

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 27.06.2019	Delivered on 05.07.2019
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CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Original Application Nos.509, 510 of 2019 and
Application No.4033 of 2019
in CS No.320 of 2019

1. Arif Buhary Rahman
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... Applicants in OA Nos.509 & 510/19
 & Respondents in A. No.4033/19

Vs

1. Siddesh Kshirsagar,
 Room No.332, Amar Veer Seva Sangh,
 Jijamata Nagar, G.D. Ambedkar Marg,
 Kalachowki, Mumbai 400 033.

2. Pueblo Holdings Limited,
 Trust Company Complex,
 Ajeltake Road, Ajeltake Islands,
 Majuro MH 96960,
 Marshall Islands

... Respondents in OA Nos.509 & 510/19
 & Applicants in A. No.4033/19

Prayers: Applications are filed under Order XIV Rule 1 and 8 of the Original Side Rules read with Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, praying to

Appl. No.509/2019: to grant an interim injunction restraining the respondents/defendants from proceeding with E.P.No.40 of 2019, or taking any steps in furtherance thereof, Pending disposal of the suit.

Appl. No.510/2019: to grant an interim injunction restraining the respondents/defendants their men, agents, attorneys, servants, assigns or any person claiming through or under them from interfering with the Transaction directly or indirectly in any manner whatsoever, including by contacting the Buyers and/or any authorities and/or any person connected to the Transaction pending disposal of the suit.

Appl. No.4033/2019: to vacate the ad-interim injunction order dated 25th April 2019 in the instant captioned proceedings i.e. in OA No.509 of 2019 in CS No.320 of 2019.

For Applicants : Mr. J.Sivanandaraaj
Applicants in OA Nos.509 & 510/19 for M/s.N.Senthil Kumar
& Respondents in A. No.4033/19

For Respondents : Mr.Ratnanko Banerji, Senior Counsel
Respondents in OA Nos.509 & 510/19 for M/s.K.Mukund Rao
& Applicants in A. No.4033/19

COMMON ORDER

The applicants in OA No.509 of 2019, seek an order of injunction restraining the respondents/defendants from proceeding with E.P.No.40 of 2019, or taking any steps in furtherance thereof, pending disposal of the suit in CS No.320 of 2019.

2. The suit in CS No.320 of 2019 has been filed seeking a declaration that this Court does not have territorial jurisdiction to adjudicate upon the title of the plaintiffs to the shares in M/s.Star Health and Allied Insurance Co. Ltd., for a declaration that this Court does not have jurisdiction to entertain EP No.40 of 2019 seeking execution of an Arbitration award against the shares of the plaintiffs in M/s.Star Health and Allied Insurance Co. Ltd., and permanent injunction restraining the defendants from proceeding with EP No.40 of 2019 and for other reliefs.

3. Upon hearing the learned counsel for the plaintiffs, having found a *prima facie* case, an order of interim injunction was granted by this Court on 25.04.2019. Upon service, the respondents/defendants have come forward with Application No.4033 of 2019 seeking to vacate the order of interim injunction.

4. The case of the applicants is as follows:

The applicants collectively hold 3.18% shares in Star Health and Allied Insurance Co. Ltd., incorporated under the Companies Act, 1956 and carrying on business in Chennai. These shares were allotted to them between 2005 and 2011. The applicants are the promoters of ETA Group of

Companies. The ETA Group of Companies were promoted by three families namely, the Al Ghurairs, the Salahuddins and the Buharys. While the Salahuddins and the Buharys families belong to the India and the Al Ghurairs belong to the UAE.

5. Sometime in 2012, the major disputes arose between the three families. In 2014, there was a deconsolidation agreement by which ETA Group was deconsolidated. After deconsolidation, the applicants decided to sell their holdings in Star Health and Allied Insurance Co. Ltd. According to the plaintiffs, on coming to know about the offer of the applicants to sell their interest in Star Health and Allied Insurance Co. Ltd., the Al Ghurairs family filed a suit in CS No.33 of 2018 in this Court, seeking a declaration that the shares held by the applicants do not belong to them and the beneficial interest in the shares belonged to M/s.ETA Star Holdings Ltd., an ETA Group Company incorporated in Dubai.

