

In the High Court of Judicature at Madras

Dated : 07.3.2019

Coram :

The Honourable Mr. Justice T.S.SIVAGNANAM

and

The Honourable Mrs. Justice V.BHAVANI SUBBAROYAN

Original Side Appeal No.62 of 2019 & CMP.Nos.5994 & 5996 of 2019

Pueblo Holdings Ltd., a company
incorporated under the appropriate
laws of the Marshall Islands having
its registered office at Trust Company
Complex, Ajeltake Road, Ajeltake Islands,
Majuro MH 96960, Marshall Islands
rep.by its authorized signatoryAppellant

Vs

1. Emirates Trading Agency LLC, a
company incorporated under the
appropriate laws of the United
Arab Emirates having its regd./
business office at ETA Star House,
Salahuddin Road, Deira, Dubai, UAE.

2. Star Health and Allied Insurance
Company Limited, a company
incorporated under the Companies
Act, 1956 having its registered
office at No.1, New Tank Street,
Valluvarkottam High Road,
Nungambakkam, Chennai-34.

3. ESSA Abdulla Ahmed Al Ghurair
a national of the UAE, having his
address at PO Box 128704
Building #3580467 Street 4,
Al Quoz 3, Dubai, UAE.

4. Syed Mohammed Salahuddin, an
individual residing at No.6, Wallace
Garden, 1st Street, Nungambakkam,
Chennai-34 also at Villa 123-494,
29th Street, Al Muteena, Deira,
Dubai, UAE.

5. Hameed Syed Salahuddin, an
individual residing at No.6, Wallace

Garden, 1st Street, Nungambakkam,
Chennai-34 also at Villa 123-494,
29th Street, Al Muteena, Deira,
Dubai, UAE.

6.Ahmed Syed Salahuddin, an
individual residing at No.6, Wallace
Garden, 1st Street, Nungambakkam,
Chennai-34 also at Villa 123-494,
29th Street, Al Muteena, Deira,
Dubai, UAE.

7.Arif Buhary Rahman, an individual
residing at No.8, Subba Rao Avenue,
III Street, Nungambakkam, Chennai-6
also at Villa 123-494, 29th Street,
Al Muteena, Deira, Dubai, UAE.

8.ETA Star Holdings Ltd., a company
incorporated under the appropriate
laws of the UAE having its regd./
business office at Ascon House,
5th Floor, Salahuddin Road, Deira,
Dubai, UAE.

9.ETA Star Holdings LLC, a company
incorporated under the appropriate
laws of the UAE having its regd./
business office at Ascon House,
5th Floor, Salahuddin Road, Deira,
Dubai, UAE.

...Respondents

APPEAL under Order XXXVI Rule 1 of the Original Side Rules
read with Clause 15 of the Letters Patent against the judgment
and decree dated 06.12.2018 made in O.A.No.772 of 2018.

For Appellant : Mr.Ratnanko Banerji, SC &
Mr.Amitava Majumdar for
Mr.K.Mukund Rao

For Respondent-3 : Mr.J.Sivanandaraj for
Mr.Roshan Balasubramanian

For Respondents 4 & 5: Mr.A.L.Somayaji, SC for
Mr.P.Giridharan & Mr.S.Santhosh

For Respondent-7 : Mr.Gowtham Kumar

Judgment was delivered by T.S.SIVAGNANAM, J

This appeal is filed by the applicant in O.A.No.772 of 2018
challenging the order dated 06.12.2018 passed by the learned
Single Judge, in and by which, the said application was
dismissed.

