

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

C.R.P. (PD) Nos. 51 of 2015 and 3924 of 2014andM.P. Nos. 1 of 2015 and 1 of 2014

The General Manager,
Airports Authority of India,
Chennai Airport, Chennai - 600027. ...Petitioner in all CRPs

Vs

K.Murali
General Manager,
P.K.Hospitality Services Pvt. Limited,
Operating Branded Fast Food Court at
New Check-in Area of Kamaraj Domestic Terminal,
Chennai Airport,
Meenambakkam, Chennai - 600027. ...Respondent in CRP (PD) 51/2015

P.K.Hospitality Pvt. Limited,
Garuda House,
142, Upper Govind Nagar,
Malad (E), Mumbai - 97. ...Respondent in CRP (PD) 3924/2014

Prayer in CRP (PD) 51 of 2015: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for records of O.S.No.286 of 2014 on the file of the Sub Court, Tambaram and strike off the plaint.

Prayer in CRP (PD) 3924 of 2014: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the ex-parte ad-interim injunction dated 08.10.2014 passed in I.A.No.760 of 2014 in O.S.No.194 of 2014 on the file

of the Sub Court, Tambaram.

For Petitioner : Mr.P.R.Raman, Senior Counsel
for Mr.A.Umasankar
in all CRPs

For Respondent : Ms.T.Ashwini
for M/s.Nathan & Associates
in all CRPs

COMMON ORDER

The Civil Revision Petition in C.R.P. (PD) No.51 of 2015 has been filed to strike off the plaint in O.S.No.286 of 2014, pending on the file of the Sub Court, Tambaram, on the ground of abuse of process of law.

2. The Civil Revision Petition in C.R.P. (PD) No.3294 of 2014 has been filed to set aside the ex-parte ad-interim injunction dated 08.10.2014, passed in I.A.No.760 of 2014 in O.S.No.194 of 2014 on the file of the Sub Court, Tambaram.

3. According to the learned Senior Counsel appearing for the petitioner, the plaint in the instant suit in O.S.No.286 of 2014, deserves to be struck off, since the respondent herein had earlier filed suits in O.S.Nos.831, 833 and 194 of 2014 for the same cause of action, without detaining liberty for filing of the present suit. It is his further submission that the respondent herein in C.R.P.

(PD) No.51 of 2015 had suppressed the pendency of the earlier suits. He also submitted that since the respondent's license (in C.R.P.(PD) No.51 of 2015) has already been terminated, the injunction granted has also become infructuous.

4. The learned counsel for the respondent, in C.R.P.(PD) No.51 of 2015, on the other hand, submitted that the petitioner herein has no authority to terminate the license agreements dated 23.02.2006 and 23.11.2007. According to the learned counsel, the petitioner ought to have given prior notice of 180 days. She would further submit that the respondent is a lawful license-holder and has invested huge amount for the development of business and as such, the petitioner herein cannot evict them from the suit property without following due process of law. It is also the submission of the learned counsel for the respondent in C.R.P.(PD) No.51 of 2015 that the earlier suits filed before the learned District Munsif, Alandur in O.S.Nos.831 and 833 of 2014, were for a declaration that the termination notice is null and void and that the subsequent suit filed in O.S.No.194 of 2014, was for a different cause of action and as such, it cannot be termed that the respondent had abused the process of law.

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5. I have given careful consideration to the submissions made by the respective counsels.

6. The petitioner and the respondent (in C.R.P.(PD) No.51 of 2015) had entered into license agreements dated 23.02.2006 and 23.11.2007 in connection with two shops in the International Airport and one in the Domestic Airport. Since the control of all the shops was franchised to a third party, it necessitated the petitioner herein to issue notices of termination of the shops, dated 09.04.2010 and 10.04.2010 to the respondent herein. Challenging these notices, the respondent-P.K.Hospitality Pvt. Ltd. had initiated suits in O.S.Nos.831 and 833 of 2014 before the learned District Munsif, Alandur on 29.09.2014 seeking for a relief for declaration that the notices of termination are null and void. In the said suit, though the respondent herein had filed an interim application seeking for injunction, such an interim relief was not granted.