6. An injunction was also sought for restraining the applicants/plaintiffs from alienating the shares. Originally an injunction was granted by this Court, on Appeal a Division Bench of this Court concluded that this Court does not have a territorial jurisdiction to decide the question of title to the shares. The Division Bench also concluded that the Courts in Dubai alone

have the territorial jurisdiction to decide the dispute. This decision of the Division Bench was upheld by the Hon'ble Supreme Court also. Thereafter, the second respondent herein, which had obtained an *Ex parte* Foreign Arbitral Award against one of the Group Companies namely, ETA LLC controlled by the Al Ghurairs Family, filed Original Application in OA No.772 of 2018 in this Court, purportedly under Section 9 of the Arbitration and Conciliation Act, 1996, raising the issue of the ownership of 3.18% shares in Star Health and Allied Insurance Co. Ltd. Originally this Court granted an *ex parte* order of injunction and the same was however vacated on 06.12.2008 in view of the judgment of the Hon'ble Supreme Court. The said order of the learned Single Judge of this Court made in OA No.772 of 2018 was challenged by the respondents in OSA No.62 of 2019.

7. During the pendency of the above Original Side Appeal, the foreign award was made enforceable under Part II of the Arbitration and Conciliation Act, 1996. The Division Bench while dismissing the Appeal in OSA No.62 of 2019, upholding the order of the learned Single Judge made in OA No.772 of 2018 concluded that the respondents herein, who are the decree holders under the foreign award would be entitled to seek execution of the award and it will be open to the respondents therein namely, the applicants herein, to raise all questions in the Execution proceedings.

8. The Division Bench also deleted the findings of the Hon'ble Single Judge against both the parties in the Order made in OA. No.772 of 2018. After the disposal of the Appeal by the Division Bench, the respondents have filed Execution proceedings in EP No.40 of 2019, seeking execution of the foreign award obtained by them, against the shares of the applicants in Star Health and Allied Insurance Co. Ltd. It is at this juncture, the applicants/plaintiffs have come forward with the above suit seeking a declaration that this Court does not have the territorial jurisdiction that desire the question of title to the shares and the same has to be decided only by Courts of Dubai. In view of the findings of the Hon'ble Supreme Court in its judgment in Civil Appeal Nos.9786 to 9799 of 2018 dated 26.11.2018. Pending the suit, the applicants seek an order of injunction restraining the respondents from proceeding with the EP No.40 of 2019.

9. This application is stoutly opposed by the respondents/defendants, according to the respondents/defendants, the prayer a grant of an injunction as prayed for would be in violation of Section 41(b) of the Specific Relief Act and hence the same could not be granted. It is the further contention of the respondents that the respondents are not parties to the proceedings in CS No.33 of 2018 and as such any finding arrived at in the said proceedings will

not be binding on it. It is their further contention that though the learned Single Judge in OA No.772 of 2018 had held against them those findings were set aside by the Division Bench and the Division Bench had in OSA No.62 of 2019, given them the liberty to seek execution of the award by a process known to law.

10. It is also pointed out that it is open to the applicants/plaintiffs to raise all defences available to them, before the Executing Court and the question of jurisdiction can also be decided by the Executing Court and a separate suit for that purpose is not maintainable, in view of the provisions contained in Order 21 Rule 58 of the Code of Civil Procedure. It is also pointed out that the Division Bench while disposing of OSA No.62 of 2019, had in fact reserved the rights of the applicants to raise all issues, when the award is put in Execution.

11. I have heard Mr. J.Sivanandaraaj, learned counsel appearing for Mr.N.Senthil Kumar, for the applicants and Mr.Ratnanko Banerji, learned Senior Counsel appearing for Mr.K.Mukund Rao, for the respondents.