2. The said original application was filed by the appellant praying for an order of ad-interim injunction restraining the respondents, its men, servants, agents, employees or officers whomsoever authorized collectively or severally from selling, alienating, transferring, encumbering or otherwise creating third party interest in relation to schedule mentioned properties, which are as follows :

Sl. No.	Name of the company	Number of equity shares
1	Respondent No.2/Star Health and Allied Insurance Company Limited	2,72,28,748
2	Respondent No.3/Mr.Essa Abdulla Ahmed Al Ghurair evidenced by share certificate Nos.00009, 29 and 45;	1,36,23,624
3	Respondent No.4/Mr.Syed Mohamed Salahuddin evidenced by share certificate Nos.00001, 000008, 27 and 44;	1,35,71,924
4	Respondent No.5/Mr.Hameed Syed Salahuddin evidenced by share certificate No.00005	8,300
5	Respondent No.6/Mr.Ahmed Syed Salahuddin evidenced by share certificate No.00006	8,300
6	Respondent No.7/Mr.Arif Buhary Rahman evidenced by share certificate No.00002 Trading Agency, LLC	8,300

3. The said original application was heard by the learned Single Judge at the first instance on 23.8.2018 and the learned Single Judge took note of the submissions of the appellant and granted an order of interim injunction as prayed for, restraining respondents 3 to 7 or any of their nominees from transferring or alienating the shares held in the second respondent company for a period of four weeks. Upon complying with the requirements of Order XXXIX Rule 3 of the Civil Procedure Code (CPC), the respondents entered appearance, the pleadings were complete and the learned Single Judge considered the said original application on merits.

4. Along with the said original application, Application Nos.7041, 7043 and 7045 seeking to vacate the said interim order dated 23.8.2018 as well as Application Nos.7042, 7044 and 7046 of 2018 seeking to suspend the said ex parte order dated

23.8.2018, which were filed respectively by respondents 4, 5 and 7, were heard together.

5. After elaborately hearing the learned counsel on either side, the learned Single Judge held that in the ETA group, under which, the first respondent was organized, 52% of the shares were held by the plaintiffs in C.S.No.33 of 2018 namely (i) Ahmed Abdulla Ahmed Al Ghurair and (ii) Ibrahim Abdulla Ahmed Al Ghurair (the brothers of the third respondent herein - Mr.Essa Abdulla Ahmed Al Ghurair) along with the third respondent herein and that the balance 48% of the shares were held by respondents 4 to 7. The learned Single Judge pointed out that it was the ninth respondent namely M/s.ETA Star Holdings LLC, which had stated that the shares belonged to the eighth respondent namely M/s.ETA Star Holdings Limited where respondents 4 to 7 held 66% of shares.

6. The learned Single Judge observed that it was, thus, apparent that the corporate litigation had been used as a tool to mystify the ownership and that the alleged de-consolidation of the ETA group had been used as a tool to legitimate the ownership. The learned Single Judge proceeded to hold that though there were overwhelming indications that the ninth respondent was the umbrella company of the ETA group, at whose behest, the first respondent paid money to the eighth respondent for the purchase of shares in the second respondent company in the names of respondents 3 to 7, an apparent dispute had been projected between the shareholders of the ninth respondent i.e plaintiffs in CS.No.33 of 2018 and the defendants therein/ respondents 3 to 7 and that it had been agreed in the draft accounts of the ninth respondent for de-consolidation of the shares to transform the registered ownership with that of the real ownership.

7. The learned Single Judge further pointed out that the first respondent had not claimed any ownership over the shares in the collateral proceedings and remained absent and that the second respondent, which was also a part of the ETA group, remained absent. Therefore, the learned Single Judge concluded that there were merits in the arguments advanced by the learned Senior Counsel for the appellant that the corporate facade and battle had been used to mystify the nature of real ownership of the shares and that the Court was unable to accept the arguments of the respondents that the applicant was colluding with the plaintiffs in C.S.No.33 of 2018.

