

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

and

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

W.A.No.1015 of 2017
and C.M.P.No.14277 of 2017

1. M.Vijayalakshmi
2. T.R.M.Muthukrishna
3. R.Suresh
4. S.A.Vinodh .. Appellants/Petitioners

Vs.

1. Tahdildar,
Office of the Tahsildar,
Tiruppur North,
Tiruppur.
2. The Chief Commercial Manager,
Headquarters Office,
Southern Railway,
Chennai.
3. S.Pandiyan .. Respondents

* * *

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the interim order made in W.M.P.No.22526 of 2017 in W.P.No.21547 of 2017, dated 11.08.2017, in so far as the condition on the appellants to pay a sum of Rs.2,50,000/- to the first respondent.

WP.21547/2017 PRAYER:

To issue a writ of Certiorari calling for the records of the 1st respondent made in Na.Ka. No.1729/2017/A5 dated 10.7.2017 and quash the same and

WMP.22526/2017 PRAYER:

To grant an order of injunction restraining the 1st respondent and his officials from bringing for attachment of the

property of the 1st respondent at door No.104, Plot No.24 and 25, 5th street, Kalliappa Nagar, Kangayam Road, Tiruppur, within the boundary mentioned in the schedule of property in the registered settlement deed dated 28.2.2005,

* * *

For Appellants :Mr.N.Subbarayalu

For Respondents :Mr.Akhil Akbar Ali,
Government Advocate for R1

Mr.P.T.Ramkumar for R2
NA for R3

JUDGMENT

[Judgment of the Court was made by RAJIV SHAKDHER, J.]

1. This is an appeal filed against the order dated 11.08.2017, passed by the learned Single Judge.

1.1. The learned Single Judge via the aforesaid order had issued notice in the writ petition and granted a conditional stay of the order impugned in the writ petition, upon deposit of a sum of Rs.2,50,000/- (Rupees two lakhs and fifty thousand only) by the appellants.

1.2. This was, concededly, an ex-parte order. The respondents in the writ petition have not had a chance to file a counter affidavit.

2. Since, the writ petitioners had approached this Court by way of the instant appeal stating that they had nothing to do with the contract qua which, the Southern Railways, Chennai, (in short, "SR"), i.e., in effect respondents No.2 herein, claimed dues, we had issued notice in the appeal.

2.1. Since then, respondent No.2 has filed a counter affidavit, which shows that respondent No.3, who was, ostensibly, given the contract, qua which dues are outstanding, portrayed himself as being a Supervisor in a hotel going by the name Ours Arya Bhavan. This hotel, even according to the learned counsel for the appellants herein, is run by them.

2.2. Furthermore, our attention has also been drawn to the communication dated 18.01.1999, by which, license was issued in favour of respondent No.3, i.e., Mr.S.Pandiyan, and the communication dated 02.07.2004, wherein, the ostensible licensee, has communicated with SR on a letter head, which bears the address of the appellants.

2.3. This apart, SR also relies upon a communication dated

22.12.2010, addressed by respondent No.3/Mr.S.Pandiyam, to it, whereby, for the first time, he claims that only he will settle the outstanding dues of the SR. It is also suggested in the very same communication by respondent No.3/Mr.S.Pandiyam, that from hereon letters should not be directed to the address of the appellants, i.e., No.261, Kumaran Road, Tirupur, Tirupur District-641 601.

2.4. The stand of SR, therefore, is that, though, Mr.S.Pandiyam, is stated to be a friend of the appellants, what is not in dispute, is that, between 19.01.2002 and 19.09.2005, he was a partner in Ours Arya Bhavan.

2.5. To be noted, this fact is affirmed before us by the learned counsel for the appellants.

2.6. Furthermore, respondent No.3, even according to the appellants, retired from the said partnership firm only on 19.09.2005, which was after a fresh demand was raised by SR on 23.06.2005.

