

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.2018 OF 2019

AND

C.M.P.NO.7188 OF 2019

B.Mohammed Kasim ... Appellant / 1st Respondent

Vs.

1. M/s.Arun Rajammal Charitable Trust,
Rep. by its President Mr.V.Shanmugapandi,
S/o.Velusamy, Arun Raj Building,
No.93-98, D.B.Road,
R.S.Puram, Coimbatore-641002. ...1st Respondent / Petitioner
2. M/s.MILOU Rep. by its Manager Mr.Sarath,
Doing business at No.93/1, 93/3 (No.95),
Ground Floor and First Floor, D.B.Road,
Coimbatore - 641002. ...2nd Respondent / 2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 of C.P.C. praying to set aside the fair and decretal orders dated 09.11.2018 in I.A.No.308 of 2017 in A.S.No.44 of 2017 on the file of V Additional District Judge's Court, Coimbatore.

For Petitioner : Mr.C.P.Prasanan

For Respondent : Mr.P.Saravana Sowmiyan

J U D G M E N T

This appeal is filed by the appellant seeking to set aside the fair and decretal orders dated 09.11.2018 in I.A.No.308 of 2017 in A.S.No.44 of 2017 on the file of V Additional District Judge's Court, Coimbatore.

2. First respondent filed a suit against the appellant seeking delivery of possession and also for arrears of rent in O.S.No.844 of 2010. The suit was decreed and delivery of possession was ordered, against which the appellant preferred an appeal in A.S.No.44 of 2017 before V Additional District Judge's Court, Coimbatore and the same is pending.

3. During the pendency of the appeal, the respondent filed a petition for injunction in I.A.No.308 of 2017 restraining the appellant / tenant from in any manner subletting the suit property to any third party or to convert his business of sale of toys and gifts under the name and style "TIP TOP or TIP TOP TREASURE" pending disposal of the appeal.

4. It is relevant to note that pending suit similar applications were filed and interim injunction was granted. The same was vacated by the Court in a Civil Revision Petition in C.R.P.(P.D.) No. 3806 to 3808 of 2008, by order dated 23.01.2009, this Court had dealt with the very same lease agreement and found that the respondent / land lord cannot restrain the appellant / tenant from carrying on the business. It was specifically found that the lease is for commercial purposes to carry on any trade which is not prohibited by law and it does not restrict any specific business and therefore, vacated the injunction. Further, an undertaking was given by the appellant / tenant that he has no intention to Sub lease the rental premises and hence status quo order was granted.

5. The contention of the appellant is that once again the very same party has approached the lower Appellate Court for the very same relief and the lower Appellate Court without considering the order passed in this Court in the Civil Revision Petition mechanically granted interim injunction. Aggrieved over the same, the appellant preferred the present civil miscellaneous appeal.

6. From a perusal of the materials, it is clearly seen that there exists lease a ageement between the appellant and one Arunachalam. The status of the first respondent as landlord is disputed. According to the appellant, he was a tenant under a different person. However, there is no default or arrears of rents in respect of the rental premises. Thirdly, the appellant is not sub letting the premises to second respondent. According to him, the second respondent is the Franchisor and he is a franchisee under him. He is selling the products of the second respondent and he has not sub-let the premises.

7. The lower appellate Court though considered the factual circumstances of the order passed by this Court in C.R.P.No.3806 to 3808 /2008, has mechanically passed the order restraining the appellant from sub-letting the suit property to any third party. This Court in the above Civil Revision Petition has already found that there is no justification in granting the reliefs. The relevant paragraphs are extracted hereunder:

"12. The learned counsel for the revision petitioner would appropriately and appositely invite

the attention of this Court that in the lease deed, there is no reference to the name of the business and also nature of the business and in such a case, it is not open for the plaintiff to pray for restraining the defendant from conducting business other than the business under the name of style "TIP TOP" or "TIP TOP TREASURE". As such, the lower Court was not justified in blindly issuing an injunction order in the way that it granted in I.A.No.2058 of 2008.

13. In I.A.No.2059 of 2005, the plaintiff prayed for the following relief:

"To restrain the respondent, his men, agents, staffs, his family members from any manner altering the physical features of the suit property, by means of temporary injunction till the disposal of this suit and by means of ad-interim injunction for the same purpose till the disposal of this petition."

14. The learned counsel for the revision petitioner / defendant would correctly argue that the lower Court was not justified in simply giving a blanket injunction. A perusal of the terms and conditions extracted supra would unambiguously evince that the defendant is entitled to make temporary partition inside the premises and in such a case, the plaintiff cannot try to restrain the tenant from effecting such temporary partition within the four corners of the terms and conditions contemplated in the lease deeds referred to supra.

15. In I.A.No.5060 of 2005 the petitioner / plaintiff prayed for the following reliefs:

" To restrain the respondent, his men, agents, staffs, his family members from any manner sub-letting the suit property to any third parties including his family members by means of Temporary injunction till the disposal of this suit and by means of Ad-interim injunction for the same purpose till the disposal of this petition"

The Court also granted injunction by way of restraining the defendant, from sub letting. The learned counsel for the revision petitioner / defendant would submit that in view of the supine and categorical submission made in the counter filed before the lower Court, it was not justified in issuing such an injunction order and the defendant is having no intention to sub lease."

8. In the considered opinion of this Court that there cannot be any restriction contrary to the contract. Further, the appellant has prima facie shown that he is running the business

by getting materials from second respondent who is a franchisor of a brand which the appellant is marketing and that does not mean subletting has taken place.

9. In these circumstances, the interim order dated 09.11.2019 in I.A.No.308 of 2017 stands vacated. Considering the long pendency of the litigation, the lower appellate Court is given a direction to dispose of the appeal itself within a period of three months from the date of receipt of a copy of this order.

10. With the above directions, the civil miscellaneous appeal is allowed. No Costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-
Deputy Registrar (CJ Conf.,)

//True Copy//

Sub Assistant Registrar

bkn

To

- 1) The V Additional District Judge,
Coimbatore.
- 2) The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.C.R.Prasanan, Advocate, S.R.No.28256

+1 cc to Mr.P.Saravana Sowmiyan, Advocate, S.R.No.25443

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AND
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RV(CO)
SSM(19/06/2019)

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