O.A.Nos.862 of 2018, O.A.No.136 of 2019
A.No.7040 of 2018
in
C.S.o.641 of 2018

Krishnan Ramasamy, J.,

The plaintiff, viz., M/s. Stephen Constructions, in the above Civil Suit, is the applicant herein and the present three Applications are filed by the applicant for the relief as mentioned below:-

i) O.A.No.862 of 2018 is filed to grant an order of interim injunction, restraining the respondent, including the respondent's Partners from operating the Bank Accounts.

ii) A.No.7040 of 2018 is filed to direct the respondent to disclose both the list of movable and immovable assets of the respondent/defendant.

iii) O.A.No136 of 2019, is filed for an order of interim injunction, restraining the respondent/defendant from selling the schedule mentioned unsold blocks of Ekambara (Block No.6) and Margosa (Block No.9) to any third party until the disposal of the main suit.

2. Mr. Nithyaesh Natraj, the learned counsel appearing for the applicant submitted that the present Suit has been filed for recovery of money of a sum of Rs.4,81,37,669/-. The applicant/plaintiff is a Civil Contractor, who worked at the Ekambara and Margosa sites of the defendant as per the two work orders, dated 06.02.2017 and 15.02.2017, for Block Nos.6 and 9 respectively. Payments have been made to the plaintiff till the date of filing of the suit from the bank accounts maintained, as stated in O.A.Nos.862 of 2018, which are two joint accounts held by the defendant and the Home Buyers Association. As and when work is completed, monies would be deposited by the Home Buyers Association and the same would be released to the plaintiff. In these circumstances, the applicant was unceremoniously removed from the project vide e-mail dated 31.07.2018, without any prior notice. Therefore, according to the plaintiff, termination of the contract is prima facie illegal.

2.1 It is the further contention of the learned counsel that the claim of the applicant/plaintiff is a *bona fide* claim, as it is claim against the defendant for the work done by them for construction performed at the sites of the respondent, viz., at the Ekambara and Margosa sites. Further, they have performed the work, for which, they raised invoice for a sum of Rs.4,81,37,669/-**.** All the bills raised by the applicant have been certified and approved for payment by one Mr.Rangarajan, appointed by the respondent to supervise the applicant and approve the bills, provided the bills are in terms of the work order. Further, on 02.03.2018, the applicant had issued a communication to the respondent, dated 02.03.2018, stating that the cost for all the materials are increased at recent times, especially, as that of the sand, which has been increased to more than 100% due to Government Regulations and non-availability of materials, and hence, requested for an increase in cost of Rs.70 per CFT. The request of the applicant was considered by the respondent, and on 05.03.2018, the cost of sand was increased to 60 per CFT by the respondent itself. Similarly, the additional work was also performed by the applicant, which was approved by the respondent on 23.05.2017 and 18.05.2017. Therefore, the applicant submitted that the applicant has performed the work to the best of their ability. Every bill has been certified and the respondent has also made TDS payment with regard to the same.

2.2 The learned counsel further submitted that, in these circumstances, the applicant was shocked to receive e-mail communications from the respondent, wherein, respondent directed the applicant to stop the project work immediately. Further, he submitted that in the said e-mail, M/s.Pioneer Homes were also marked, and the applicant was directed to contact the president of the respondent, and one Mr.Muruganandam, DGM of the M/s. Pioneer Homes. The applicant submitted that the said M/s.Pioneer Homes is a rival contractor, and it was clear that the intention of the respondent was to stop the services of the applicant, and thereafter, award the contract for the balance works to be performed by the said M/s. Pioneer Homes. This action of the respondent is illegal and no notice was issued to the applicant for termination of contract. Further, the learned counsel submitted that, if this e-mail is to be construed as termination of contract, then, it can only be taken that the same has been done on a premature basis, without following the basic principle of natural justice and is in violation of law.

