THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No.687 of 2016

JUDGMENT: (Per the Hon'ble Smt. Justice Anis)

This Civil Miscellaneous Appeal is filed under Section 104 read with Order XXXXIII Rule 1 C.P.C. against the order in I.A.No.887 of 2015 in O.S.No.120 of 2015, dated 23.04.2015, passed by the Chief Judge, City Civil Court, Hyderabad.

2. Appellant herein is the petitioner in I.A.No.887 of 2015, whereas the respondents herein are the respondents.

3. The said I.A. was filed by the petitioner under Order XXXIX Rule 1 and 2 read with Section 151 C.P.C. seeking temporary injunction restraining the respondents 1 and 2 from alienating the plots shown in 'A' to 'C' schedule property in Ananda Nilayam Project Phase 1, 2 and 3 situated at Raikal Village, Farooq Nagar Mandal, Mahabubnagar District pending disposal of the suit.

4. For the sake of convenience, the parties are referred to as arrayed in the aforesaid Interlocutory Application.

5. The brief averments made in the affidavit filed in support of the I.A. are as follows:

The petitioner stated that he is one of the Directors of respondent No.1 Company along with respondents 2 to 5.

Respondent No.1 Company was registered under the Companies Act and was conducting the business of real estate in and around Hyderabad and in the then United State of Andhra Pradesh. In the course of business, respondent No.1 Company developed certain real estate projects at Hyderabad, Vijayawada and Visakhapatnam. The said projects were completed and plots were sold to the intending purchasers. Respondent No.1 Company also developed another project by name 'Ananda Nilayam' at Raikal Village, Farooq Nagar Mandal, Mahabubnagar District. In the said project, the petitioner had spent lakhs of rupees and developed the entire project along with other Directors. In the course of business, the petitioner and respondents 2 to 5 entered into an agreement to settle the accounts in respect of the other projects except the Ananda Nilayam project at Raikal Village, Mahabubnagar District, and the same was reduced into writing as an agreement on 16.05.2013 to settle the accounts amicably and accordingly settled the accounts in respect of the projects developed by respondent No.1 Company, except the Ananda Nilayam project. Respondent No.2 kept the original agreement and furnished the Xerox copies to all the Directors including the petitioner. As per the settlement, respondent No.2, representing respondent No.1, agreed to pay an amount of Rs.26,17,975/- by way of cheques to each Director including the petitioner and further agreed to pay an amount of Rs.65,01,956/- to each Director including the petitioner after disposing of the leftover immoveable property standing in the name of respondent No.1. Respondent No.2, representing respondent No.1, has not paid the amount of Rs.26,17,975/-, to be paid by way of cheque, as per the agreement, and on insistent demands, respondent No.2 informed that the said amount was also invested in Ananda Nilayam project at Raikal Village, Mahabubnagar District, and the petitioner can take more profits in the said project. Believing the respondents 1 and 2, the petitioner kept quiet. Respondent No.1 also authorized the petitioner to execute the Sale Deeds. In pursuance of the said authorization, the petitioner executed the Sale Deeds even after the agreement dated 16.05.2013. As per the agreement dated 16.05.2013, the petitioner spent huge amount and developed the entire project, as such he is entitled for 50% share from the receipts over Ananda Nilayam project, Raikal Village, Mahabubnagar District, and the same was accepted by the respondents 2 to 5. The petitioner continued his participation in the business transactions of Ananda Nilayam Phases 1 to 3 and he was also authorized to execute the Sale Deeds in favour of the intending purchasers even after entering into agreement on 16.05.2013 and continued upto April 2014. In the month of May 2014, the petitioner came to know that respondent No.2 is also executing the Sale Deeds on behalf of respondent No.1. When the petitioner questioned the acts of respondent No.2, respondent No.2 was avoiding to give response on one pretext or the other. The petitioner demanded the respondents 1 and 2 to pay the amounts due to him as per the agreement, dated 16.05.2013, and also demanded to furnish the accounts pertaining to the Ananda Nilayam project phases 1 to 3. Respondents 1 and 2 are postponing the same by one pretext or the other and all of a sudden, on 10.02.2015, respondent No.2 got issued a public notice in Eenadu daily newspaper stating that the petitioner has nothing to do with the respondent No.1 Company and cautioning the public not to enter into any sale agreement with the petitioner. The petitioner got issued a reply public notice and also issued a notice to respondents 1 and 2 calling them to pay the amount as per the agreement, dated 16.05.2013, and furnish the accounts in respect of the Ananda Nilayam project. Respondent No.1 received the said notice and gave reply making false allegations by stating that they have already paid the amounts in liquid cash. In fact, the respondents 1 and 2 have not paid any amount to the petitioner, as such they are liable to pay an amount of Rs.91,19,931/-. The petitioner himself purchased the lands on behalf of respondent No.1 Company from the Pattedars at Raikal village and developed the entire projects. Respondent No.1 developed the land admeasuring about 2,67,000 square yards and incurred the total cost, which comes to Rs.2,000/- per square yard, and respondent No.1 sold the plots @ Rs.2,600/- per square yard to the intending purchasers, and hence, he got the profit of Rs.600/- per square yard, and hence, got a total profit of more than Rs.16.00 Crores. The petitioner is entitled to 50% of the profits, which comes to Rs.8.00 Crores. In spite of repeated demands, respondents 1 and 2 avoided to give response to the petitioner. According to the petitioner, even after issuing notice by him, respondent No.2 is trying to alienate the plots in Ananda Nilayam project without settling the accounts and without the consent of petitioner. According to the petitioner, respondents 1 and 2 are trying to dupe the petitioner and avoiding to show the accounts and failed to pay the amounts due to him in various projects. If the injunction is not granted restraining the respondents 1 and 2 from alienating the plots shown in the schedule 'A' to 'C', the petitioner will suffer irreparable loss. Thus, the petitioner established *prima facie* case and the balance of convenience is also in his favour and therefore, prayed the Court below to grant temporary injunction.

