendant on 26.05.2007 and consequently the Form No.5 filed by the 1st defendant before the 5th defendant (Document Nos.14 to 17) as void;
- (f) to grant Permanent Injunction against defendants no.1 to 3 restraining them, their agents, representatives, attorneys etc from alienation of or from creation of interest or charge over the suit schedule property, in any manner, in favour of third parties through equity or debt investment participation or otherwise;
- (g) to grant Permanent Injunction against defendants no.1 to 3 restraining them, their agents, representatives, attorneys, henchmen etc from interfering in any manner with the peaceful possession of the suit schedule property held by the plaintiffs;
- (h) to grant Temporary Injunction against defendant no.1 to 3 restraining them, their agents, representatives, attorneys etc from alienation of or from creation of interest or charge over the suit schedule property, in any manner, in favour of third parties through equity or debt investment participation or otherwise;
- (i) to grant Temporary Injunction against defendants no.1 to 3 restraining them, their agents, representatives, attorneys,

henchmen etc from interfering in any manner with the peaceful possession of the suit schedule property held by the plaintiffs;

- (j) to award costs of the suit; and
- (k) to grant such relief or other reliefs as deem fit and proper in the circumstances of the case and in the interest of justice.”

[Reproduced verbatim]

The 1st defendant and other defendants are resisting the suit. During trial, both the parties adduced evidence. When the trial is at the conclusion, the 1st defendant had filed the aforementioned application. That application was resisted by the plaintiffs. On merits and by the order impugned, the trial Court dismissed the application. Aggrieved of the same, the 1st defendant is before this Court.

4. The case of the 1st defendant, in support of his request to summon the Branch Manager for the desired purpose, is this: “The 1st defendant raised several unsecured loans from various persons of Dharmavaram and other areas; and, that amount so secured was contributed towards consideration for purchase of the defunct theatre. The plaintiffs did not contribute any amount. To substantiate the said fact, the 1st defendant examined necessary witnesses and also filed a copy of the relevant bank statement and exhibited it. To prove it in accordance with law, it is necessary to examine the Branch Manager of the bank concerned by summoning him to produce the statement of current account of the 4th defendant Company. Therefore, the present application is filed.”

5. The case of the plaintiffs, in their counter and as per the submissions before this Court is this: “The 1st defendant had produced eight witnesses. After the evidence on the side of the defendants’ is closed, the present petition is filed to adduce further evidence on behalf of the 1st defendant. The petition is not maintainable at this belated stage. The petition is intended to drag on the proceedings.”

6. I have bestowed my attention to the facts and I have given earnest consideration to the submissions made in line with the respective cases of the parties.

7. The plaintiffs are opposing the petition only on the ground of delay. When the matter is before the trial Court and when admittedly a copy of the statement of account is already marked and some of the persons from whom the 1st defendant had secured the loans were examined and when the 1st defendant intends to further prove the bank statement by summoning the officer concerned of the bank and is also seeking leave of the Court to direct the Branch Manager of the concerned bank to produce the statement of the current account of the 4th defendant Company, in the well considered view of this Court, an opportunity must be given to the 1st defendant to prove his case in the manner he thinks best, as such a course would sub-serve the ends of justice. The trial Court, while dismissing the petition, observed in its order that it is not necessary to summon the branch manager of the concerned bank as the record discloses that the suit is filed for declaration that the plaintiffs' resignation letter is void and that the alleged transfer of shares is not valid etcetera. In the well-considered view of this Court, the trial Court ought not to have indulged in appreciating the proposed evidence at a stage when it is considering an application to summon a witness, as the stage of appreciation of the proposed evidence would come up later i.e., after the proposed evidence is adduced on according permission to the 1st defendant.

8. Viewed thus, this Court finds that the order impugned is unsustainable and that the instant case is a fit case to grant permission to the 1st defendant to summon the witness for the desired purpose.

9. In the result, the Civil Revision Petition is allowed and the impugned order is set aside. As a sequel, I.A.No.26 of 2015 in O.S.No.1405 of 2007 on the file of the Court below is allowed. However, considering the fact that the suit is of the year 2007, the 1st defendant is directed to obtain 'hand over witness summons' from the Court below for personal service on the proposed

witness as expeditiously as possible and preferably within a period of two (02) weeks from the date of receipt of a copy of this order. On production of a copy of this order by the parties, the Court below shall entrust, as per procedure, 'handover witness summons' to the 1st defendant for service on the proposed witness by fixing an early date for examination of the said witness and complete the recording of the evidence of the said witness as early as possible and at any rate within a period of one month from the date of the receipt of a copy of this order.

There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

M.Seetharama Murthi, J

06th June, 2016

Note:-

Issue C.C. by 09.06.2016.

(B/o)

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