

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R.SURESH KUMAR

C.R.P.(PD) Nos.2105 & 2106 of 2019

and

C.M.P.Nos.23268, 23270,
13623, 13619 & 13626 of 2019

M/s.ATC Telecom Infrastructure Private Limited,
Rep. by its Circle Head, Celestial Point,
No.45, Damodharan Street,
Opposite to T.Nagar Bus Stand,
T.Nagar, Chennai - 600 017.

... Petitioner in both CRPs.

Vs.

1.R.Muthukrishnan
2.R.Rathinakumar

... Respondents

Prayer in CRP.2105 of 2019: Petition filed under Article 227 of the Constitution of India praying to set aside the Petition and Order dated 06.06.2019 passed in I.A.No.2 of 2019 in O.S.No.167 of 2019 on the file of the District Munsif, Pollachi.

Prayer in CRP.2106 of 2019: Petition filed under Article 227 of the Constitution of India praying to strike off the plaint in O.S.No.167 of 2019 on the file of the District Munsif, Pollachi.

For Petitioner : Mr.T.V.Ramanujam
Senior Counsel
For Mr.J.Ravikumar

For 1st Respondent : Mr.N.Umapathi

COMMON ORDER

In C.R.P.(PD).No.2105 of 2019, the revision petitioner seek to set aside the order passed in I.A.No.2 of 2019 in O.S.No.167 of 2019 on the file of the District Munsif, Pollachi, by order dated 06.06.2019.

In C.R.P.(PD).No.2106 of 2019 is concerned, the prayer sought for in the said revision is to strike off the plaint in O.S.No.167 of 2019.

2.In both the revision petitions, today C.M.P.Nos.23268 and 23270 of 2019 respectively have been filed to raise additional grounds.

3.However, with the consent of both sides, arguments were heard from the learned counsel appearing for both sides, in the main Civil Revision Petitions themselves and accordingly, these two Civil Revision Petitions are disposed off by this Common Order.

4.Mr.T.V.Ramanujam, learned Senior Counsel appearing for the revision petitioner would submit that, the revision petitioner wanted to erect the cellphone tower in the neighbouring land of the respondents. As against the said move, it seems that, the 1st respondent/plaintiff filed the suit for injunction, where an interlocutory application I.A.No.2

of 2019 was moved, where interim order of injunction has been granted. Therefore, as against the grant of interim order of injunction by the trial Court restraining the revision petitioner from erecting the cellphone tower, the first revision has been filed.

5.Insofar as the second revision is concerned, it is the case of the revision petitioner that, since an erection of the cellphone tower is an infrastructure project, therefore, such kind of infrastructure project cannot be curtailed by a Civil Court by granting prohibitory injunction, in view of the prohibition expressed under Section 20A of the Specific Relief Act. Therefore, on that ground, the suit itself is barred by law. Therefore, in order to strike off the plaint, the second revision has been filed.

6.The learned Senior Counsel would rely upon Section 20A of the Specific Relief Act, which reads thus:

"20A. Special provisions for contract relating to infrastructure project.—(1) No injunction shall be granted by a court in a suit under this Act involving a contract relating to an infrastructure project specified in the Schedule, where granting injunction would cause impediment or delay in the progress or completion of

such infrastructure project.

Explanation.—For the purposes of this section, section 20B and clause (ha) of section 41, the expression "infrastructure project" means the category of projects and infrastructure Sub-Sectors specified in the Schedule.

(2) The Central Government may, depending upon the requirement for development of infrastructure projects, and if it considers necessary or expedient to do so, by notification in the Official Gazette, amend the Schedule relating to any Category of projects or Infrastructure Sub-Sectors.

(3) Every notification issued under this Act by the Central Government shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification."

7.The learned Senior Counsel for the revision petitioner has also

relied upon a Division Bench Judgment of this Court in ***W.P.No.24976 of 2008 etc. batch, dated 05.03.2015*** in the matter of ***K.R.Ramaswamy V. The Secretary, Department of Telecommunications, Government of India and others]*** (***MANU/TN/1140/2015***), where a Division Bench of this Court, in a similar circumstances, has held as follows:

"10. We are, thus, of the view that in a judicial proceeding these aspects cannot be analysed. There being no materials atleast as on date, which can finally suggest any health hazards from these towers and the solution thereof, the Court would not venture into uncharted territory of technical expertise to determine the area where it should be installed. The Court, at best can place this matter before the appropriate Committee to look into this matter which the Kerala High Court already did and we have the benefit of the conclusion arrived at in those proceedings, as noticed above.