11.1. Mr.J.Sivanandaraaj, learned counsel appearing for the applicants/plaintiffs would strenuously contend that in view of the findings of

the Division Bench rendered in OSA Nos.220-223, 227-228, 230-237 of 2018, the Courts in Chennai have no jurisdiction to decide the question of title to the shares held by the applicants in M/s. Star Health and Allied Insurance Co. Ltd. Pointing out that the said judgment of the Division Bench was also confirmed by the Hon'ble Supreme Court in Civil Appeal Nos.9786 to 9799 of 2018, Mr.J.Sivanandaraaj, learned counsel appearing for the applicants would submit that once the question of jurisdiction has been finally decided by the Hon'ble Supreme Court, it is binding on the present respondents/defendants also inasmuch as they also trace the title to the shares to the same source as done by the plaintiff in CS No.33 of 2018. He would also submit that Section 41(d) of the Specific Relief Act, would not stand in the way of this Court, granting an order of injunction restraining a person from initiating or proceeding with execution in this Court itself. He would also submit that what is prohibited under Section 41(b) of the Specific Relief Act, is a grant of an injunction restraining any person from instituting or prosecuting any proceeding in a Court **not subordinate** to that from which injunction is sought. Emphasizing the use of the word 'not subordinate' Mr. J.Sivanandaraaj, learned counsel, would submit that an injunction can be granted restraining a person from prosecuting a proceeding in a Court of coordinate jurisdiction or equal jurisdiction or the Court itself.

12. He would also invite my attention to the observation of the Division Bench in **Syed Mohamed Salahuddin v. Ahmed Abdulla Ahmed Al Ghurair**, reported in **2018 (4) L.W.259**, to contend that the Division Bench had categorically held that this Court does not have jurisdiction to decide the question of title to the shares in question. Therefore, according to Mr.J.Sivanandaraaj, the very initiation of the execution proceedings in EP No.40 of 2019, is without jurisdiction and the same can be challenged by way of a suit. He would also invite my attention to the judgment of the Hon'ble Supreme Court in Civil Appeal Nos.9786 to 9799 of 2018 (SLP(C) Nos.22057 - 22070 of 2018). Drawing my attention to the conclusions of the Hon'ble Supreme Court to the effect that the title to the shares in question, cannot be decided by the Courts in India, Mr. J.Sivanandaraaj, would submit that the said law declared by the Hon'ble Supreme Court is binding on all the Courts in India and therefore, the Executing Court should not have entertained the execution proceeding. The Hon'ble Supreme Court while deciding Civil Appeal Nos.9786 to 9799 of 2018 had in fact observed as follows:

"We find that Court in Dubai would be more convenient forum to decide the dispute between the parties who are residents of Dubai and which

*revolves around Defendant No. 2, again a
Company registered and situate in Dubai.”*

The Hon'ble Supreme Court also extracted the observations of the Division Bench of this Court and concurred with the same.

13. Further reliance is placed by Mr. J.Sivanandaraaj, on the judgment of the Hon'ble Supreme Court in **Cotton Corporation of India Limited v. United Industrial Bank Limited and Others**, reported in **1983 (4) SCC 625**, wherein the Hon'ble Supreme Court left the question regarding the power of the Court to grant injunction against the person from instituting or prosecuting a proceeding before itself open. Mr.J.Sivanandaraaj, would rely upon the judgment of the Kerala High Court in **Raghavan and another v. Sankaran Ezhuthassan**, reported in **AIR 1993 Ker 178**, in order to buttress his submission that the Court can always restrain a person from instituting or prosecuting any proceeding before itself. He would also rely upon the judgment of a Division Bench of Kerala High Court in **Santha v. Vasu**, reported in **AIR 1996 Ker 188**, wherein the Division Bench of the Kerala High Court while answering the question as to whether a Court should be prevented from regulating its own proceedings concluded that the interdict contained in Section 41(b) cannot be stretched to the extent of rendering a Court helpless in preventing abuse of its own proceedings.

