

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2018

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.No.456 of 2008
and MP.No.1 of 2008

Coimbatore District Consumer Wholesale Stores Ltd.,
Rep by its Special Officer
Chinthamani Buildings
North Coimbatore. Appellant/3rd Defendant

Vs

1. M/s.Tele Deck Electronics Firm
Rep by its Partner V.Abdul Kuthoose
87, Oppanakkara Street
Coimbatore.
2. B.Abdul Kuthoose
Partner
M/s.Tele Deck Electronics Firm
87, Oppanakkara Street
Coimbatore.
3. B.Mohammed Ali
Partner
M/s.Tele Deck Electronics Firm
87, Oppanakkara Street
Coimbatore.
4. M.Mohammed Gouse
Partner
M/s.Tele Deck Electronics Firm
87, Oppanakkara Street
Coimbatore.

..1 to 4 Respondent/Plaintiff

5. A.S.Moosa
6. Sheik Dawood
7. Oriental Bank of Commerce
Oppanakkara Street, Coimbatore.

... 5 to 7 Respondents/1,2 & 4 Defendants

Prayer:

Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, against the judgment and decree dated 21.11.2006 made in A.S.No.5 of 2006 on the file of Principal Sub Court, Coimbatore, reversing the judgment and decree dated 13.10.2005 made in O.S.No.440 of 2003 on the file of I Additional District Munsif, Coimbatore.

For Appellant : Ms.M.Meenatchi
for Mr.P.Anbarasan

For Respondents : Mr.A.Kundavi [R1, R3 & R4]
Mr.Venkatesh Babu [R7]
for R2 & R6 - No appearance

JUDGMENT

1.1 The third defendant in O.S.No.440 of 2003 on the file of I Additional District Munsif, Coimbatore, has come forward with this appeal. The suit is laid by the first plaintiff-firm and his partners, for an injunction that the defendants 1 to 3 shall not interfere or intrude into the business activity of the first plaintiff-firm. Parties would be referred to by their rank before the trial Court.

1.2 According to the plaintiffs, the plaintiff-firm was reconstituted in 1993, of which, the plaintiffs 2 to 4 are its partners, that the first defendant's two daughters and the wife of second defendant had been the partners of the said firm and that they had retired some time in 1992, whereupon the firm was reconstituted, that there was some financial dealings between the defendants 1 and 2 on the one hand and the third defendant on the other hand with regard to which the third defendant had moved the Registrar of Co-operative Society and had the property attached, which was subsequently vacated by this Court in W.P.No.80 of 1991, subject to the first defendant offering some bank guarantee. On these pleadings, the suit is laid for permanent injunction.

2.1 The defendants 1 and 2 have filed their written statement, but chose to remain exparte during trial, whereas the third defendant filed its written statement and contested the suit.

2.2. In essence, the third defendant would plead that the firm incurred liability to the third defendant even prior to the alleged reconstitution of the firm in favour of the plaintiff sometime in 1990, that to realise which it had moved the registrar of Co-operative Society and had obtained an award

passed by him, that even though the High Court had subsequently had passed a conditional order vacating the order of attachment passed by the Registrar of Co-operative Society subject to the defendants 1 and 2 furnishing a bank guarantee which they initially complied with, yet the said defendants failed to renew the same after a while, with the result the liability due to the third defendant remain outstanding. It also disputed the alleged reconstitution of the firm.

3.1 Before the trial Court, the second plaintiff has examined himself as P.W.1 and besides the plaintiffs have also examined two independent witnesses P.W.2 and P.W.3, and for the defendants, the official of the third defendant was examined. Both parties competed to file considerable number of documents to support their rival submissions.

3.2 Appreciating the evidence before it, the trial Court dismissed the suit, whereas the First Appellate Court, which the plaintiff has approached challenging the decree of the trial Court has granted a decree in their favour. Aggrieved by the judgment and decree of the First Appellate Court, the third defendant has now come before this Court.

4. This appeal is not yet admitted. Therefore, the appellant is heard on the substantial questions of law involved in, this Court can take cognizance on the issue to be considered. Since the respondents/plaintiffs are represented by counsel, both sides are heard.

5. The learned counsel for the appellant would submit that the third defendant had obtained an award against the defendants 1 and 2 and that this can be executed against the firm inasmuch as they were the partners originally, more particularly when they incurred liability to the third defendant/appellant. It is also submitted that the fifth respondent died, pending this appeal and hence the appellant has given up its claim as against the fifth respondent and a memo dated 16.07.2018 was filed to that effect.

6. The learned counsel for the respondents 1,3 and 4/plaintiffs would submit that at the end of the day, the Registrar of Co-operative Society had passed only a personal decree against the defendants 1 and 2, and the plaintiff has not been made a party to the arbitral proceedings under the provisions of Co-operative Societies Act.

7. The rival submissions apart, if the prayer sought in this litigation is considered, in substance it is one for bare injunction that the third defendant shall not interfere with the business activities of the firm. If the third defendant/

appellant has any money claim against the present firm, either independently or through its alleged erstwhile partners, the defendants 1 and 2, then that is an issue that falls outside the purview of the litigation even if the third defendant has a cause of action for realising the amount due to it from the plaintiff. The third defendant then has to separately work out his remedy, and it would not give the third defendant any licence to interfere with the business activities of the first plaintiff-firm. Therefore, this Court does not find merit in the appeal, since the rights which the appellant seeks is not related to the cause of action in the present suit and the appellant is free to proceed to realise its money claim in the manner known to law.

8. In the end, the appeal fails and accordingly dismissed. The judgment and decree dated 21.11.2006 made in A.S.No.5 of 2006 on the file of Principal Sub Court, Coimbatore, reversing the judgment and decree dated 13.10.2005 made in O.S.No.440 of 2003 on the file of I Additional District Munsif, Coimbatore, is hereby confirmed.No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

1. The Principal Sub Judge
Coimbatore.
2. The I Additional District Munsif
Coimbatore.

+lcc to Mr.P.Anbarasan, Advocate, S.R.No.76689

+lcc to Mr.C.R.Prasanan, Advocate, S.R.No.76571

S.A.No.456 of 2008

KS(CO)
CS/19/02/2019