11. We are of the view that no further directions are required in these matters, other than to say that the concerned authorities would continue to analyse the materials as and when it emerges to look into the concern raised by the petitioners, especially, in view of the fact that there is no final view as yet on these aspects. Science grows and

evolves and one does not know that may happen tomorrow. It is, in this context, we have made these observations."

8.By relying upon these materials i.e., Section 20A of the Specific Relief Act as well as the observation made by the Division Bench of this Court in the Judgment cited above, the learned Senior Counsel appearing for the petitioner would contend that, there is no need to get any approval of erecting a cellphone tower and whether the erection of cellphone tower would impact health hazard or it will have an impact on the environment, is a matter to be gone into only by Experts, and the Court cannot jump into a conclusion to that aspect. Therefore, the Court should lay off their hands. This is what emphasised, according to the learned Senior Counsel, in the Division Bench Judgment.

9.Like that, the learned Senior Counsel would also emphasise that, in view of the blanket prohibition made in Section 20A of the Act, as has been quoted above, the Civil Courts shall not entertain such kind of suits for injunction restraining an infrastructure project and therefore, the very suit itself is barred by law, hence, it can very well

be struck off. Accordingly, the prayer sought for to strike off the plaint can also be allowed by this Court.

10.Per contra, Mr.N.Umapathi, learned counsel appearing for the 1st respondent in both the civil revision petitions, who is the plaintiff before the trial Court, submits that, insofar as the injunction granted by the trial Court is concerned, it is open to the revision petitioner/ 2nd defendant to file vacate injunction petition under Order XXXIX Rule 4 C.P.C., however, no such attempt so far has been taken by the revision petitioner.

11.He would further submit that, insofar as the Judgment quoted by the petitioner's side, as well as the plea of rejection of plaint is concerned, contra to the said view taken in the said Division Bench Judgment as well as the stand of the revision petitioner, there are atleast five judgments of this Court viz., (i) 2013(2) CTC 756 (*Amaravathy Cranes and Structural Pvt. Ltd. and another V. Rajendra Raja and others*); (ii) (2015) 3 CTC 485 (*T.K.Chithran V. C.Samsari @ Chithran and others*); (iii) W.P.No.21979 and 14877 of 2017 (*Indus Towers Limited and others V. The Secretary to Government, Municipal*

Administration Department, The Government of Tamil Nadu, Fort St. George, Chennai - 600 009 and others); (iv) W.P.(MD0.No.6440 of 2019 (S.S.Nagar Kudiyuryppor Nala Sangam, rep. by its President K.Jeyaram, Sivagangai District V. The District Collector, Collectorate, Singampuneri, Sivagangai District and others); (v) W.P.No.5862 of 2019 (K.Latha and others V. The Secretary to Government, Municipal Administrative Department, Government of Tamil Nadu, Fort St. George, Chennai - 600 009 and others).

12.He would also submit that, the prohibition said to have been given under Section 20A of the Specific Relief Act, heavily relied upon by the revision petitioner, is not a prohibition insofar as the erection of the cellphone tower, as the said erection cannot be construed as an infrastructure development within the meaning of or in the context wherein Section 20A has been brought into the Statute Book. Therefore, the learned counsel appearing for the 1st respondent/ plaintiff would submit that, both the civil revision petitions are liable to be rejected, as admittedly the revision petitioner has not exhausted the statutory remedy for the relief sought for in both the civil revision petitions, which are very well available under Civil Procedure Code, to

be agitated before the trial Court itself.

13.I have considered the said rival submissions made by the learned Senior Counsel appearing for the petitioner as well as the learned counsel for the 1st respondent.

14.Insofar as C.R.P.No.2105 of 2019 is concerned, as against the order of interim injunction granted in I.A.No.2 of 2019, the said revision has been filed.