14. Reliance is also placed on the judgment of the Delhi High Court in ***Deepak Khosla v. Monreaux Resorts Pvt Ltd. And Ors.***, reported in ***ILR (2012) V Delhi 117***, wherein a Division Bench of the Delhi High Court refused to hear an Appeal by the appellant on the ground that a learned Single Judge of the Delhi High Court had granted an injunction restraining the appellant from instituting or prosecuting proceedings before the said Court. A Division Bench concluded that it should respect the order of the learned Single Judge.

15. Relying upon the above judgments, Mr.J.Sivanandaraaj, would contend that the prohibition or interdict imposed by Section 41(b) of the Specific Relief Act, cannot prevent this Court from granting an injunction restraining a party from initiating proceedings before this Court itself. May be that the proceedings in execution are before another judge of this Court, but that according to Mr.J. Sivanandaraaj, would not take away the jurisdiction of this Court to restrain a party from initiating or prosecuting any proceeding before this Court. The learned counsel would also term the execution proceedings is an abuse of process of Court. According to him, since the Hon'ble Division Bench in the proceeding arising out of CS No.33 of 2018 had held that this Court will not have jurisdiction to decide the question of

title, the present proceeding in EP No.40 of 2019 initiated by the respondents is nothing but an abuse of process of Court. Therefore, this Court has the power to prevent such abuse.

16. In support of his submission Mr.J. Sivanandaraaj, would rely upon the judgment of a learned Single Judge of this Court in ***Ranipet Municipality v. M.Shamsheerkhan, reported in 1998 SCC online Mad 914***. He would also draw my attention to judgment of the Hon'ble Supreme Court in ***K.K.Modi v. K.N.Modi and others***, reported in ***1998 (3) SCC 573***, wherein the Hon'ble Supreme Court had concluded that the Courts have power to check abuse of process or re-litigation by the parties under Section 151 of the Code of Civil Procedure as well as under Article 227 of the Constitution of India

17. Reliance is also placed on the judgment of the Allahabad High Court in ***Mula and Another v. Babu Ram and another***, reported in ***AIR 1960 All 573***, wherein the Allahabad High Court had observed that the Court should be slow in accepting a proposition which would render the Court powerless against wrongful conduct and an abuse of the process of Court by an unscrupulous litigant. Relying upon the above judgments, Mr.J.Sivanandaraaj, would argue that even assuming that Order 39 Rule 1

cannot be invoked, this Court would be justified in granting an injunction under its inherent powers and invoking Section 151 of the Code of Civil Procedure.

18. As regards the power of the Executing Court to go into the question of jurisdiction of this Court regarding title to the shares, Mr.J.Sivanandaraaj, would contend that the power of the Executing Court is limited and it cannot go beyond a decree and traverse the question of title to the shares. In support of the said submission, he would rely upon the judgment of the Hon'ble Supreme Court in **Fargo Freight Ltd v. Commodities Exchange Corporation and others** reported in **2004 (7) SCC 203**, wherein the Hon'ble Supreme Court had held that the complicated questions of law relating to the validity of letters of credit or the liability of the issuing Bank under a letter of credit, cannot be decided in execution proceeding and it has to be decided only in independent proceeding.

19. Contending contra, Mr.Ratnanko Banerji, learned Senior Counsel appearing for the respondents would submit that in view of the interdict imposed under Section 41(b) of the Specific Relief Act, the prayer for injunction as sought for by the applicants cannot be granted. He would also further contend that the conclusion of the Hon'ble Supreme Court regarding

the territorial jurisdiction arrived at in the proceedings in CS No.33 of 2018 would not be binding on the respondents, inasmuch as they were not parties to the said proceeding and in the light of the judgment of the Division Bench in OSA No.62 of 2019, wherein the Division Bench had specifically permitted the respondents to take proceedings in execution of the award. It is well open to the respondents to initiate the Execution proceedings in this Court.