2.3 The learned counsel further contended that the respondent can never deny the liabilities due to the applicant for the simple reason that on the Bills submitted by the applicant, the respondent has claimed Input Tax Credit for the same. The approval, admission and confirmation of the RA Bills on the part of the respondent would bind them, insofar as the claim against the respondent is concerned.

2.4 The learned counsel further contended that the respondent has not filed annual return for the year 2013 onwards. In the annual return report upto 31.03.2013, it is stated that the Net Loss for the year ending 31.03.2013 is Rs.1,28,13,035/- and the total tangible assets shown was worth Rs.69,20,844 as on 31.03.2013. Therefore, the applicant contended that the respondent represented by its Directors have set up this Company only as a front to defraud creditors and statutory obligation has been fulfilled by the respondent Company.

2.5 Further, the learned counsel contended that the respondent has opened an escrow account along with the purchasers of the Apartment Complex, bearing Account No.08140200000772 with Bank of Baroda-15, Narayani Building, Sringeri Mutt Road, Chennai – 600028. The account is known as Sabari Realtors Pvt. Ltd., Margosa Account for Block No.9, Margosa. Similarly, the respondent/defendant is maintaining an account bearing No.08140200000765, with the same Bank of Baroda, situated at R.K.Nagar, Chennai – 600 028, known as Sabari Realtords Pvt. Ltd. The account for Block No.6 is known as Sabari Realtors Pvt. Ltd, Ekambara Account. Therefore, it is contended that the applicant has strong reasons to believe that the respondent has siphoned off the monies that are due and liable to the applicant.

2.6 Further, the learned counsel contended that the applicant came to know that the respondent has started establishments like Primary Schools in Dubai and Star Hotels in Coimbatore out of the funds siphoned off. Further, the learned counsel contended that on a bare outlook, it is clear that the value of all these establishments would run to millions and the worth of the Company also come down to Rs.8.09 crores. Therefore, the learned counsel contended that the respondent, who seems to an acute defaulter, has failed to pay even a single penny to secure the rights of the applicant, but, rather chosen to escape from the clutches of law. The applicant, after their own due diligence, came to know that 10 units of Flats in Block No.9 and Block No.6 remains unsold, and therefore, he also filed the present application No.136 of 2019 to pass an order of interim injunction, restraining the respondent/defendant from selling the unsold portions of the flats to any third party until the disposal of the main suit and also two other Applications, viz., O.A.No.862 of 2018 and A.No.7040 of 2018, for the relief as stated supra and therefore, the learned counsel prayed for appropriate orders.

3. On the other hand, Mr.M.S.Krishnan, the learned Senior Counsel for the respondent/defendant while reiterating the averments set out in the counter affidavit filed by the respondent, submitted that the work order for Block No.6 was issued on 06.02.2017 for the value of Rs.3 crore and the work order for Block No.9 was issued to the applicant on 15.02.2017 for the value of Rs.9 Crore. The scope of the work of the applicant is to construct walls and do plastering. Work orders for both the blocks was signed by Mr.Ramesh, who is the President of the respondent-Company. The learned Senior Counsel further submitted that one Mr.Rangarajan was appointed to supervise the applicant and approve the bills, provided the bills are in terms of the work order. Any change in the work or any modifications in the rates to be done by the person, who signed the work order. Since the project was getting delayed and flats need to be delivered within the stipulated time, the respondent appointed Project Management Consultant to verify the progress of the work. Only at that point of time, the respondent was shocked to know that the applicant, in collusion with Mr.Rangarajan, raised bills for abnormal rates. Further, the said Mr.Rangarajan, without any authority has approved the bills, which are not specified in the work order and gone to an extent of approving escalation of price, when the work order specifically states that the applicant is not entitled for escalation.