8. The learned Single Judge also pointed out that though there were overwhelming materials to probe and pierce the corporate veil of the first respondent to infer that it was the plaintiffs in CS.No.33 of 2018 along with respondents 3 to 7, who were in control of respondents 1, 8 and 9, that corporate

facade had been used and that the failure to comply with the mandatory requirements of the Companies Act, 1956 had been used to their advantage. It was further pointed out by the learned Single Judge that he was unable to continue the interim order any longer in view of the subsequent development in the light of the decision of the Hon'ble Supreme Court in Civil Appeal Nos.9786 to 9799 of 2018 dated 26.11.2018 [Ahmed Abdulla Ahmed Al Ghurair through their power of attorney holder & another Vs. Star Health and Allied Insurance Company Limited].

9. This decision arose out of an application in A.No.292 of 2018 filed by the plaintiffs in C.S.No.33 of 2018 seeking leave to sue the defendants in the suit and leave was granted on 12.1.2018. Aggrieved by that, respondents 2, 4 and 8 herein namely defendants 1 to 3 in the said suit filed applications in A.Nos.1387, 1389 and 1391 of 2018 seeking to revoke the leave granted and A.Nos.1388, 1390 and 1392 of 2018 seeking to reject the plaint. However, by a common order dated 06.6.2018, the said applications filed by defendants 1 to 3 in the said suit were dismissed. As against dismissal of the said applications filed for revoking the leave granted as well as to reject the plaint, defendants 1 to 10 in the said suit filed OSA.Nos.220 to 223, 227, 228, 230 to 237 of 2018 of 2018 before a Division Bench of this Court. Ultimately, the Division Bench, by a common judgment dated 03.8.2018 in the case of Syed Mohamed Salahuddin & Others Vs. Ahmed Abdulla Ahmed Al Ghurair Villa-A-Chiller [reported in 2018 (4) LW 259], allowed the said original side appeals by allowing A.Nos.1387 to 1392 of 2018 filed by defendants 1 to 3 in the said suit and dismissing A.No.292 of 2018 filed by the plaintiffs in the said suit.

10. As against the said common judgment dated 03.8.2018, the plaintiffs in the said suit preferred appeals before the Hon'ble Supreme Court by filing Civil Appeal Nos.9786 to 9799 of 2018. However, the Hon'ble Supreme Court, by a common judgment dated 26.11.2018, dismissed the appeals by confirming the common judgment dated 03.8.2018 rendered by the Division Bench of this Court.

11. Reverting back to the findings rendered by the learned Single Judge in the impugned order, as pointed out earlier, the learned Single Judge observed that he was unable to continue the interim order in view of the subsequent development i.e. rendering of judgments both by the Division Bench of this Court as well as the Hon'ble Supreme Court. In paragraph 173 of the impugned order, the learned Single Judge pointed out that both the Division Bench and the Hon'ble Supreme Court had recognized that the eight respondent/second defendant was the real owner of the share and that it was only based on the financial statement in the ninth respondent/eleventh defendant, there was de-consolidation of shares.

12. Thus, the learned Single Judge concluded that the issue as to whether the shares were actually purchased for the benefit of the first respondent as per the applicant or for the benefit of the eighth respondent in the second respondent company in the names of respondents 3 to 7 as stated by the ninth respondent could not be decided by way of roving enquiry in a proceeding under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, the AC Act). It was further pointed out that the Hon'ble Supreme Court upheld the order of the Division Bench that the issue could not be agitated here in India.

13. After referring to paragraph 6 of the judgment of the Division Bench, the learned Single Judge pointed out that the order of interim injunction granted on 23.8.2018 and extended to the appellant could not be continued any longer even though the facts indicated that C.S.No.33 of 2018 appeared to have been orchestrated with a view to raise a shadow of doubt over the ownership of the shares for collateral purpose. The learned Single Judge also pointed out that as severe disputed questions of fact were involved and in view of the said decision of the Hon'ble Supreme Court upholding the decision of the Division Bench of this Court, the interim order of injunction passed on 23.8.2018 and extended subsequently had to be vacated. The correctness of this order is being tested before us.

