

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.08.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A.No.1024 of 2017
and CMP No.14419 of 2017

- 1.The State of Tamil Nadu
Rep. by its Secretary
Commercial Taxes/Registration
Fort St. George, Chennai - 9
 - 2.The Inspector General of Registration
Mylapore, Chennai - 28
 - 3.The District Registrar
Administration (General), No.9, Jennis Road
Saidapet, Chennai - 15
 - 4.The Sub Registrar
Alandur, TNHB Building
Nanganallur, Chennai 600 061
- ... Appellants

Vs

Evos Design Living Private Limited
No.3, Khadar Nawaz Khan Road
Nungambakkam, Chennai 600 006
Rep. by its Director

.... Respondents

Writ Appeal filed under Clause 15 of the Letters Pate against the order dated 12.09.2016 made in W.M.P. No.27381 of 2016 in W.P. No.31540 of 2016.

W.M.P.27381 of 2016:- petition praying that in the circumstances stated therein and in the respective affidavit filed therewith the High Court will be pleased to grant an Order to stay the operation of the impugned Order of the 3rd respondent bearing reference 5785/Aa1/2015 dated 28.03.2016, received on 02.08.2016 and all proceedings consequent thereto, pending disposal of the Writ Petition.

W.P. No.31540 of 2016:- Writ petition filed under section 226 of the constitution of India praying to issue a Writ of certiorarified Mandamus or any other Writ, Order, or direction in the nature of a Writ, calling for records on the file of 3rd respondent in the impugned order of the 3rd respondent bearing reference 5785/Aa1/2015 dated 28.3.2016 received on 2.8.2016

and quash the same as unconstitutional, illegal, invalid arbitrary and without jurisdiction and also being contrary to the provisions of the Indian Registration Act, 1908 and the Indian Stamp Act, 1899 and consequently direct the 4th respondent to register sale deeds executed by the petitioner or its agents and assigns pertaining to the property situated at T.S.No.105, Adambakkam Village, Alandur Town, Kancheepuram District admeasuring 2.69 acres.

For Appellants : Mr.M.Elumalai, Govt. Advocate

J U D G M E N T
(Delivered by S.MANIKUMAR, J.)

Challenge in this appeal is to an interim order made in W.M.P. No.27381 of 2016 in W.P. No.31540 of 2016 dated 12.09.2016, by which, following an earlier order made in W.P. No.13001/2016 and W.M.P. Nos.11355 and 11356 of 2016, and also a decision of the Hon'ble Supreme Court in Hindustan Lever and Anr vs. State of Maharashtra, reported in (2004) 9 SCC 438, a Learned Single Judge has granted interim stay for a period of two weeks.

2. It is well settled law that a writ appeal would not lie against an interim order. In the case on hand, interim stay has been granted only for two weeks. Instead of filing a petition for vacating the interim order, writ appeal has been filed.

3. The issue as to whether a writ appeal under clause 15 of the Letters Patent is maintainable against an interim order granted in a writ petition, is no longer res integra. The same has been dealt by a Hon'ble Division Bench of this court in The Anna University v. Narayanaguru International Institute of Science and Technology (Regd. Trust) and others in W.A.(MD) No.466 of 2015 dated 14.05.2015. After considering the earlier decisions of this Court, the Hon'ble Bench, held that writ appeal as against interim order granted in writ petition, was not maintainable.

4. A similar question arose for consideration before a Hon'ble Division Bench of this court in R.Kannan v. Indcom Electronics Ltd., stating that the order impugned therein is not a judgment within the meaning of Clause 15 of Letters Patent of this court. A Hon'ble Division Bench, elaborately considered the matter, and held that interim order made in the petition, which has not reached finality, determining the rights and liabilities as between the parties and which cannot be said to have caused grave and substantial injustice to the appellant, will not fall within the meaning of the expression 'judgment' occurring in Clause 15 of the Letters Patent. Accordingly, the Hon'ble

Division Bench held that writ appeal was not maintainable against an interim order.

5. In Dr.Chinnaraj Joseph Jeyakumar Joseph Jeyakumar v. The Governing Counsel of Amercian College and Others in W.A.No.540 of 2008, dated 02.08.2008, another Hon'ble Division Bench of this court held that ex-parte interim orders are not judgments for an aggrieved person to invoke the jurisdiction of the Appellate Court, under clause 15 of the Letters Patent. Adopting the same legal principle, W.A. No.2347 of 2012, dated 05.12.2012, was disposed of by the Hon'ble First Bench giving liberty to the appellant therein to file application to vacate the interim order.

6. In Hindu Nadar Educational Trust, represented by its Managing Trustee and others vs. Hindu Nadar Uravinmurai, Nilakottai, in W.A.(MD) No.312 of 2016 dated 22.02.2016, a Division Bench of which one of us is a party (Justice S.Manikumar), held as follows:

"In the abovesaid circumstances, we would only clarify that the interim order, granted in W.M.P(MD) Nos.23 and 24 of 2016 in W.P(MD)No.23 of 2016 dated 05.01.2016, would be an interim order, till the miscellaneous petitions are finally heard and decided, along with the vacate stay petition. It shall not be an interim order, as prayed for, in the miscellaneous petitions, till the disposal of the writ petition. It could only be an interim order, till the parties to the lis, are put on notice, in the interim applications and heard. With the above clarification, we only request the Writ Court, to take up the injunction petitions in W.M.P(MD)Nos.23 and 24 of 2016 in W.P(MD)No.23 of 2016, along with the vacate stay petition, and pass orders, as expeditiously as possible. Registry is directed to place the matter before the learned single Judge.

