

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.04.2018

Pronounced on : 27.06.2018

CORAM

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

C.R.P.(PD)No.971 of 2018
and C.M.P.No.5196 of 2018

OMR Mall Developers (P) Ltd.,
"Citi Tower"5th Floor,
117, Sir Theyagaraya Road,
T.Nagar, Chennai - 600 017

...Petitioner

Versus

1. Ace Hotel Brokers India (P) Ltd.,
Rep by its Chief Executing Officer,
Mr.V.Santhanaraman,
Having Office at #9/5, 3rd Floor,
Balaji Avenue, 1st Street,
T.Nagar, Chennai - 600 017.

2. Capitaland Limited,
Registered office at 168, Robinson Road,
30-01 Capital Towers, Singapore - 068 912.
Corporate Office at
Shop No.21, A-1 Apartment, C.S.Road,
Off M.G. Road, Kandivali (West),
Mumbai - 400 067.

...Respondents

Prayer : Civil Revision Petition filed Under Article 227 of the
Constitution of India to set aside the Fair and Decretal order dated

06.01.2018 in I.A.No.12884 of 2017 in O.S.No.4920 of 2017 passed by the learned VII Assistant Judge, City Civil Court, Chennai and allow the revision petition and also costs of the petition.

For Appellant : Mr.D.Dorairajan
for M/s.Surana and Surana

For Respondents : Mr.Nithyash Nataraj

ORDER

This Civil Revision Petition has been filed against the Order dated 06.01.2018 made in I.A.No.12884 of 2017 in O.S.No.4920 of 2017 by the learned VII Assistant Judge, City Civil Court, Chennai

2. In this case, the first respondent/plaintiff filed a suit against the revision petitioner and second respondent for permanent injunction and restraining the defendants their servants, men, agents, persons or entities or anyone/person claiming right through or under them for entering into any agreement, under standing in any manner whatsoever in violation of the Exclusive Selling Mandate and Commission Agreement dated 29.09.2015 and especially in the absent of the first respondent/plaintiff in O.S.No.4920 of 2017 on the file of the learned VII Assistant City Civil Judge, Chennai and and also filed an

interlocutory application in I.A.No.12884 of 2017 in O.S.No.4920 of 2017 for interim injunction till the disposal of the suit. In which, the revision petitioner has filed a counter and the learned trial Judge after hearing the arguments, even though the trial Court has not inclined to grant interim injunction, however, status-quo was ordered till the disposal of the suit. Felling aggrieved with the order passed by the trial Court Judge, the revision petitioner/first respondent filed this present revision petition.

3. The learned counsel for the petitioner would submit that even the trial Court without marking any documents and without ascertaining the actual factual position, passed the order of status-quo. Therefore, the revision petitioner has invoked this Court to rectify the illegality committed by the Court below.

4. The learned counsel for the first respondent would submit that against the order passed in the application under Order 39 Rule 1 & 2, there is an appeal provision under Order 43 Rule 1(r) of C.P.C. Therefore, without seeking remedy under the appeal provision, the revision petitioner wrongly invoked the Article 227 of C.P.C. The revision

petitioner without exhausting the remedy under the appeal provision, it is not open to the revision petitioner to prefer the present revision petition and hence the present revision petition is not maintainable and therefore liable to be dismissed. In support of his contention the learned counsel for the first respondent has placed reliance on the judgement of this Court reported in **"2009(6) CTC 54 Banu Mithra and another Vs. M.Balu and another"** in paragraph Nos. 32 and 36, which reads as follows :-

"32. Admittedly, the revision petitioners have not resorted to the remedy of filing of an Appeal against the order passed in I.A.No.3805/07 dated 30.09.2008 by the Trial Court. In this connection, this Court points out the decision in Prabhu Narain Khatri and another V. Daulat Ram Varma, AIR 1988 Raj.. 53, it is held that "where an Application is filed under order 39, Rule 2 read with Section 151 of the Civil Procedure Code, mere mention of Section 151 does not change its character or complexion and no Revision lies against an order passed on such an Application and such an order is appealable under the relevant provisions of the Civil Procedure Code.

.....

36. On a careful consideration of respective contentions, this Court is of the considered view that the Civil Revision Petitioners/Defendants cannot invoke the supervisor jurisdiction of this Court under Article 227 of the Constitution of India when they have a remedy of filing an Appeal as per Order 43, Rule 1(r) of the Civil Procedure Code in regard to the order passed in I.A.No.3805/07 in O.S.No.237/07 dated 30.09.2008 by the Trial Court and moreover, the jurisdiction under Article 227 of the Constitution of India has to be sparingly exercised by this Court and in this view of the matter, the Civil Revision Petition is dismissed."