20. He would also point out that the Division Bench while disposing of OSA No.62 of 2019 had made it very clear that it will be open to the respondents therein/applicants herein, to raise all defences available to them on facts and in law. He would also lay considerable stress or considerable emphasis on the fact that the Division Bench had vacated the findings rendered by the learned Single Judge, who disposed of OA No.772 of 2018. This, according to Mr.Ratnanko Banerji, learned Senior would only mean that the applicants herein can raise the question of territorial jurisdiction, before the Executing Court and the Executing Court can decide the same. The learned Senior Counsel would also submit that the contention of the learned counsel for the applicant that this execution proceeding is an abuse of process of Court, cannot be countenanced in view of the fact that the present respondents had nothing to do with the proceedings in CS No.33

of 2018.

21. He would also invite my attention to the judgment of the Division Bench of the Delhi High Court in ***Horlicks Ltd & Anr. V. Heinz India (Pvt.) Limited***, reported in **2009 SCC online Del 3342**, wherein the Division Bench had pointed out that the principle of forum non conveniens cannot be applied to domestic formus in India. Reliance is also placed by the learned Senior Counsel, on judgment of the Division Bench of the Calcutta High Court in ***Indian Bank v. Euro International Pte. Ltd.***, reported in **AIR 1999 Cal 200**, wherein the Division Bench had held that inherent powers under Section 151 of the Code of Civil Procedure cannot be used in derogation of specific provisions contained in the Code of Civil Procedure. In fact the Division Bench had pointed out that the inherent powers cannot be used against the specific provisions of Section 41(b) of the Specific Relief Act.

22. My attention is also drawn to the judgment of the learned Single Judge of this Court in ***M/s.Rajshree Sugars & Chemicals Limited v. Axis Bank Limited***, reported in **2009 (1) LW 209**, wherein the scope of Section 41(b) of the Specific Relief Act, was considered and with reference to the meaning that could be assigned to the words Courts “not Subordinate” used in the said provision. To sum up, the contentions of the learned counsel for

the respondents is that the execution proceeding cannot be termed as an abuse of process of law, inasmuch as they have been permitted by the Division Bench in OSA No.62 of 2019 and it is well open to the applicants to raise the issue of jurisdiction also before the Executing Court and a separate suit seeking a declaration that this Court has no territorial jurisdiction cannot be maintained.

23. I have considered the rival submissions.

24. The facts are not very much in dispute. The plaintiffs have become the owners of 3.18% of shares in M/s.Star Health and Allied Insurance Co. Ltd., as per the deconsolidation agreement which took place between 2012 and 2014. It is also not in dispute that various book adjustments have been made between the entities in Kuwait belonging to the ETA Group, pursuant to the deconsolidation agreement. Two of the members of the family of the Al Ghurairs had filed CS No.33 of 2018, claiming that the shares held by the defendants 3, 4, 5, 6 and 7 in the said suit in M/s. Star Health and Allied Insurance Co. Ltd., do not belong to them and a prayer was sought for declaring the beneficial interest of the second defendant in the shares bearing certain folio numbers of the share holding of the first defendant.

25. This claim was resisted by the defendants in the said suit contending that this Court does not have the territorial jurisdiction to decide the question relating to shares. The said proceeding went up the Hon'ble Supreme Court and the Hon'ble Supreme Court agreed with the Division Bench of this Court that the question of title to the shares cannot be conveniently decided in the Courts in India and it is the Courts in Dubai, which have the territorial jurisdiction to decide this dispute. However, the present respondents who had obtained an *ex parte* award against one of the group companies seek to execute their decree against the applicants herein, claiming that the shares held by them in M/s.Star Health and Allied Insurance Co. Ltd., are beneficially owned by the judgment debtor and therefore, they are entitled to levy execution against those shares.

26. The respondents originally filed an application under Section 9 of the Arbitration and Conciliation Act, seeking an interim protection in OA No.772 of 2018, the said application came to be disposed of by this Court on 06.12.2018, the learned Single Judge, who disposed of Original Application in OA No.772 of 2018, rendered several findings but ultimately concluded that in view of the judgment of the Hon'ble Supreme Court in SLP Civil Nos.9786 to 9799 of 2018, the ownership of the shares cannot be decided

by this Court. The matter did not stop there, there was an appeal against this order dated 06.12.2018 made in the Application under Section 9 of the Arbitration and Conciliation Act.