14. We have heard Mr.Ratnanko Banerji, learned Senior Counsel and Mr.Amitava Majumdar for Mr.K.Mukund Rao, learned counsel on record for the appellant, Mr.J.Sivanandaraj, learned counsel appearing on behalf of Mr.Roshan Balasubramanian, learned counsel for the third respondent, Mr.A.L.Somayaji, learned Senior Counsel appearing on behalf of Mr.P. Giridharan and Mr.S.Santhosh, learned counsel for respondents 4 and 5 and Mr.K.Gowtham Kumar, learned counsel appearing for the seventh respondent.

15. Before we proceed to consider the correctness of the impugned order, it would be first necessary to consider as to whether the exercise requires to be done in this appeal. We have to see the reasons or pleadings, based on which, the appellant approached the learned Single Judge by filing an application under Section 9 of the AC Act.

16. The appellant, being armed with two foreign awards respectively dated 09.4.2017 and 06.8.2017 passed against the first respondent, filed a petition namely O.P.No.416 of 2018 to enforce the award before the Court and simultaneously filed an application under Section 9 of the AC Act namely O.A.No.772 of 2018 to restrain respondents 3 to 7 from selling, alienating, transferring, encumbering or otherwise creating third party interest in relation to the properties more fully mentioned in

the schedule referred to above.

17. The case of the appellant is that the purchase of those shares in the second respondent company was funded by the first respondent - award debtor and routed through respondents 7 and 8 and that since the shares were held for and on behalf of the first respondent, respondents 3 to 7 should be restrained from selling or alienating the shares. In other words, it was stated that the shares were the real assets of the first respondent - award debtor. It was further stated that the appellant filed collateral proceedings before this Court in O.P.No.416 of 2018 for enforcing the award under Sections 44 and 47 to 49 of the AC Act against the first respondent - the award debtor and to secure the interest of the appellant, an order be passed restraining respondents 3 to 7 from alienating the shares.

18. Thus, the original application filed under Section 9 of the AC Act was predicated with the submission that the shares held in the second respondent company by respondents 3 to 7 were for and on behalf of the first respondent and that therefore, the appellant was well within their rights to seek for an order of interim injunction restraining them from selling, alienating, transferring, encumbering or creating a third party interest.

19. Respondents 3 to 9 resisted the said original application firstly by raising a preliminary objection with regard to the territorial jurisdiction. It was contended that the application was not bona fide. There was also an allegation that the appellant was colluding with the third respondent. The sheet anchor of the contesting respondents before the learned Single Judge was the decision in the applications filed in C.S.No.33 of 2018 and heavy reliance was placed on the findings rendered by the Division Bench of this Court in the decision in the case of Syed Mohamed Salahuddin.

20. Several decisions were cited at the bar to substantiate their respective stands. The appellant argued that this Court had jurisdiction to entertain the application because for enforcement of the award, the situs is the assets to be attached, that this Court, within whose territorial jurisdiction, those assets are situated, is entitled to entertain an application under Section 9 of the AC Act and that therefore, the appellant was justified in moving this Court for protection under Section 9 of the AC Act. The contentions raised by the parties in C.S.No.33 of 2018 were referred to and it was submitted on behalf of the contesting respondents that the transaction was without bona fide. There was also an allegation against the appellant that the appellant was colluding with the third respondent.

21. After elaborately referring to the arguments on either side, the learned Single Judge, though made certain observations, which may appear to enure in favour of the appellant as referred to above, ultimately held that the order of interim injunction already granted could not be continued any further in the light of the decision of the Division Bench of this Court as confirmed by the Hon'ble Supreme Court.

22. After elaborately hearing the learned counsel for the parties, the undisputed fact, which emerges, is that the appellant sought adequate protection of their rights to enforce the award and at the time when the award is being enforced, it should not become a paper award. The petition in O.P.No.416 of 2018 filed by the appellant to make the award an enforceable decree stood allowed by order dated 02.11.2018. It is stated that the said order dated 02.11.2018 had become final. Thus, the award passed by the learned Arbitrator has matured into a decree. Undoubtedly, the appellant has got powers to execute the decree in a manner known to law.