5. Heard the submissions made on either side and perused the records.

6. A perusal of the records would reveal that the first respondent/plaintiff filed a suit against the revision petitioner and the second respondent herein for permanent injunction restraining them from entering into any agreement, under standing in any manner whatsoever in violation of the Exclusive Selling Mandate and

Commission Agreement dated 29.09.2015. In which, the first respondent/plaintiff filed an interlocutory application in I.A.No.12884 of 2017 in O.S.No.4920 of 2017 for ad-interim injunction, till the disposal of the suit. The trial Judge after hearing not inclined to grant ad-interim injunction, however, he passed an order of status-quo. Challenging the said order of status-quo, the revision petitioner/first defendant has filed this revision petition.

7. As contended by the learned counsel for the first respondent/plaintiff, there is an appeal provision under order 43 Rule 1(r) of C.P.C. and instead of invoking the appeal provision, the revision petitioner has approached this Court by way of revision petition. As per the decision of this Court, which is extracted above, since the revision petitioner has got remedy under Order 43 Rule 1(r) of C.P.C., it is not proper on the part of the revision petitioner to approach this Court by invoking Article 227 of the constitution. In the appeal by invoking appellate jurisdiction, the appellate Court can re-appreciate the oral and documentary evidence and pass an order. Whereas Article 227 has to be invoked sparingly but not as a matter of right. Accordingly, this revision

petition is liable to be dismissed. However the revision petitioner is at liberty to invoke the appeal provision under Order 43 Rule 1(r) of C.P.C.

8. With the above observations, the civil revision petition is disposed of. Consequently connected miscellaneous petition is also closed. No costs.

27.06.2018

Index :Yes/No
Internet :Yes/No
Speaking order/Non-speaking order
rts

To

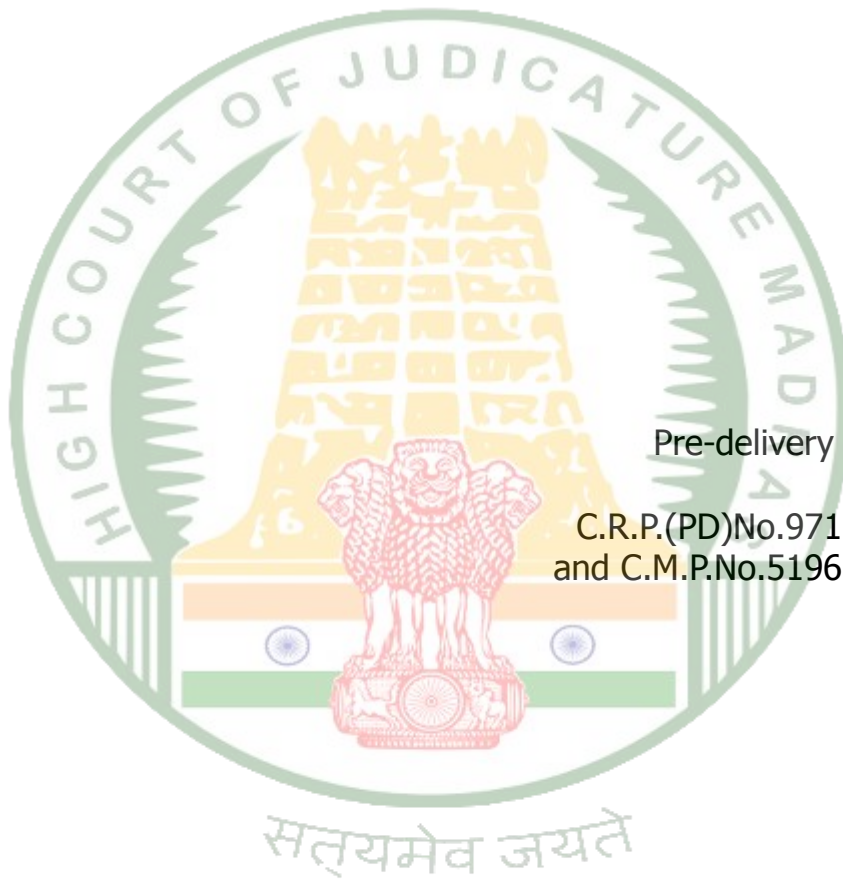
1. The Presiding Officer,
VII Assistant Judge,
City Civil Court, Chennai



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P.VELMURUGAN, J.,

rts



Pre-delivery Order in

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