

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.03.2017

PRONOUNCED ON : 16.03.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.673 of 2011

and

M.P.No.1 of 2011

Gem Granites

Rep.By its Partner Mr.Asai Thambi ...

Appellant

Vs.

1. Indian Overseas Bank,
Esplanade Branch,
Rep.by its Chief Manager,
Esplanade, Chennai – 600 108.

2. Director of Mines and Geology,
Government Karnataka
No.16, S.P.Complex,
Subbiah Circle,
Lalbag Road,
Bangalore -27.

...

Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 20.01.2010 in A.S.No.71 of 1999 on the file of the Additional District and Sessions Court, Fast Court No.3, Chennai, reversing the decree and judgment dated 23.12.1998 in O.S.No.13323/1996 on the file of I Assistant City Civil Judge, Chennai.

For Appellant

: Mr.R.Rajarajan

For Respondent
No.1

: Mr.Ranganatha Reddy
for M/s.King & Partridge

For Respondent
No.2.

: No appearance

JUDGMENT

Challenge in this second appeal is made by the plaintiff against the judgment and decree dated 20.01.2010 made in A.S.No.71 of 1999 on the file of the Additional District and Sessions Judge, Fast Court No.III, Chennai, reversing, the judgment and decree dated 23.12.1998 in O.S.No.13323/1996 on the file of I Assistant City Civil Judge, Chennai.

2. The second appeal has been admitted and the following substantial questions of law are formulated for consideration in this second appeal:-

"(1) Is the first appellate court not wrong in non-suiting the plaintiff on the ground that the Court at Chennai is not having territorial jurisdiction to decide the dispute on hand in the absence of any specific objection by the respondents in their pleading or in the grounds of appeal as mandated under Section 21 of CPC and when no injustice is caused to the respondents?"

2. Whether the First appellate Court is correct in dismissing the appeal by ignoring Ex.A22 decree of injunction restraining the 2nd respondent from enforcing the bank guarantee?

3. The suit has been laid by the plaintiff for permanent injunction.

4. The relief of permanent injunction is sought by the plaintiff restraining the first defendant viz., the Indian Overseas Bank, Esplanade Branch, Rep. by its Chief Manager, Esplanade, Chennai – 600 108 from releasing or paying 8 bank guarantees bearing Nos. 39/95, 46/95, 42/96, 6/96, 14/96, 23/96, 43/96 and 59/96 provided to the second defendant at the instance of the plaintiff before the rights of ownership over the disputed lands are settled by the Court.

5. As regards certain lands located in the State of Karnataka taken by the plaintiff on lease for carrying out quarrying operation from Vijaya Mahantesh Vidya Vardhak Society, it appears that the Deputy Commissioner of Bijapur has passed an order dated 05.08.1995 that the said lands in question are unassessed waste lands, as per the Bombay Personal Inam and Abolition Act, 1952 and

the said lands are deemed to be vested with the Government. The plaintiff and the lessor have challenged the above said order in the High Court of Karnataka by way of two writ petition Nos.32197 and 32198/1995 and it is also found that as per the interim order of the High Court of Karnata passed in the above said writ petitions, the plaintiff has furnished 8 bank guarantees to the tune of Rs.22.50 crores. It is found that the plaintiff has been permitted to carry on the quarrying operations in the above said lands and finally, it is found that the High Court of Karnataka has dismissed the writ petitions laid by the plaintiff directing the plaintiff and the lessor to approach the civil Court for establishing the rights over the lands in question. The SLP preferred by the plaintiff and the lessor also came to be dismissed and consequently, it is found that the suits have been laid by the plaintiff and the lessor as regards the question of title of the lands in question.

6. Meanwhile, on the steps taken by the defendants to invoke the bank guarantees offered by the plaintiff as per the interim order of High Court of Karnataka in the writ petitions above referred to, contending that the defendants are not entitled to invoke the bank guarantees given by the plaintiff till the right of ownership over the disputed lands are settled by the Court, the plaintiff has laid the

present suit.

7. It is found that the bank guarantees had been furnished by the plaintiff only as per the interim order passed by the High Court of Karnataka in writ petition Nos.32197 and 32198/95. It is further seen that the interim order passed by the High Court of Karnataka has become merged with the final order passed in the writ petitions. As adverted to supra, the writ petitions have come to be finally dismissed by the High Court of Karnataka with a direction to the plaintiff and the lessor to approach the civil Court for deciding the question of title as regards the lands in question. It is also found that the SLPs filed by the plaintiff and the lessor were not entertained. Therefore, it could be seen that the plaintiff and the lessor had moved the civil Court at Karnataka, as regards the establishment of their title to the lands in question.

8. When the interim order passed in the writ petitions, under which, the bank guarantees had come to be given by the plaintiff has merged with the final order passed in the writ petitions, it could be seen that as rightly held by the First Appellate Court, the plaintiff cannot restrain the defendants from invoking the bank guarantees issued in their favour. Accordingly, it could be seen that the bank

guarantees had come to be invoked by the defendants. It is not established by the plaintiff that the defendants are prevented by any judicial order from invoking the release of bank guarantees in favour of the second defendant. In such view of the matter, when there is no specific order passed by the High Court of Karnataka in the writ petitions that the bank guarantee cannot be enforced and finally, when it is found that the writ petitions have come to be dismissed, it could be seen that the plaintiff cannot injunct the defendants from invoking the bank guarantees.

