

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **07.02.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD.No.29 of 2017
and
C.M.P.Nos.215 and 998 of 2017

1.K.Nagamani @ Nagamuni

2.K.Gangamma

3.K.Reddy Varaprasad

.. Petitioners

vs

1.K.R.Shanmugam (Died)

2.Praveen

3.S.Balaji

4.R.Rajeswari

5.K.R.Mohan

6.Ganesan

7.R.R.Cold Storage Private Ltd.,
rep.by its Director S.Balaji
having office at
No.40, Dharmaraja Koil Street
Oldpet, Krishnagiri.

*8.Roshini

Minor aged 16 years
rep.by S.Balaji

*9. Dhananjaya Jain

.. Respondent

R8 brought on record as
LR of the deceased first respondent
and R9 impleaded as party respondent
vide order of Court dated 30.01.2017
by PSNJ in CMPS Nos.1248 and
1376 of 2017 in CRP PD.No.29 of 2017

Prayer: Civil Revision Petition filed under Article 227 of the
Constitution of India against the fair and decreetal order dated
16.12.2016 passed by the learned learned Principal Subordinate
Judge, Krishnagiri in CMA No.1 of 2016 in reversing the fair and
decreetal order dated 06.10.2015 passed by the learned District
Munsif, Krishnagiri in I.A.No.762 of 2015 in O.S.No.158 of 2015.

For Petitioners : Mr.K.M.Vijayan
Senior counsel for
Mr.B.Saravanan

For Respondents : Mr.AR.L.Sundaresan
Senior Counsel for
Ms.AL.Gandhimathi
for RR2 to 8

Mr.P.P.Hegde
for R9

ORDER

The plaintiffs are the revision petitioners.

2. For the sake of convenience, the parties are referred to here under according to their litigative status and ranking in the suit.

3. The revision petitioners/plaintiffs herein filed a suit in O.S.No.158 of 2015 on the file of the District Munsif Court, Krishnagiri seeking the following reliefs:

(i) for a permanent injunction restraining the respondents/defendants 1 to 7 from preventing the plaintiffs to take part in day to day accounts and business in the suit property;

(ii) for a permanent injunction restraining the defendants from lifting the stock on any pretext from the 7th defendant's premises till accounts are settled between the plaintiffs and the defendants;

(iii) for a permanent injunction restraining the defendants from alienating their respective share in the suit property to third parties;

(iv) for a mandatory injunction, directing the defendants to produce the up-to-date stock accounts and business accounts of income, profits and loss of the 7th defendant company.

4. Pending suit, the plaintiffs filed three interlocutory applications seeking the following reliefs:

(i) **I.A.No.760 of 2015** was filed seeking an injunction restraining the respondents/defendants from in any manner alienating or encumbering the suit property and the 7th defendant's shares to any third parties till the disposal of the suit.

(ii) **I.A.No.761 of 2015** was filed seeking an injunction restraining the respondents/defendants from in any manner preventing the plaintiffs to enter and to inspect the stocks and its accounts in the suit property, i.e., the 7th defendant, till the disposal of the suit.

(iii) **I.A.No.762 of 2015** was filed for an injunction restraining the respondents/defendants from in any manner

lifting the stock lying in the suit property, i.e., the 7th defendant company or delivering the stock to any third parties, till the disposal of the suit.

5. A common order dated 06.10.2015 was passed by the learned District Munsif, Krishnagiri in the above interlocutory applications. The learned Judge has allowed I.A.No.761 of 2015 and dismissed I.A.Nos.760 and 762 of 2015. However, while dismissing I.A.No.762 of 2015, the learned Judge has directed the respondents to furnish the stock ledger book and rent receipts book maintained by 7th respondent before the said Court within a week, otherwise, the said application will be allowed automatically. Admittedly, the direction given by the trial court was not complied with by the defendants and the I.A.No.762 of 2015 got automatically allowed, thereby there was a temporary injunction restraining the seventh defendant from lifting the stocks lying in the suit property.

6. Aggrieved by the same, the defendants preferred an appeal in CMA No.1 of 2016 before the learned Principal

Subordinate Judge, Krishnagiri and the Appellate Court had set aside the order passed by the learned trial Judge in I.A.No.762 of 2015 and allowed the appeal.

7. Challenging the same, the present revision is filed by the plaintiffs.

8. Heard Mr.K.M.Vijayan, the learned Senior Counsel appearing for the revision petitioners; Mr.AR.L.Sundaresan, learned Senior counsel appearing for respondents 2 to 8 and Mr.P.P.Hegde, learned counsel appearing for the impleaded 9th respondent and perused the orders passed by the Courts below.