3.1 Further, the learned Senior Counsel submitted that as per the work order, there is a specific clause in the terms and conditions of the work order that the applicant is not entitled for escalation and steel wastage. Inspite of the said clause, the applicant has claimed for escalation charges and the said Mr.Rangarajan, has approved the sand escalation vide letters dated 06.06.2017, and 02.03.2018, which have been disputed by the respondent. Further, it is contended that the applicant is relying on letters dated 22.03.2017 and 15.05.2017, for additional rates. It is pertinent to note that all the works mentioned in the above two letters form part of the work order. The applicant, in collusion with Mr.Rangarajan, has made additional claims for the same work. Hence, all the bills are disputed by the respondent. Therefore, the learned Senior Counsel submitted that the applicant is not entitled for interim protection for the entire claim amount.

4. In reply to the above submission, the learned counsel for the applicant submitted that they have executed the work to the extent of the suit claim. By virtue of e-mail, dated 31.07.2018, the applicant was unceremoniously removed from the project work without any prior notice. The respondent has appointed one Mr.Rangarajan, to approve the bills. The said Rangarajan approved all the bills and the present suit has been filed for recovery of money only to the extent of the bills approved by the representative of the respondent, Mr.Rangarajan, and even the escalation charges have been claimed only based on the approval of the said Mr.Rangarajan. In fact, some of the bills raised by the applicant were paid along with escalation charges. Having cleared some of the bills along with escalation charges, now, the respondent has no locus standi to raise any objections and raise any question about the genuinity of the approval made by the said Mr.Rangarajan and also the escalation charges, as claimed by the applicant, especially, when there is clear admission of liability on the part of the respondent. The learned counsel, therefore, contended that the dispute raised by the respondent is not bona fide dispute.

4.1 In fact, the learned counsel further contended that the application No.862 of 2019 has been filed for the purpose of restraining the respondent from dealing with the bank accounts, bearing No. Account No.08140200000772, being Sabarii Realtors Pvt. Ltd Margosa Account and No.08140200000765, being Sabari Realtors Pvt. Ltd Ekambara Account. As interim measure, this Court also passed an order, dated 29.10.2018, directing the respondent to operate the Bank Account, maintained with the Bank of Baroda by maintaining the bank balance in the accounts till the disposal of the suit claim of Rs.4,81,37,669/-. The learned counsel further submitted that the respondent also filed statement of accounts, which clearly show that the respondent is still operating the account subsequent to the passing of the order. Therefore, the applicant has filed Application No.136 of 2019, to restrain the respondent from selling the schedule mentioned unsold blocks of Ekambara (Block No.6) and Margosa (Block No.9) to any third party.

5. Per contra, the learned Senior Counsel for the respondent completely denied the liability and contended that because of the non-performance of the work order, they have appointed Project Management Consultant to verify the progress of the work. However, the respondent came to know that the applicant is in collusion with Mr.Rangarajan, raised abnormal rates and the said Mr.Rangarajan, without any authority has approved the bills, which are not specified in the work order and gone to an extent of approving escalation of price, when the work order specifically states that the applicant is not entitled for escalation. Therefore, the learned Senior Counsel contended that the unless and otherwise, the parties goes for trial to prove their case by letting in evidence, both oral and documentary, the outstanding liability cannot be ascertained.

5.1 Further, the learned Senior Counsel submitted that the respondent has filed various details about the bank accounts they are operating as per the direction of this Court. The respondent also filed an affidavit, dated 31.07.2019, stating that all the fixed assets have been mortgaged with the Block Nos.6 and 9, (Ekambara and Margosa) are part of the project work of Sabari's Serenity, which is constructed over the mortgaged property. Further, it is stated that the properties mortgaged with Housing Development Finance Corporation Ltd., vide Memorandum of Title Deeds, dated 27.12.2011, registered as Document No.14202 of 2011 at S.R.O.Thiruporur.

5.2 Further, the learned Senior Contended that, as directed by this Court, the respondent filed an affidavit, dated 04.02.2019, wherein, the respondent undertook not to deal with the three flats described in the schedule mentioned in the said affidavit. Further, the respondent also filed an affidavit, dated 18.01.2019, furnishing the details about the maintenance of the bank accounts. In these circumstances, the learned Senior Counsel, the present applications are liable to be dismissed and sought for a direction upon the parties to go for trial and prove the case.

