

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P.(PD)No.454 of 2017
and
CMP.Nos.2158, 4771, 6975 & 6976/2017**

1. Harmony Avakash Homes Pvt. Ltd.,
Moogambigai Complex
5th Floor, No.4, Lady Desika Road,
Mylapore,
Chennai – 600 004.

2.Ramesh
3.Shankar
4.Naryanasamy
5.Ramesh Kumar

.. Petitioners

Vs.

M/s.Govis & Co.,
Rep. By its Proprietor
S.Muthuramalingam
No.20, 53rd Street,
9th Sector, K.K.Nagar,
Chennai 600 078.

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the exparte interim injunction order dated 07.10.2016 made in IA.No.1028/2016 in O.S.No.160/2016 on the file of Additional District Munsif Court, Tindivanam.

For Petitioners : Mr.M.Venkadeshnan

For R1 & R2 : Mr.S.Palanivelayutham

ORDER

This Civil Revision Petition has been filed to set aside the ex parte interim injunction order dated 07.10.2016 made in IA.No.1028/2016 in O.S.No.160/2016 on the file of Additional District Munsif Court, Tindivanam.

2. The petitioners are defendants and respondent is the plaintiff, who filed suit in O.S.No.160/2016 seeking a decree and judgment in the nature of permanent injunction forbearing the respondents herein, who are the defendants in the original suit from putting up construction utilizing the business equipment belonging to them which are lying in the suit 'A' Schedule Property and also further restraining them from disturbing the petitioner's peaceful possession and enjoyment in respect of 'B' Schedule property.

3. Along with the suit, the respondents filed I.A.No.1028/2016 for interim injunction restraining the respondents, their men or their agents, not to disturb the materials/equipments available in the 1st schedule property and respondents/defendants their men or their agents not to disturb/interferences in the 2nd schedule property, until further orders and ex parte interim injunction was ordered on 07.10.2016.

4. After hearing the arguments of learned counsel for the respondent and having been satisfied with the reasons stated by the learned counsel for the respondent, the trial court granted exparte injunction/Ad-interim/Temporary injunction, restraining the respondents their men or their agents not to disturb the materials/equipments available in the Ist schedule property and respondents/defendants their men or their agents not to disturb/interferences in the 2nd schedule property, until further order.

5. Aggrieved against the order dated 07.10.2016 made in I.A.No.1028 of 2016, the present Civil Revision Petition is filed.

6. According to the petitioner, when the respondent has not served notice on the petitioner, the learned Judge, without properly considering all the materials, granted interim injunction. In the work order issued by the petitioner, there is an arbitration clause and respondent has not invoked arbitration clause and therefore, the suit is not maintainable.

7.The petitioner has filed Application under Section 8(1) of the Arbitration and Conciliation Act. Once the application filed under Section 8(1) of the Arbitration and Conciliation Act, is pending in the suit, all further proceedings will be automatically stayed till the disposal of the said application.

8. The respondent/plaintiff filed a counter and two other Civil Miscellaneous Petitions viz., CMP.Nos.6975 and 6976 of 2017 to vacate the interim orders dated 08.02.2017 in CMP.No.2158 of 2017 and 14.03.2017 in CMP.No.4771 of 2017 respectively staying the interim injunction granted by trial court as well as all further proceedings in the suit.

9. Learned counsel for the respondent submitted that the petitioner has filed an application in I.A.No.1245 of 2016 under Section 8(2) of the Arbitration and Conciliation Act and the respondent filed counter affidavit denying the averments made in the application. The learned Judge after considering the averments made in the affidavit, counter affidavit and materials on record has closed that application on 24.02.2017 and the petitioners were also set ex parte. On that day, the suit was posted for recording ex parte evidence. On 15.03.2017, ex parte evidence was recorded and PW1 was examined-in-Chief and marked Exs.A1 to A10 and the suit was posted to 23.03.2017 for further evidence. At that stage, the petitioners have obtained interim stay of all further proceedings in the suit. In view of the closure of Application filed by the petitioners under Section 8(2) of Arbitration and Conciliation Act and the fact that the petitioners were set ex parte on 24.02.2017 and ex parte evidence was recorded on 15.03.2017, learned counsel for the respondent prayed for dismissal of the Civil Revision petition.

10. The petitioners have not disputed the averments made by the

respondent in the counter affidavit and the application filed by them under Section 8(1) of the Arbitration and Conciliation Act was closed and they were set ex parte on 24.02.2017 and ex parte evidence was recorded on 15.03.2017. The petitioners are challenging only the interim order of injunction granted by the trial court. Without deciding the issue raised by the petitioners in the Civil Revision Petition on merits, in view of an ex parte order passed by the learned Judge in the suit as well as in the I.A.No.1028/2016 for interim injunction, if the petitioners file a petition to set aside the ex parte order, the learned Trial Judge is directed to consider the same on merits and pass orders in accordance with law.

11. In the result, the Civil Miscellaneous Petitions filed by the petitioners for interim injunction are dismissed and interim injunction granted by the learned Judge is restored until further orders are passed by the learned Trial Judge.

With the above observations, Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Gv

24.04.2017

Speaking/Non-speaking order
Index :Yes/No

V.M.VELUMANI.,J.

gv

To

The Additional District Munsif Court,
Tindivanam.

C.R.P.(PD)No.454 of 2017

and

CMP.Nos.6975, 6976,2158 & 4771/2017

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