27. The Division Bench while confirming the conclusions of the learned Single Judge, vacated the findings and the Division Bench further observed that it will be open to the respondents herein, to take appropriate proceedings for execution of the award. The Division Bench further observed that when such proceedings for execution of the award are taken by the respondents, it will be open to the applicants to raise all defences available to them on facts and in law. In concluding so, the Division Bench observed as follows:

“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 of move the Execution 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.”

28. It is pursuant to these observations of the Division Bench, the respondents had filed EP No.40 of 2019 before this Court. The main issue that arise in these applications can be summarised as follows:

1. *Whether the interdict imposed by Section 41 (b) of the Specific Relief Act would prevent this Court from granting an injunction restraining the respondents from proceeding with EP No.40 of 2019?*
2. *Whether the Executing Court will have the Power to decide as to whether the Courts in India have got jurisdiction to pronounce on the title to the shares in question?*
3. *Whether the proceedings in EP No.40 of 2019 could be termed as an abuse of process of law?*

29. From the arguments of Mr.J.Sivananadaraaj, learned counsel appearing for the applicant, it is seen that his contentions are two folds. The first contention based on the order of the Hon'ble Supreme Court in Civil Appeal Nos.9786 to 9799 of 2018, wherein the Hon'ble Supreme Court had held that the Courts in India do not have jurisdiction to go into the question of title to the shares of the plaintiffs in M/s.Star Health and Allied Insurance Co. Ltd. The second contention would be that the proceedings in EP No.40 of 2019 amount to abuse of process of law. Having failed in their attempt to having their rights declared in CS No.33 of 2018, the Al Ghurairs are now claiming the same relief through the respondents.

30. Mr.Ratnanko Banerji, learned Senior counsel appearing for the respondents would however submit that the claim that there is a collusion between the respondents and the Al Ghurairs is an invention of the applicants and the Al Ghurairs were actually the debtors of the respondents. He would also invite my attention to certain observations in the order of the learned Single Judge, who decided the Original Application in OA No.772 of 2018 to the effect that the very deconsolidation agreement itself may have been brought about. However, I do not propose to go into the question, since the findings of the learned Single Judge in Original Application in OA No.772 of 2018 have been vacated by the Division Bench in OSA No.62 of

2019. The relevant portion of Section 41(b) of the Specific Relief Act, reads as follows:

“41. Injunction when refused.—An injunction cannot be granted-

(a).....

*(b) to restrain any person from instituting or prosecuting any proceedings in a Court **not subordinate** to that from which the injunction is sought;”*

The other parts of the Section are not material for our purposes.

31. The plain reading of the above provision would show that the interdict placed is on a grant of injunction from instituting or prosecuting any proceeding in a Court not Subordinate to the Court from which injunction is sought for. There is no difficulty in concluding that the Court cannot injunct a person from instituting or prosecuting a proceeding the Court superior or coordinate Court. It is also clear that injunctions can be granted restraining a person from instituting or prosecuting a proceeding before a Subordinate Court.

32. Mr.J.Sivanandaraaj, would rely upon the two judgments of the Kerala High Court in ***Raghavan and another v. Sankaran Ezhuthassan, reported in AIR 1993 Ker 178***, and ***Santha v. Vasu***, reported in ***AIR 1996 Ker 188***, to contend that Section 41(b) does not prevent a Court for regulating its own proceeding. Therefore, according to him, an injunction can be granted restraining institution or prosecution of a proceeding by a person in the very same Court. No doubt, the conclusions of the Kerala High Court in both the above said judgments support the arguments of Mr.J.Sivanandaraaj. But the larger question here is whether there could be an injunction restraining a person from levying execution proceedings in this Court, more so when such execution proceeding is sought to be levied based on a liberty granted by a Division Bench of this Court.