6. The brief averments made in the counter affidavit, filed by the respondents 1 and 2, are as follows:

The respondents 1 and 2 admit that the petitioner was the Director of respondent No.1 Company and that the respondent No.1 registered its company under the Companies Act and doing the business activity. The respondents 1 and 2 also admit that respondent No.1 developed certain real estate projects at Hyderabad, Vijayawada and Visakhapatnam and they were already completed. The respondents 1 and 2 further admitted that respondent No.1 also developed another project in the name and style of 'Ananda Nilayam' at Raikal Village, Farooq Nagar Mandal, Mahabubnagar District. The landed property of the said project was purchased by respondent No.1 and all the Directors of the Company and developed the same by spending huge amounts. Originally, the petitioner has entered into an agreement of sale with original Pattedars and thereafter, he nominated respondent No.1 to purchase the property and the said proposal was accepted by respondent No.1. Respondent No.1 by paying the sale consideration obtained the registered Sale Deed in its name. The respondents 1 and 2 also admitted about the agreement, dated 16.05.2013, in respect of the projects, which were already completed, and the said agreement was reduced into writing and accepted by all the parties. Respondent No.2 admits that the original agreement was retained by him and the Xerox copies of the same were given to the petitioner and to the other Directors. As per the terms and conditions of the said agreement, respondent No.2 agreed to pay an amount of Rs.26,17,975/- to all the Directors and the amounts were paid to them and the same was acknowledged by the petitioner and respondents 3 to 5. Respondent No.2 also admitted that he agreed to pay an amount of Rs.65,01,956/- to each Director after disposal of the left over immovable property i.e., Ananda Nilayam project.

