

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P. PD No.339 of 2017
and
C.M.P.Nos.1541 & 1542 of 2017**

Aditya Birla Fashion and Retail Limited
(Pantaloons Division) (Formerly known as
Pantaloons Fashions and Retail Limited),
Rep. By its General Manager–Legal & Compliance ... Petitioner/Plaintiff
Vs

1. M/s.Prashanth Properties Private Limited,
Rep.by its Managing Director,
Mr.Joseph Prem Raja

2.Lifestyle International Private Limited,
Rep.by its Authorised Representative ... Respondents / Plaintiffs

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 06.01.2017 in I.A. No.2179 of 2016 in O.S.No.193 of 2016 on the file of the Principal District Judge at Pondicherry.

For Petitioner : Mr.Kamalakumar

For Respondents : Mr.V.Raghavachari
for Mr.K.S.Karthik Raja

ORDER

This Civil Revision Petition is filed against the order dated 06.01.2017 in I.A. No.2179 of 2016 in O.S.No.193 of 2016 on the file of the Principal District Judge at Pondicherry.

2. The petitioner is the plaintiff and the respondents are the defendants in O.S.No.193 of 2016 on the file of the Principal District Judge, Pondicherry. The petitioner filed suit for a direction to the first respondent to receive the balance refundable security deposit amount of Rs.10,00,000/- and come forward to execute the lease deed after complying with his obligations under the agreement to lease dated 02.03.2015 and declaring the sub-lease deed dated 05.12.2016 executed by the first respondent in favour of the second respondent as null and void and not binding on the petitioner.

3. According to the petitioner, he has entered into an agreement for execution of lease with the first respondent agreeing to pay a sum of Rs.25,00,000/- as refundable security deposit. Accordingly, the petitioner had paid a sum of Rs.15,00,000/- and balance sum of Rs.10,00,000/- is payable in two instalments of Rs.5,00,000/- Lakhs each, upon completion of work by the first respondent and execution of

lease deed respectively. The first respondent did not complete the work as agreed upon and completion of work was delayed. The first respondent was giving assurances that the work would be completed and lease agreement would be entered into with the petitioner. On 17.11.2016, the first respondent terminated the Agreement to Lease and refunded the security deposit. Immediately, the petitioner sent reply to the said letter and returned the cheque issued by the first respondent.

4. The petitioner filed Arbitration petition (L) No.1290 of 2016 on the file of High Court, Mumbai as per Arbitration Clause 46 of Agreement invoking the relief under Section 9 of the Arbitration and Conciliation Act. On 08.12.2016, when the matter was listed, the learned counsel for the first respondent informed the court that he has no instruction with regard to creation of third party interest in the suit property. Based on the said submission, sole Arbitrator was appointed by the court on 09.12.2016. On 09.12.2016, the learned counsel for the first respondent informed the learned counsel for the petitioner and arbitrator that property was handed over to the second respondent on 02.11.2016 and a sub-lease agreement was registered on 06.12.2016. A copy of the lease deed was produced before the High Court, Mumbai on 16.12.2016 and the High Court, Mumbai closed the Arbitration petition with a direction to the

petitioner to seek remedy before the appropriate Civil Court. In the said circumstances, the petitioner has filed the above suit for specific performance of agreement to lease dated 02.03.2015 directing the first respondent to receive the balance refundable security deposit amount of Rs.10,00,000/- and come forward to execute the lease deed after complying with his obligations under the agreement to lease dated 02.03.2015 and declaring the sub-lease deed dated 05.12.2016 executed by the first respondent in favour of the second respondent as null and void and not binding on the petitioner.

5. Alongwith the suit, the petitioner filed I.A.No.2179 of 2016 for interim injunction restraining the second respondent and anyone claiming through them from entering into the petition schedule property and from carrying on any activities including fit out or altering the physical features in furtherance of the lease deed dated 05.12.2016 till the final disposal of the suit. On 20.12.2016, an exparte injunction order was granted. The petitioner complied with Order 39 Rule 3 (a) of CPC and filed an affidavit to that effect on 21.12.2016. On 03.01.2017, when the I.A. was posted for hearing, the second respondent filed counter to I.A.No.2179 of 2016 and an affidavit stating that the petitioner has not complied with Order 39 Rule 3 (a) of CPC. The application was

adjourned to 06.01.2017 and after elaborate arguments, the learned Judge passed an order adjourning I.A.No.2179 of 2016 for enquiry to 18.01.2017 and did not extend the interim order already granted.

6. Against the order dated 06.01.2017 in I.A. No.2179 of 2016 in O.S.No.193 of 2016, the present Civil Revision Petition is filed.