Accordingly, the writ appeal is disposed of. No costs. Consequently, C.M.P(MD)No.1856 of 2016 is closed."

7. In Special Tahsildar No.III, Land Acquisition, Lignite Project, Neyveli, vs. V.Rangasamy Reddiar, reported in AIR 1988 Madras 162, this Court, has held as follows:-

"2.We are very much concerned to note a disturbing tendency that is fast developing now-a-days. In the recent past, we have come across several matters in which appeals are filed against ad interim ex parte orders without resorting to the normal course of approaching the court which passed such orders and seeking appropriate further orders in

spite of the law having been clearly laid down by a Division Bench of this Court in Abdul Shukoor v. Umachander AIR 1976 Mad 350. No doubt, that case arose out of an order emanating from a Subordinate Court. The ratio of the decision will apply with more force to an order passed by a learned single Judge of this Court. Moreover the ad interim orders are not judgments within the meaning of clause 15 of the Letters Patent.

3.What concerns us most is that the Government and statutory Corporations very often indulge in by-passing the only lawful course and adopting a course expressly disapproved by this court. We hold that the appeals ought not to have been filed in this case. The only course open to the Government was to approach the court in charge of civil miscellaneous petitions and pray for the passing of appropriate final orders in the civil miscellaneous petition. We hope that there will be no recurrence of similar instances in future. We make it clear that if we come across any such appeals in future, we will be constrained not only to dismiss such appeals, but also penalise the parties concerned with orders of heavy costs.'

The above said decision has been followed in Syed Zehera Jabeen vs. S.Padmanabhan, reported in 1988 II MLJ 423 = 1989 (1) L.W 112, and Telecom Regulatory Authority of India vs. Bharti Airtel Ltd., reported in 2013 (5) CTC 264.

In view of the above decisions and discussion, the present writ appeal filed against an interim order is not maintainable. Accordingly, the same is dismissed. However, this judgment will not prevent the appellants to approach the writ court for vacating the interim stay, if so advised and all the contentions are left open. No costs. Consequently, connected civil miscellaneous petition is closed.

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Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

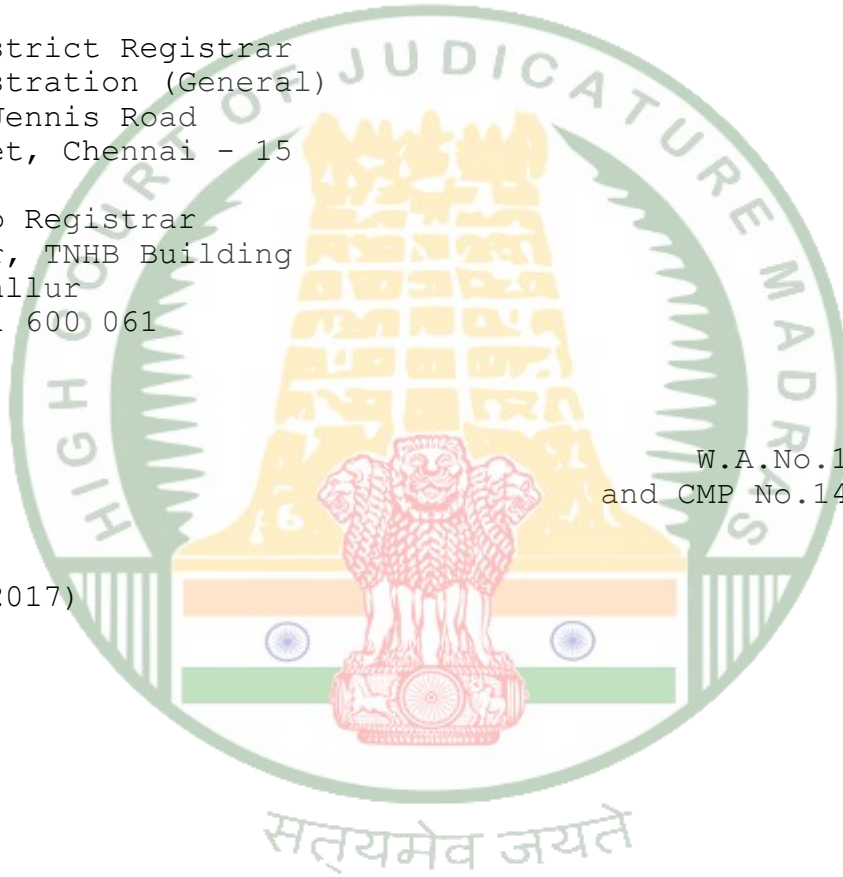
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PA(CO)
VR(23/10/2017)



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