Respondent No.1 paid the amounts for the period from 01.01.2013 to 10.05.2013 to the petitioner amounting to Rs.26,20,000/-, which was admitted and acknowledged by the petitioner under payment voucher of respondent No.1 Company. The respondents 1 and 2 denied the allegation that they have not paid the amounts to the petitioner as per the agreement, dated 16.05.2013. The respondents also denied that the petitioner was invested amounts in the Ananda Nilayam project. The petitioner already received the amounts towards his share much prior to entering into agreement, dated 16.05.2013. In view of the same, the petitioner is not entitled to receive any amount from respondent No.1. The respondents 1 and 2 admit the petitioner's contention with regard to the execution of Sale Deeds in favour of the prospective purchasers on behalf of respondent No.1. The petitioner was authorized to execute the Sale Deeds by respondent No.1. Respondent No.1 paid the amounts to the petitioner by way of cash vouchers to the tune of Rs.65,00,000/- commencing from 03.06.2013 to 26.11.2013. The respondents 1 and 2 denied the allegation that the petitioner spent huge amounts, as such he is entitled for 50% share in pursuance of the agreement, dated 16.05.2013. The respondents 1 and 2 also denied the allegation that the petitioner participated in the business transactions of Ananda Nilayam project. Respondent No.2 is the Managing Director of respondent No.1 Company, as such he is having the right to deal with the properties of respondent No.1 and in fact, he alone is entitled to execute the Sale Deed in favour of the prospective purchasers on behalf of respondent No.1 Company. The petitioner is not entitled to question the said activity of respondent No.2. The petitioner received his share of amount under different vouchers from respondent No.1 prior to entering into agreement, dated 16.05.2013. The petitioner and respondents 2 to 5 entered a consent agreement on 26.03.2014 to settle the account. As per the agreement dated 16.05.2013, all the Directors agreed to share an amount of Rs.66,04,436/-. The petitioner also received an amount of Rs.65,00,000/- under different vouchers of respondent No.1 Company. Respondent No.2 was forced to give a public notice informing the general public that the petitioner is not a Director of respondent No.1 Company and hence, the accounts were settled and the petitioner was seized to be a Director of respondent No.1 Company. The petitioner was making false representations before the creditors that he is the Director of respondent No.1 Company. The said activity of petitioner amounts to misleading the general public and tarnishing the image of respondent No.1 Company. The petitioner along with his father obtained loans from Bank of India, Mehidipatnam Branch, for the purpose of running the poultry sheds and failed to pay the loan amount. As such the Bank of India published a public notice, dated 15.09.2014, informing the general public about the property details for obtaining the loan and warned the general public that the properties were mortgaged. The petitioner is in the habit of misleading the general public for obtaining the loan. In pursuance of the agreement dated 16.05.2013, respondent No.1 Company paid an amount of Rs.91,20,000/- to the petitioner. According to the respondents 1 and 2, there was a consent agreement entered into between the parties on 26.03.2014, wherein all the Directors of the Company agreed to settle the accounts and as per the terms and conditions of the said agreement, 10% land were to be left out for the development of projects i.e., Sai Abhaya Township, Bhagyanagar Residency and Bhagyanagar Township; as such the profit was reduced to Rs.66,04,436/- towards each share as against Rs.91,19,931/- in pursuance of the agreement dated 16.05.2013. As per the consent agreement, accounts were settled with regard to the Ananda Nilayam project. It was agreed by all the Directors that 50% share of the profit has to be given to the petitioner and the remaining profit share of 50% to be divided among the Directors of respondent No.1 Company. According to the respondents, the petitioner is entitled for 50% profit share, out of Rs.3.00 Crores, i.e., Rs.1,50,00,000/- and one share in the remaining profits, which was allotted to other Directors and the petitioner i.e., Rs.25,00,000/-, in all a sum of Rs.1,75,00,000/-. Thus, respondent No.1 Company paid a sum of Rs.30,00,000/- on

30.03.2013 through Axis Bank, Rs.1,00,000/- on 05.04.2013 through Bank of India, Rs.10,00,000/- on 25.04.2013 through Bank of India, Rs.38,00,000/- on 02.05.2013 drawn on Axis Bank, Rs.2,50,000/- on 10.05.2013 drawn on Bank of India, Rs.2,50,000/- on 13.06.2013 drawn on Bank of India, Rs.3,00,000/- on 13.07.2013 drawn on Bank of India, Rs.15,00,000/- on 23.07.2013 drawn on Axis Bank and Rs.2,00,000/- on 16.08.2013 drawn on Bank of India, in all a sum of Rs.1,04,00,000/- given to the petitioner and the remaining amount of Rs.71,00,000/- and a sum of Rs.50,00,000/- under different vouchers in the name of respondent No.1 Company, for which the petitioner admitted and acknowledged the receipt of the same. The petitioner also received the balance of Rs.21,00,000/- between 03.06.2013 to 26.11.2013. Thus, the petitioner received the entire profit share of amount in respect of the Ananda Nilayam project and he is not entitled to claim Rs.8.00 Crores as alleged in the plaint. Since all the accounts were settled in respect of the Ananda Nilayam project, much earlier to the claim laid down by the petitioner, the respondents 1 and 2 are not under obligation to render the accounts to the petitioner. Prior to filing of the suit, the petitioner was issued a legal notice, for which the respondents 1 and 2 gave a suitable reply. The petitioner failed to mention about the consent agreement, dated 26.03.2014, and the petitioner failed to establish the suit claim and he is not entitled to claim Rs.8.00 Crores. The petitioner seized to be a Director of respondent No.1 Company. On 10.05.2014, the petitioner addressed a letter to respondent No.1 about his resignation as Director of the Company. Thus, the petitioner failed to establish *prima facie* case and the balance of convenience in his favour and the petitioner is not entitled for ad-interim injunction restraining the respondents 1 and 2 from alienating the properties belonging to Ananda Nilayam project and finally prayed the Court to dismiss the petition with exemplary costs.