7. According to the learned counsel for the petitioner, the interim order was not extended only based on the contention of the second respondent that petitioner has not complied with Order 39 Rule 3(a) CPC. The second respondent has not substantiated his contention that he has not received the document and the learned Judge erred in not extending the interim injunction. The learned Judge failed to consider the document relied on by the petitioner and arguments to prove that the second respondent is not a bonafide leasee. The learned Judge having held that injunction application can be finally decided only after considering the oral evidence, erred in not extending the interim injunction. The learned Judge has not given any reason for not extending the interim injunction.

8. The learned counsel for the petitioner relied on the following judgments in support of his contention –

(1) 2001 (3) CTC 486 [R.Karuppan v. P.K.Rajagopal]

(2) AIR 2013 (KAR) 142 [R.K.Jain v. P.G.Chacko]

(3) Order of Delhi High Court dated 10.01.2014 in
CS (OS) 2252/2011 & connected I.As

9. Per contra, learned counsel for the second respondent submitted that the present Civil Revision Petition is not maintainable as impugned order is appealable under Order XLIII Rule (1) (r) CPC. He would further submit that the possession of the suit property was entrusted to the second respondent by the first respondent on 02.11.2016 and sub-lease agreement was registered on 06.12.2016. The second respondent carried major portion of the work in the petition premises and has already issued purchase order to the tune of Rs.1,56,74,394/-. The fact that the second respondent is in possession of the petition premises was admitted by the petitioner before the High Court, Mumbai and High Court, Mumbai held that the second respondent will not in equity claim in respect of the work done by him from 29.12.2016. It is not correct to state that the learned Judge did not extend the interim order on the ground that the petitioner has not complied with mandatory provisions of

Order 39 Rule 3 (a) CPC. The learned Judge has not passed any final order and has only adjourned the application for final disposal to 18.01.2017 on the ground that the application can be decided on merits only based on the oral evidence let in by the parties.

10. The learned counsel for the second respondent relied on the following document in support of his contention –

- (1) 2007 SCC 695 [A.Venkatasubbiah Naidu v. S.Chellappan & Ors.]
- (2) 2011 (8) SCC 249 [Ramrameshwari Devi & Ors. v. Nirmala Devi & Ors.]
- (3) 2007 (7) SCC 125 Adhunik Steels Ltd. v. Orissa Manganese & Minerals (P) Ltd.]
- (4) 2007 (1) CTC 668 [Salem Vivekananda English Institute v. Vivekananda Kalvi Nilayam Pvt. Ltd.]
- (5) AIR 1988 MAD 162 [The Special Tahsildar v. V.Rangasamy Reddiar]
- (6) 2013 (15) SCC 27 [I.S.Sikandar (dead) by Lrs v. K.Subramani & Ors.]

11. Heard the learned counsel for the petitioner, respondents and perused the materials available on record.

12. A reading of the impugned order reveals that the learned Judge has not extended the interim order already granted not based on

the contention of the second respondent that the petitioner has failed to comply with the mandatory provisions of Order 39 Rule 3 (a) of CPC. The learned Judge did not extend the interim order in view of the rival contention which can be decided only by appreciating the oral evidence to be let in by the parties in the Interlocutory Application.

13. From the above facts of the case mentioned by the petitioner in this Civil Revision Petition, it is seen that the learned counsel for the first respondent who appeared in Arbitration Petition before the High Court, Mumbai has informed that the second respondent was put in possession of the schedule mentioned property on 02.11.2016 and sub-lease agreement was registered on 06.12.2016. It is also seen that the learned counsel for the first respondent produced the sub-lease agreement before the High Court, Mumbai on 16.12.2016 and based on the same, the Arbitration Petition was closed with a direction to seek appropriate remedy before the appropriate Civil Court.

14. The second respondent in the present Interlocutory Application has stated that he is in possession of the petition premises and has carried out 75% of entire work and has also placed purchase order to the tune of Rs.1,56,74,394/-. Considering the said submissions, the learned

Judge has held that these rival contentions cannot be decided in a summary manner and it is just and necessary to conduct a full enquiry by examining the parties to arrive at a decision.

15. In view of the above reasons, the relevant portions of the judgments relied on by the learned counsel for both the parties are not extracted.

16. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

17. From the records, it is seen that exparte order of injunction was originally granted and subsequently interim injunction was not extended. In view of the same, the learned Judge is directed to dispose of the I.A., as expeditiously as possible, in any event, not later than two (2) months from the date of receipt of a copy of this order.

08.06.2017

Speaking/Non-speaking order
Index : Yes/No
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To

The Principal District Judge
Pondicherry.

V.M.VELUMANI, J.

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