9. The contention put forth by the plaintiff that only on production of the order from the High Court, the defendants are entitled to enforce the bank guarantee as such cannot be accepted. If that be so, nothing prevented the plaintiff from moving the High Court of Karnataka as regards the necessary relief in the writ petitions. When it is noted that the writ petitions laid by the plaintiff and the lessor had been ultimately dismissed and no further directions are issued as regards the bank guarantees in question, it could be seen that the defendants are entitled to enforce the bank guarantees. Even in the plaint, it has been admitted that the enforcements of the bank guarantees could be injuncted only on two grounds viz., fraud and

special equity. It is not the case of the plaintiff that the defendants by committing fraud had taken steps to enforce the bank guarantee. Further, it has not been established by the plaintiff that there is any special equity in its favour to injunct the defendants from enforcing the bank guarantees.

10. That apart, as seen from the prayer sought for by the plaintiff, it is found that the plaintiff has sought the relief of permanent injunction restraining the defendants from enforcing the bank guarantees till the rights of ownership over the disputed lands are settled by the Court. However, there is no such condition in the bank guarantees, as such, in question. Therefore, as rightly put forth by the respondents' counsel, it is found that the plaintiff has incorporated new conditions unilaterally as regards the enforcement of the bank guarantees in question. Therefore, the contention that the bank guarantees cannot be enforced by the defendants till the question of title as regards the lands in question are finally decided by the Civil Court as such cannot be accepted.

11. It is contended by the plaintiff's counsel that the defendants by way of the enforcement of the bank guarantees are attempting to

infract the order of injunction granted restraining the second defendant from enforcing the bank guarantees marked as Ex.A22. However, it has not been established that Ex.A22 pertains to the bank guarantees involved in this matter. Therefore, it could be seen that the contention of the plaintiff that the defendants are enforcing the bank guarantees much against the order of injunction of the city civil Court at Karnataka cannot be countenanced. If that be so, nothing prevented the plaintiff from moving the City Civil Court, Karnataka for appropriate reliefs.

12. In such view of the matter, the second substantial question of law formulated in the second appeal is answered against the plaintiff and in favour of the defendants.

13. The First Appellate Court has also rejected the plaintiff's case on the question of lack of territorial jurisdiction and the First Appellate Court has held that city civil Court, Chennai has no jurisdiction to decide the issue involved in this matter, since the lands with reference to which the lease in question is involved lies in the state of Karnataka. However, as rightly put forth by the plaintiff's counsel as regards the place of suing, the defendants have not raised any issue specifically in

the written statement at the first instance or before the settlement of issues as contemplated under Section 21 CPC. That apart, it has not been raised as a ground by the first defendant before the first appellate Court. In such view of the matter, when the territorial jurisdiction has not been raised by the defendants specifically as provided under Section 21 CPC and further, when the defendants have also not established that any injustice has been caused to them by the laying of the suit in the city civil Court, Chennai, it could be seen that the First Appellate Court has erred in holding that the City Civil Court, Chennai has no jurisdiction to entertain the suit laid by the plaintiff. As rightly put forth by the plaintiff's counsel, the decision reported in **AIR 1993 SC 2094 (R.S.D.V.Finance Co.Pvt. Ltd., V.Shree Vallabh Glass Works Ltd.,)** would apply to the present case and in such view of the matter, when none of the conditions envisaged under Section 21 CPC has been complied with, it could be seen that the First Appellate Court has erred in holding that the City Civil Court, Chennai, has no jurisdiction to entertain the suit. In such view of the matter, the first substantial question of law formulated in this second appeal is answered in favour of the plaintiff and against the defendants.

14. In the light of the above discussions, inasmuch as the relief of permanent injunction sought for by the plaintiff as regards the enforcement of the bank guarantees is found to be against of the terms and conditions of the bank guarantees in question and further, when the plaintiff has not placed any material that the defendants are not entitled to enforce the bank guarantees after the dismissal of the writ petitions and SLPs laid by plaintiff and the lessor, it could be seen that the relief of permanent injunction sought for by the plaintiff has been rightly negated by the First Appellate Court on merits. No ground is made out to warrant any interfere with the above findings and conclusions of the First Appellate Court.

15. The counsel for the First respondent has relied upon the following decisions **2006-2-L.W.833 (Harshad Chimanlal Modi V. DLF Universal Ltd., & another), 2013-2-L.W.647 (T.Ekambaram V.Bhavani Sagari), (2007) 8 Supreme Court Cases 110 (Himadri Chemicals Industries Ltd., V. Coal Tar Refining Co.), (2006) 2 Supreme Court Cases 728 (Bses Ltd.(Now Reliance Energy Ltd) V. Fenner India Ltd. and another), and (2008-1-L.W.64) (Mohannakumaran Nair V. Vijayakumaran Nair).** The

principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the present case.

In conclusion, the second appeal fails and the same is dismissed.
No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No
Internet: Yes/No
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16.03.2017

To

1. The Additional District and Sessions Judge,
Fast Court No.3, Chennai.
2. The I Assistant City Civil Court,
Chennai.

T.RAVINDRAN,J.

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Pre-delivery Judgment in
S. A.No.673 of 2011
and
M.P.No.1 of 2011

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