7. While the suits in O.S.Nos.831 and 833 of 2014 were pending, the respondent herein had filed another suit in O.S.No.194 of 2014 on 08.10.2014, before the learned Subordinate Judge, Tambaram, seeking for relief of permanent injunction, in which an order of interim injunction was granted, against which C.R.P.(PD) No.3924 of 2014 is filed. Subsequently on 10.10.2014, the respondent herein in C.R.P.(PD) No.3924 of 2014 had withdrawn the suit itself in O.S.No.194 of 2014. In the meantime, the petitioner herein had filed a Civil Revision Petition before this Court in CRP.No.3924 of 2014, in which an interim order was granted on 17.12.2014, as against the proceedings pending before the learned Subordinate Judge, Tambaram.

8. In this background, the respondent herein-K.Murali in C.R.P.(PD)No.51 of 2015 had filed another suit in O.S.No.286 of 2014 on 22.11.2014, before the learned Subordinate Judge, Tambaram, seeking for relief of permanent injunction once again. It is in this background, the present Civil Revision Petition in C.R.P. (PD) No.51 of 2015 has been filed to strike off the plaint in O.S.No.286 of 2014.

9. As rightly pointed out by the learned Senior Counsel for the petitioner, the respondent herein in C.R.P.(PD) No.51 of 2015 had totally suppressed the earlier suits filed by him before the learned Subordinate Judge, Tambaram, as well as the learned District Munsif, Alandur. When the cause of action and the relief sought for touches upon the same properties and when it is in connection with the termination of the license agreement, in all fairness, the respondent herein in C.R.P.(PD) No.51 of 2015 ought to have disclosed the filing of the earlier suits by him.

10. Insofar as the suit in O.S.No.194 of 2014 is concerned, it is seen that the respondent herein, in C.R.P.(PD) No.3924 of 2014 was unable to obtain interim orders of injunction before the learned Subordinate Judge, Tambaram and he had chosen to file the suit in O.S.No.286 of 2014. Likewise, when the respondent in C.R.P.(PD) No.3924 of 2014 had withdrawn the suit in O.S.No.194

of 2014 and when this Court had also granted an interim order in C.R.P. (PD).No.3924 of 2014, he had chosen to file the suit in O.S.No.286 of 2014, without disclosing the earlier proceedings. All these would only amount to abuse of process of law. The respondent herein in C.R.P.(PD) No.51 of 2015 had not only chosen to suppress the material facts, but also had indulged in "Forum Shopping" by filing suits before the learned District Munsif, Alandur, and subsequently before the learned Subordinate Judge, Tambaram. It can only be stated that the filing of the earlier suits and suppression of the facts in the present suit, has been done with a mala-fide intention. As such, I am of the view that the present pendency of the suit in O.S.No.286 of 2014 would only cause undue agony to the petitioner herein.

11. It would not be out of place to mention here that the petitioner herein had chosen to terminate the license on the ground that the comprehensive control of all the international and domestic shops had been handed over to their franchisee and that it was impediment that all the licenses are to be cancelled and the possession of the shops be handed over to the franchisee. Such a decision seems to have been taken as a policy decision and even on the merits, the respondent herein in C.R.P.(PD) No.51 of 2015 may not have a valid reason to squat in the licensed premises.

12. For all the foregoing reasons, I am of the firm view that the plaint in

O.S.No.286 of 2014 is an abuse of process, which is liable to be struck off and accordingly, the Civil Revision Petition in C.R.P.(PD).No.51 of 2015 stands allowed. Consequently, the plaint in O.S.No.286 of 2014 on the file of the learned Subordinate Judge, Tambaram, is struck off. The petitioner herein is at liberty to break open the licenses premises, which are the subject matter of the suit in O.S.No.286 of 2014 and take possession of the same.

13. Consequently, since the suit in O.S.No.194 of 2014 was withdrawn by the respondent-P.K.Hospitality Ltd., C.R.P.(PD) No.3924 of 2014 is dismissed as having become infructuous.

14. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index:Yes
Speaking Order
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C.R.P. (PD) Nos. 51 of 2015 and 3924 of 2014
and
M.P. Nos. 1 of 2015 and 1 of 2014

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