33. As already stated a Division Bench of this Court in OSA No.62 of 2019, had observed that it will be open to the respondents herein to take steps for execution of the award and once such execution proceeding is initiated, it will be open to the respondents/applicants herein to raise all defences open to them either on facts or in law, before the Executing Court. Therefore, the question that is to be answered is as to whether the applicants can maintain this application for injunction or they should raise the plea of want of jurisdiction before the Executing Court itself. While I see

no difficulty agreeing with the contention of Mr.J.Sivanandaraaj and the powers of this Court regulating its own proceedings, I find it difficult to accept his submission that the Executing Court cannot go into the question of jurisdiction and decide on it.

34. Reliance placed by Mr.J.Sivanandaraaj, learned counsel appearing for the applicants, on the judgment in **Fargo Freight Ltd v. Commodities Exchange Corporation and others** reported in **2004 (7) SCC 203**, in this regard appears to be misconceived. The question that arose before the Hon'ble Supreme Court was that whether the Executing Court can decide the liability of the issuing banker under a letters of credit under Order 21 Rule 46 of the Code of Civil Procedure. While deciding on the said question, the Hon'ble Supreme Court held that the liability of the issuing banker which is an independent liability cannot be decided the proceeding under Order 21 Rule 46.

35. The question that is raised in this case is as to whether the Executing Court would have jurisdiction to decide the question of title to the shares. The Execution Petition is filed on the premise that the shares held by the applicants herein in M/s.Star Health and Allied Insurance Co. Ltd., are beneficially owned by some other entity and such beneficial interest is

answerable to the claim of the decree holder under the award. Section 60 of the Code of Civil Procedure permits attachment of a property in which the judgment debtor has got a beneficial interest. Once such proceeding is taken, it is for the person, who is the decree holder to prove that the judgment debtor has a beneficial interest in the property and that the ostensible owner is only a name lender. That question has to be essentially decided by the Executing Court before proceeding with the execution. Considerable safeguards are provided under Order 21 of the Code of Civil Procedure, by way of Order 21 Rule 58 and Order 21 Rule 97 to 101, where execution is sought to be levied against a person who is not bound under the decree or execution is sought to be levied against the property of a person, who is not a party to the decree. But those questions would arise only at the later stage in the case on hand.

36. On the facts set out above and the arguments of the learned counsel on the either side, the larger question that is to be decided in the case on hand is that jurisdiction on Executing Court to decide on the beneficial interest. If the Executing Court finds that it cannot decide the question of ownership of the shares and the said question has to be decided by the Courts in Dubai, the Execution Petition will be thrown out and it is for the respondents who are the decree holders to work out the remedies

available to them under law. I do not think that it can be safely concluded that the Executing Court does not have a jurisdiction to decide the question of jurisdiction itself, as observed by the Division Bench, the applicants have been given liberty to raise all defences open to them on facts and in law, before the Executing Court. The question of jurisdiction is also a defence open to them and the Executing Court can well be called upon to decide on the jurisdiction also, before it proceeds with the execution of the award.

37. I am therefore of the considered opinion that the question whether interdict imposed by Section 41(b) would prevent this Court from regulating its own process need not be gone into, at this juncture suffice to say that the Executing Court will be competent to decide on the question of jurisdiction also and once the applicants have that remedy open to them, they need not be favoured with the discretionary remedy of injunction.

38. As rightly pointed out by the learned Senior Counsel appearing for the respondents, the findings rendered in the proceedings which arose against CS No.33 of 2018, cannot be said to be strictly binding on the respondents herein, since they were not parties to the said proceeding. The said fact coupled with the fact that the Division Bench had given them liberty to proceed with the execution would entail them to maintain the execution

proceedings. I do not think that the execution proceedings could be said to be an abuse of process of Court, inasmuch as, the Law, namely, the Code of Civil Procedure, particularly Section 60 enables the respondents to contend that the judgment debtors are the beneficial owners of the shares which are now held by the applicants and a machinery is provided for under the Code itself to decide the said question. I am therefore of the considered opinion that an injunction cannot be issued restraining the respondents from instituting or prosecuting in EP No.40 of 2019 and it is open to the applicants to raise all questions of jurisdiction which is now sought to be raised by way of the present suit before the Executing Court itself.