7. Before the Court below, on behalf of the petitioner exhibits P1 to P26 were marked and on behalf of the respondents exhibits R1 to R15 were marked. After considering the pleadings and documentary evidence on both sides, the Court below dismissed I.A.No.887 of 2015, filed by the petitioner, as the petitioner has no *prima facie* case and balance of convenience in his favour to seek the relief of injunction restraining the respondents 1 and 2 from alienating the schedule property.

8. Aggrieved by the order passed by the Court below, the petitioner filed the present appeal:

9. Having regard to the submissions made by the learned counsel appearing for both the parties, the point requires for consideration is that whether the appellant is entitled for temporary injunction restraining the respondents 1 and 2

from alienating the plots shown in ‘A’ to ‘C’ schedule property in Ananda Nilayam Project Phase 1, 2 and 3 situated at Raikal Village, Farooq Nagar Mandal, Mahabubnagar District?

10. **POINT**: Learned counsel for the appellant argued that the appellant is one of the Directors of respondent No.1 Company along with others and respondent No.1 Company involved in conducting the real estate business in Hyderabad, Vijayawada and Visakhapatnam and completed the projects and sold the plots to the purchasers and that respondent No.1 Company also developed another project by name ‘Ananda Nilayam’ at Raikal Village, Farooq Nagar Mandal, Mahabubnagar District, and the appellant has invested huge amounts and developed the entire project along with other Directors. Due to the misunderstanding between the Directors and the appellant, the other Directors insisted respondent No.2, who is the Managing Director of respondent No.1 Company, to settle the accounts. On which, an agreement was entered on 16.05.2013, wherein it was agreed by respondent No.1 Company to pay Rs.26,17,975/- to each Director including the appellant and also agreed to pay Rs.65,01,956/- after disposal of the left over immovable property standing in the name of respondent No.1 Company. Learned counsel further argued that in pursuance of the said agreement, no amounts were paid to the appellant and when the appellant insisted for payment, respondent No.2, representing respondent No.1, informed that the said amount

was invested in Ananda Nilayam project and authorized the appellant to execute the Sale Deeds on behalf of respondent No.1 Company. Thereafter, suddenly respondent No.2 issued a public notice in Eenadu daily newspaper stating that the appellant was resigned from the Company and informing the general public that the appellant has nothing to do with respondent No.1 Company and cautioning the public not to enter any sale agreement with the appellant. On which, the appellant also gave a reply public notice and also issued a notice to respondents 1 and 2 calling them to pay the entire amount due to him. Learned counsel further argued that the alleged settlement, dated 26.03.2014, does not contain the signatures of all the Directors. In spite of the appellant investing huge amount, respondent No.2, representing the respondent No.1, failed to pay his due share of 50% in the profits of Ananda Nilayam project, as such the petitioner-appellant filed the suit for recovery of Rs.91,19,931/- and also for rendition of accounts. Learned counsel further argued that if the respondents 1 and 2 are not restraining from alienation, the appellant will suffer irreparable loss and therefore, prayed the Court to grant interim injunction as prayed for and to set aside the order passed by the Court below in I.A.No.887 of 2015, dated 23.04.2015.