2.7. Therefore, according to us, these are assertions, which are required to be enquired into by the learned Single Judge.

3. As indicated above, the writ petition is still at the stage of completion of pleadings.

3.1. Thus, having regard to the aforesaid facts and circumstances, we are of the view that no interference is called for with the impugned order.

4. Since, the appellants have not deposited the money as yet, in terms of the learned Single Judge's order dated 11.08.2017, they are given further time of two (2) weeks from the date of receipt of a copy of the order passed today by us, to comply with the order.

4.1. If, compliance is made, then, the interim protection, as ordered by the learned Single Judge, will continue to operate, till it is varied by him.

5. The captioned appeal is, accordingly, disposed of. Resultantly, pending application shall stand closed.

6. List the writ petition 'for direction' before the learned Single Judge on 21.12.2017.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1.THE TAHSILDAR, O/O. THE TAHSILDAR,
TIRUPPUR NORTH, TIRUPPUR.

2. THE CHIEF COMMERCIAL MANAGER,
HEAD QUARTERS OFFICE,
SOUTHERN RAILWAY, CHENNAI.

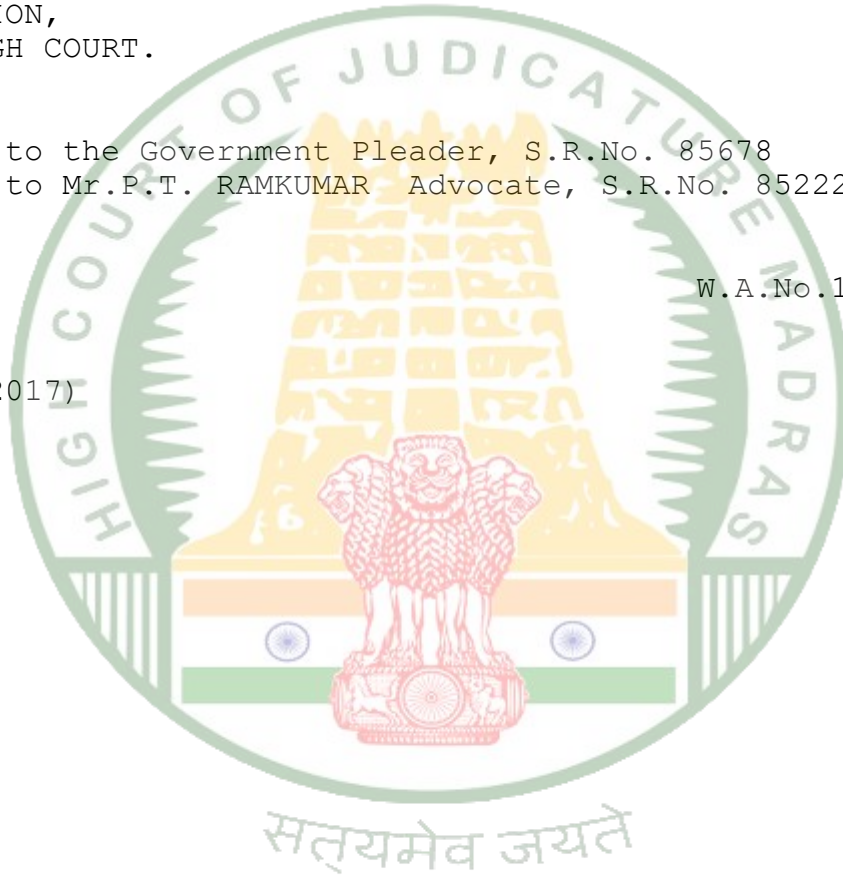
3.THE SUB ASSISTANT REGISTRAR,
WRIT SECTION,
MADRAS HIGH COURT.

+1cc to the Government Pleader, S.R.No. 85678

+1cc to Mr.P.T. RAMKUMAR Advocate, S.R.No. 85222

W.A.No.1015 of 2017

RV(CO)
TR(20/12/2017)



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