23. The learned Senior Counsel appearing on behalf of the appellant does not dispute this legal position and while agreeing that it is well open to the appellant to execute the award, he submits that the reason, for which, the appellant moved this Court for relief under Section 9 of the AC Act, is to protect their interest in realizing the fruits of the award.

24. In our considered view, the foreign award having matured into a decree, the rightful action that has to be taken by the appellant is to seek for execution of the award. In the execution proceedings, it will be well open to the appellant to seek for any incidental or ancillary or interim relief as the CPC may provide for.

25. In fact, the learned Senior Counsel for the appellant does not dispute this legal position nor can the learned Senior Counsel and the learned counsel for the contesting respondents do so.

26. The apprehension expressed by the learned Senior Counsel for the appellant is that since certain observations were made in the impugned order and more particularly, with reference to the said suit in C.S.No.33 of 2018, the judgments rendered by the Division Bench as well as the Hon'ble Supreme Court in the case arising in the said suit are likely to be against the appellant in the event of they approaching for appropriate interim or other reliefs before the Executing Court.

27. Equally, the learned Senior Counsel appearing for respondents 4 and 5 has also expressed his apprehension that if it is left open to the appellant to approach the Executing Court

and raise all the contentions, whatever observations made by the learned Single Judge with regard to the nature of share transactions need to be eschewed, so that the Executing Court or any other Court will not be prejudiced by the findings.

28. In our considered view, the apprehension or thought process expressed by the learned counsel on either side merits consideration. The application under Section 9 of the AC Act was moved when the petition to enforce the award was pending before this Court and an ex parte interim order was granted in O.A.No.772 of 2018 by the learned Single Judge on 23.8.2018. It is only on 02.11.2018, O.P.No.416 of 2018 was allowed and the foreign award became an enforceable decree by this Court in terms of Chapter I, Part II of the AC Act. Having obtained such a relief and the foreign award having become a decree, it is just and proper for the appellant to execute the decree in a manner known to law and while doing so, it will be well open to the appellant to raise all the contentions as they propose to seek adequate interim relief in the execution proceedings as well.

29. In such circumstances, the findings rendered by the learned Single Judge in the order dated 06.12.2018 in O.A.No.772 of 2018, which is impugned before us, should not operate as a bar for the appellant to canvass all contentions before the Executing Court. Equally so, any observations, which touch upon the merits of de-consolidation arrangement or such other observations made by the learned Single Judge, some of which, we pointed out above, should not, in any way, impinge upon the rights of the respondents to set up their defence. We are inclined to give liberty to both the parties to advance all their contentions on merits and in accordance with law before the Executing Court and any observations or findings or opinion rendered in the impugned order would not, in any manner, prejudice the rights of the parties.

30. We make this observation for one more reason. The appellant before us was not a party to C.S.No.33 of 2018. In the application filed under Section 9 of the AC Act, from paragraph 20 onwards, the averments were devoted to M/s.Star Heal Insurance Lawsuit. In paragraph 24, the appellant commented upon 'de-consolidation' and had gone to the extent of saying that it was fraudulent. Thus, it is all the more necessary that the findings rendered in the impugned order should be vacated.

31. The contesting respondents, on the other hand, contended in the counter filed to the application filed under Section 9 of the AC Act that the foreign award proceedings itself is collusive, that the application filed under Section 9 of the AC Act is also equally collusive and that the appellant had not placed all the documents before the learned Single Judge, who

heard the application under Section 9 of the AC Act.

32. The learned Senior Counsel appearing on behalf of the appellant has referred to Section 60 of the CPC and submits that the appellant is well within their jurisdiction to invoke Section 60 of the CPC to seek for attachment of the assets and to restrain respondents 3 to 7 from alienating the same.