9. While allowing the appeal, the first Appellate Court has held that the suit and the application filed by the plaintiffs are not maintainable as the Civil Court has got no jurisdiction to try the matters in connection with the company affairs. Further it has held that only the Registrar of Companies has been conferred with powers to deal with company matters as per Section 430 of the Companies Act. The learned Appellate Judge has also stated

that the 7th defendant, viz., R.R.Cold Storage is a service oriented company as it only stores commodities and never stocks its own stock. For the stocks stored by the third parties in the cold storage, rents are charged. Therefore, the stock inside the 7th defendant's godown belong to third parties and any order injuncting the lifting of goods inside the cold storage would affect only the right and interest of the third parties, who have stored their commodities. By holding so, the learned Appellate Judge has set aside the order passed by the learned trial Judge in I.A.No.762 of 2015 and thereby allowed the appeal.

10. In the meanwhile, the 9th respondent in this revision, had filed a petition in C.M.P.No.1248 of 2017 before this Court, to implead himself as a party and the said petition was allowed by this Court on 30.01.2017.

11. It is the contention of the impleaded 9th respondent that he is a wholesale business man trading in red chillies. He had procured 263 bags of red chillies and in order to store the same, he had approached the 7th defendant and had deposited

196 bags of red chillies and another 67 bags of red chillies by two separate receipts duly signed by the Managing Director of the 7th defendant, viz., RR Cold Storage Private Limited. It was further stated that there was a demand for red chillies in the month of December and in order to sell the goods kept in the cold storage, the impleaded 9th respondent had approached the 7th defendant company, only then he was informed of the dispute between the Directors of the Company and the order of the Court restraining the third parties from taking delivery of stocks. According to him, the goods are perishable and demands are seasonal, hence, he has requested the 7th defendant to release the goods, however, they were refused to be removed.

12. In the meanwhile, at the time of admission of the Civil Revision Petition, an interim order of status quo was granted, which also operated against the impleaded 9th respondent. As a third party, the 9th respondent has nothing to do with the dispute inter se between the Directors and the members of the 7th defendant company, who were owning the cold storage.

13. It is stated by the 7th defendant company that there are several other individual third parties, who have also stocked their commodities with the cold storage company and in view of the interim order passed by this Court, they are unable to get their goods lifted from the cold storage. Only the 9th respondent has come to this Court explaining his difficulty and each and every customer cannot be expected to approach this Court for release of their goods when they are no way connected with the inter se dispute between the Directors.

14. It is also brought to the notice of this Court by the learned Senior counsel appearing for the respondents/defendants that they had also filed I.A.No.841 of 2015 praying for rejection of the plaint on the ground that the suit filed by the plaintiffs is not maintainable as the same is barred under the provisions of the Companies Act. However, the said application was dismissed by the learned District Munsif, Krishnagiri vide order dated 01.10.2015 and the revision filed against the said order was also withdrawn by the defendants.

15. Be that as it may, the revision petitioners/plaintiffs have not produced any evidence to show that they also have stocked goods with the 7th defendant company and that therefore, they are not entitled to the interim order of injunction, restraining the defendants from lifting the stocks.

16. As stated earlier, the entire stock of commodities lying with the 7th defendant company belong to only third parties and they are being pressurized for the release of the goods. The stocks lying in the cold storage are perishable ones like Tamarind, Chillies, Horse gram, guava, etc., and if they are not allowed to be released to the respective owners within the time, the company would be liable to pay damages to them for the loss that may be caused in their business.

17. It is contended by the learned Senior counsel appearing for the 7th defendant company that the cost of the stocks inside the cold storage may vary from time to time and the goods stored were only to be removed at the appropriate

time. Therefore, if the third party owners of the goods are not permitted to remove their goods at their will, it would amount to breach of trust, resulting in irreparable loss to the company. It is his further contention that the 7th defendant company is ready to produce the rent receipts that are available with them, in order to establish that the goods stored in the cold storage are all belonging to the third parties.

18. In view of the above submission, this Court is of the view that the burden is only on the plaintiffs to establish as to whether the stocks stored inside the cold storage of the 7th defendant company, belong to the 7th defendant or any of the parties to the suit.

19. Considering the aforesaid facts and circumstances of the case, the order dated 16.12.2016 passed by the learned Principal Subordinate Judge, Krishnagiri in CMA No.1 of 2016 in reversing the order dated 06.10.2015 passed by the learned District Munsif, Krishnagiri in I.A.No.762 of 2015 in O.S.No.158 of 2015 is confirmed.

20. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

07.02.2017

vj2

Index : Yes/No

Internet: Yes

To

1. The Principal Subordinate Judge, Krishnagiri
2. The District Munsif, Krishnagiri

PUSHPA SATHYANARAYANA,J.,

vj2

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