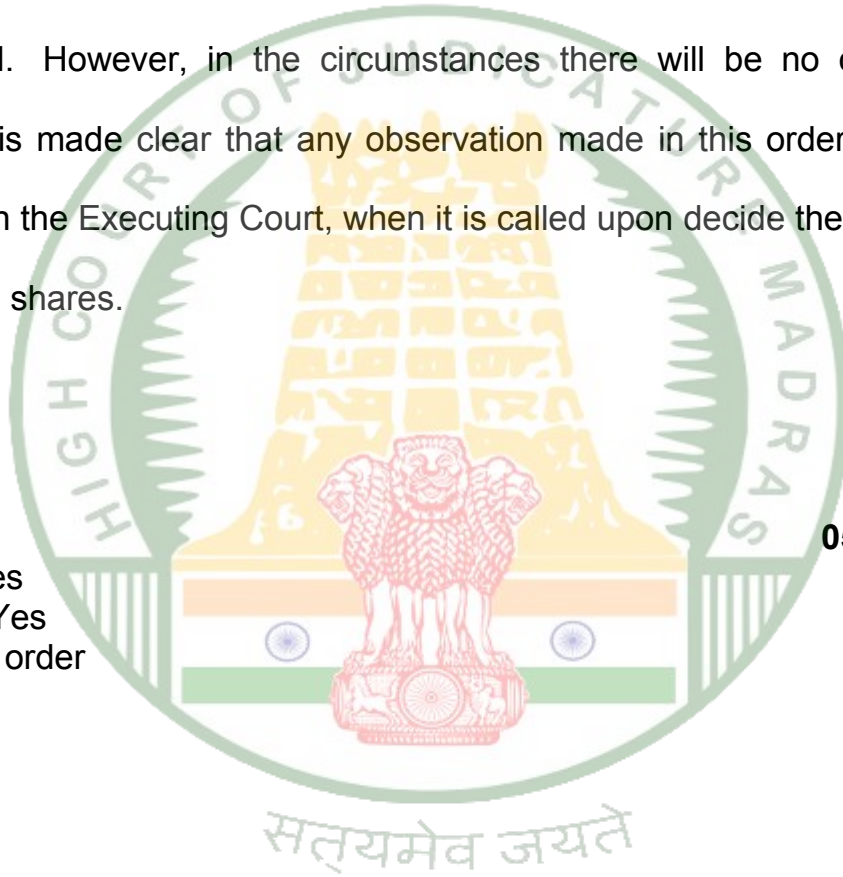
39. I am unable to subscribe to the contention of Mr.J.Sivanandaraaj, learned counsel appearing for the applicants, the Executing Court cannot decide that question. The Executing Court can definitely look into the question as to whether it has jurisdiction entertain the execution proceedings and also decide whether it has jurisdiction to go into the question of title to the shares.

40. In view of the above conclusions, I find that the applicants have

not made out the *prima facie* case for grant of an injunction and the balance of convenience is also not in their favour, on the other hand I find the balance of convenience is in favour of the respondents. In view of the above findings, interim injunction granted on 25.04.2019 is vacated in Application No.4033 of 2019 is allowed and OA Nos.509 and 510 of 2019 will stand dismissed. However, in the circumstances there will be no order as to costs. It is made clear that any observation made in this order will not be binding on the Executing Court, when it is called upon decide the question of title to the shares.

Index : Yes
Internet: Yes
Speaking order
jv

05.07.2019



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R.SUBRAMANIAN,J.

jv



Pre Delivery Order

Original Application Nos.509, 510 of 2019 and
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in CS No.320 of 2019

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