33. Thus, there are allegations and the counter allegations with regard to conduct of the parties, the manner, in which, the transaction took place and such other matters. Therefore, we are of the considered view that the findings rendered by the learned Single Judge in the impugned order touching upon both the contentions advanced by the appellant as well as those advanced by the respondents have to be vacated. If this is done, it will put the clock back and it will be well open to the parties to contest the matter on merits before the Executing Court as and when the appellant moves for executing the decree. Liberty has to be given to both the sides to agitate the issues for one more reason that the respondents were not parties to the foreign award or for that matter in O.P.No.416 of 2018.

34. It is pointed out by the learned Senior Counsel appearing on behalf of respondents 4 and 5 that though initially the appellant impleaded two private parties in O.P.No.416 of 2018, they were subsequently given up by a memo dated 02.11.2018.

35. However, we do not wish to express anything on the merits. It is a decision taken by the appellant to delete those two parties and it is well open to both the parties to raise all their defenses before the Executing Court.

36. Thus, while confirming the impugned order of the learned Single Judge in not extending the interim order and vacating the order of interim injunction, we dispose of this appeal by vacating the findings rendered by the learned Single Judge against both the appellant as well as the respondents and leave it open to the appellant to move the Executing Court for necessary relief. In such an event, it is well open to the respondents to raise all defenses available to them on facts and in law. No costs. Consequently, the connected CMPs are closed.

-s/d-

Assistant Registrar(CS-IV)

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Sub-Assistant Registrar

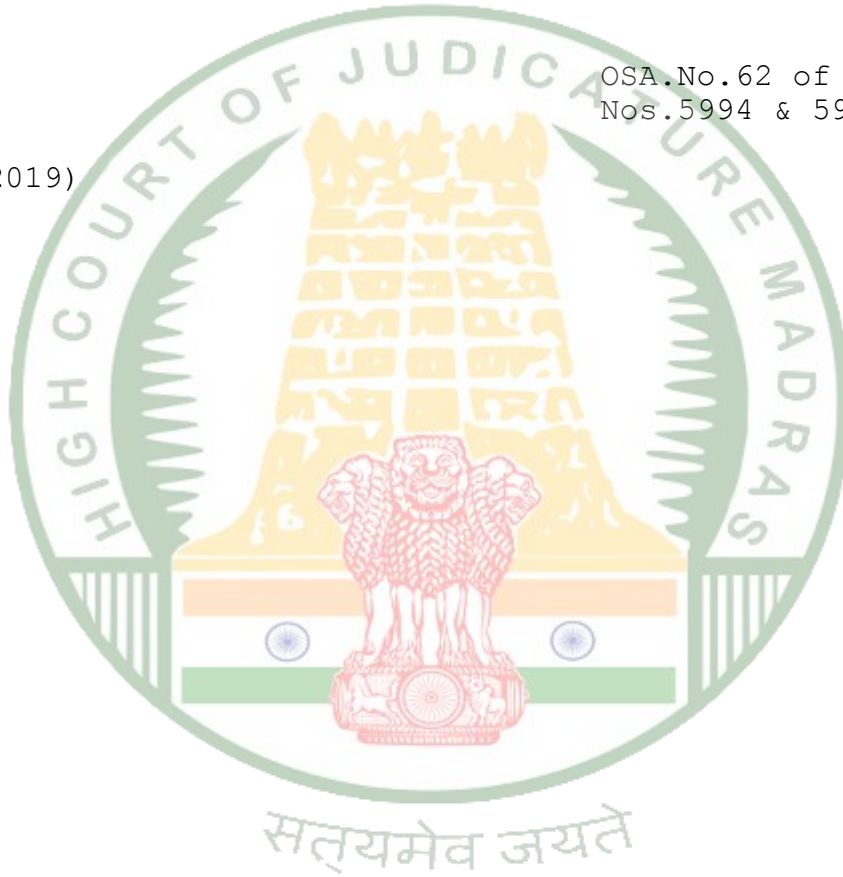
To

The Sub Assistant Registrar, Original Side,
High Court, Madras.

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