11. On the other hand, learned counsel for the respondents 1 and 2 argued that the appellant is one of the Directors of the Company along with respondents 3 to 5 and respondent

No.2 is the Managing Director of respondent No.1 Company, which is doing business in real estate and also admitted that the appellant and respondents entered into an agreement on 16.05.2013 in respect of the projects of respondent No.1 Company, which were already completed, and respondent No.2 being the Managing Director agreed to pay a sum of Rs.26,17,975/- to all the Directors including the appellant and they have paid the amounts as agreed and the same was acknowledged by the appellant and other Directors. Learned counsel further argued that there is no dispute that respondent No.2 agreed to pay a sum of Rs.65,01,956/- to the appellant and other Directors after disposal of the leftover immovable property i.e., Ananda Nilayam project and respondent No.1 Company already paid an amount of Rs.65,00,000/- to the appellant by way of cash voucher for the period from 03.06.2013 to 26.11.2013. Therefore, the appellant is not entitled for 50% share as claimed. Learned counsel further argued that respondent No.1 Company paid about 1,04,00,000/- to the appellant on various dates through various banks and therefore, the appellant intentionally suppressed the agreement, dated 26.03.2014, and filed the false case. Thus, the appellant failed to establish the *prima facie* case and the balance of convenience is also not in favour of the appellant and therefore, prayed the Court to dismiss the appeal by confirming the orders passed in I.A.No.887 of 2015.

12. A perusal of the record shows that the appellant filed a suit for recovery of Rs.91,19,931/- and for rendition of accounts. There is no dispute that the respondent No.1 Company is a registered company and the appellant and respondents 3 to 5 are the Directors and respondent No.2 is the Managing Director of respondent No.1 Company, which is carrying out the real estate business and completed the projects at Hyderabad, Vijayawada and Visakhapatnam. Respondent No.1 Company also developed another project by name 'Ananda Nilayam' at Raikal Village, Mahabubnagar District, and that the appellant entered into an agreement of sale with the original Pattedar for purchase of the property at Raikal Village and thereafter, the appellant nominated respondent No.1 to purchase the property. Accordingly, respondent No.1 Company paid the sale consideration and obtained the registered Sale Deed in its name and carried out the project. It is also not in dispute that on 16.05.2013 there was an agreement entered into between the appellant and respondents 1 to 5 for settlement of accounts. Accordingly, the appellant and respondents 2 to 5 agreed to take Rs.26,17,975/- and also agreed to take Rs.65,01,956/- after selling the property available with respondent No.1. As per the agreement between the parties, since the Ananda Nilayam venture is still in continuation, it was agreed that after six months the accounts have to be settled and profits from the said project have to be shared i.e., 50% has to be paid to the

appellant and remaining 50% has to be shared by the remaining Directors i.e., respondents 2 to 5. The main contention of the respondents 1 and 2 is that the appellant was paid Rs.1,04,00,000/- through Company vouchers and also through bank transactions. Thus, the appellant was totally paid the amount due to him and that the appellant himself addressed a letter stating that he decided to resign from the post as Director and requested to accept his resignation. The contention of appellant that he invested more than 50% in Ananda Nilayam project is also to be gone into the merits of case during the course of trial, since the petitioner-appellant filed the suit for rendition of accounts. Further, whether the petitioner-appellant is entitled for about Rs.91.00 lakhs or Rs.2.00 Crores is also to be decided in the suit, but not at the interlocutory stage. Therefore, the appellant is not entitled to any claim in this case, much less a temporary injunction. The appellant filed the suit claiming Rs.91,19,931/- due and payable by respondent No.1 Company and also for rendition of accounts. If the appellant is disputing the documentary evidence i.e., cash voucher and bank transaction, it has to be gone into the merits of the suit. *Prima facie* it shows that the appellant received substantial amounts through bank transactions and payment vouchers. Further, whether the subsequent agreement dated 26.03.2014, bear the signatures of all the Directors, is also to be considered in the main suit itself and its binding nature.

In view of the documentary evidence produced by the respondents i.e., payment vouchers and bank statement, it shows that the appellant has no *prima facie* case for temporary injunction and the balance of convenience is also not in his favour. Therefore, the Court below, after considering the pleadings and documentary evidence, has rightly observed that the petitioner-appellant failed to establish the *prima facie* case and held that the appellant is not entitled for grant of temporary injunction and dismissed I.A.No.887 of 2015 and the said findings do not warrant any interference. The trial Court is directed to dispose of the suit uninfluenced by any of the observations made in this judgment.

Accordingly, the Civil Miscellaneous Appeal is dismissed. No order as to costs. Pending Miscellaneous Petitions shall also stand dismissed. No order as to costs.

(SANJAY KUMAR, J)

(ANIS, J)

25.01.2017
MVA

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS

C.M.A. No.687 of 2016

(per the Hon'ble Smt. Justice Anis)

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