6. Heard the learned counsel for both the parties and this Court also gone through the averments set out in the applications, counter and written submissions submitted by both the parties.

7. Admittedly, the respondent engaged the services of the applicant for a project and the applicant also performed the work, as per the work order and raised invoices, which were certified from time to time by Mr.Rangarajan, a representative appointed by the respondent. It is also an admitted fact that the respondent released some of the bills, in respect of which, the respondent also claimed Input Tax Credit. But, the issue that requires to be decided herein is whether the respondent continued to engage the service of the applicant for the project work entirely and cleared the bills of the applicant subsequent to the appointment of Project Management Consultant, who had been appointed by the respondent to verify the progress of the work performed by the applicant.

8. According to the respondent, subsequent to the appointment of the Project Management Consultant, as like the fence eating the crops, the respondent came to know that the applicant, in collusion with Mr.Rangarajan, raised bills for abnormal rates and the said Mr.Rangarajan, without any authority has approved the bills, which were not specified in the work order and gone to an extent of approving escalation of price, when the work order specifically states that the applicant is not entitled for escalation charges. The moment the respondent came to know of such collusion, they stopped engaging the service of the applicant and also making payment and sent a e-mail in this regard. Whereas, it is the case of the applicant that they were unceremoniously removed from the project vide e-mail dated 31.07.2018, without any prior notice. Therefore, according to the plaintiff, termination of the contract is prima facie illegal.

9. In view of the above narrated facts, it is clear that the issue is only with regard to the settlement of portion of the claim made by the applicant, which is disputed by the respondent. Though it is the contention of the applicant that the substantial work has been completed for the claim and some of the bills raised by the applicant were paid along with escalation charges, and having cleared some of the bills along with escalation charges, now, the respondent has no locus standi to raise any objections and any question about the genuinenity of the approval made by the said Mr.Rangarajan and also the escalation charges, when there is clear admission of liability on the part of the respondent, when the claim made by the applicant is seriously disputed by the respondent by stating the same to be not a bona fide claim, such disputed question of fact can be only resolved by subjecting the parties to go for trial by letting in evidence and examining the witnesses.

10. Therefore, this Court prima facie is of the view that, in the present case, the dispute is only with regard to the portion of the claim, this Court cannot ascertain whether such claim of the applicant is bona fide or not at this stage. De hors the same, the properties of the schedule mentioned in the applications have been mortgaged with the Housing Development Finance Corporation Ltd., vide Memorandum of Title Deeds, dated 27.12.2011, registered as Document No.14202 of 2011 at S.R.O.Thiruporur, as a first charge holder. Hence, this Court is not in a position to pass an order, restraining the respondent from alienating/encumbering the properties, which were already mortgaged with HDFC. That apart, at the time of argument, it was mentioned by the learned Senior Counsel for the respondent that the total liability payable to HDFC is about Rupees Fourteen Crore. When such be the case, this Court is not inclined to grant the prayer as sought for by the applicant, and is of the view that the following directions would meet the ends of justice:-

A) As and when sale occurs, the respondent is hereby directed to file statement of accounts with regard to the utilization of the sale proceeds of the properties mentioned in O.A.No.136 of 2019, within a week from the date of such sale.

B) In case of any excess amount available from and out of the sale proceeds of the flats in respect of the properties mentioned in O.A.No.136 of 2019, which is over and above the clearance of the outstanding liability due to the HDFC, the respondent is directed to deposit the excess amount not exceeding the suit claim, to the credit of the suit in C.S.No.641 of 2018, within a period of two weeks from the date of receipt of the monies.

Krishnan Ramasamy, J.,
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11. With the above directions, the present applications are disposed of.

20.08.2019

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Index : Yes/No

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