15.As has been rightly pointed out by the learned counsel appearing for the 1st respondent, there has been no petition to vacate the injunction under Order XXXIX Rule 4 filed by the revision petitioner. Since the Civil Procedure Code provides for an effective statutory remedy, without exhausting the same, whether the litigant can approach this Court, that too, by invoking superintendence power under Article 227 of the Constitution, had engaged more than once of the Law Courts especially, the Highest Court of this land. In a recent decision of the Hon'ble Apex Court reported in **2019 (5) CTC 696** in the matter of **Virudhunagar Hindu Nadargal Dharma Paribalana**

Sabai and others V. Tuticorin Educational Society and others,
the Hon'ble Apex Court has given a detailed findings and paragraphs 13 and 14 of the said Judgment can usefully be referred to herein, which are extracted hereunder:

"13. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of Code of Civil Procedure and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which the respondents 1 and 2 invoked the jurisdiction of the High Court. That is why, a 3 member bench of this court, while overruling the decision in *Surya Dev Rai v. Ram Chander Raj* [(2003) 6 SCC 675], pointed out in *Radhey Shyam v. Chabbi Nath* [(2015) 5 SCC 423] that "orders of civil court stand on different footing from the orders of

authorities or Tribunals or courts other than judicial / civil courts.

14. Therefore wherever the proceedings are under the code of Civil Procedure and the forum is the Civil Court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself."

16.Further, in respect of the second C.R.P.No.2106 of 2019 is concerned, it is a prayer sought for by the revision petitioner to strike off the plaint i.e., O.S.No.167 of 2019 before the Court below i.e., District Munsif, Pollachi.

17.Here also, the said principle enunciated in the aforesaid Judgment of the Hon'ble Supreme Court will squarely apply, as admittedly the revision petitioner has not exhausted the remedy available to the revision petitioner before the trial Court itself where the revision petitioner could have filed an application under Order VII

Rule 11 to strike off the plaint.

18. Therefore, this Court at the threshold is of the considered view that, the prayer sought for in both the revision petitions can very well be agitated before the Court below, in view of the settled legal position, as has been reiterated and amplified by the recent decision of the Hon'ble Apex Court in the above cited Judgment. Therefore, on that ground, these revision petitions cannot be entertained.

19. However, Mr.T.V.Ramanujam, learned Senior Counsel appearing for the revision petitioner would submit that, since there has been a provision under Section 20A of the Specific Relief Act, the same should have been applied by the trial Court before granting interim order of injunction, without which, if such an interim order is granted, the petitioner therefore approached this Court by filing the revisions. If at all the revision petitions are not entertained for the aforesaid reason, then, the remedy available to the revision petitioner against such an interim order of injunction granted against the revision petitioner, would be only to approach the Court below to file appropriate application to vacate the interim injunction.

20. Like that, if at all the revision petitioner felt that, the suit itself ought not to have been entertained or admitted, in view of the aforesaid prohibition under Section 20A of the said Act, even then, the revision petitioner can very well agitate the issue before the trial Court by filing appropriate application to strike off the plaint under Order VII Rule 11 on the ground that, the suit is barred by a law.

21. When both the remedies are very much available in the explicit provision of Civil Procedure Code, this Court is of the considered view that, the revision petitioner can very well be relegated to the trial Court to exhaust such remedies too.

22. In view of the aforesaid facts and circumstances, this Court is inclined to dispose of these two civil revision petitions with the following orders:

(i) That the prayer sought for herein in both the revision petitions cannot be granted for the aforesaid reasons, hence, the revision petitions are liable to be rejected, accordingly are rejected.

(ii) However, it is open to the revision petitioner to file an appropriate application under Order VII Rule 11 C.P.C. to strike off the plaint, if he is advised to do so in the manner known law. Like that, it is also open to the revision petitioner to file a vacate injunction application against the order of interim injunction granted in I.A.No.2 of 2019 in O.S.No.167 of 2019, by order dated 06.06.2019.

(iii) If these two applications are filed by the revision petitioner, the trial Court is hereby directed to take up these two applications and decide the same on merits and in accordance with law, within a period of 30 days from the date of filing of such applications.

(iv) It is also made clear that, if an application under Order VII Rule 11 is filed, the same shall be taken up and decided first and depending upon the decision to be made by the trial Court in such application, the fate of the other application can very well be decided.

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(v) In the meanwhile, the interim order of injunction granted in I.A.No.2 of 2019, for the said period of 30 days, as indicated above, is

suspended.

(vi) The said suspension of interim order shall not make the revision petitioner entitle to proceed with the erection of the questionable cellphone tower.

(vii) The intention of this direction made by this Court is that, the trial Court with free mind to decide both the applications, without any prejudice with the order already made available on record before the trial Court.

(viii) It is also made clear that, such applications, as indicated above, shall be filed by the revision petitioner within a period of one week from the date of receipt of a copy of this order. If the petitioner fails to file such applications within the time granted above, it is open to the trial Court to proceed with the pending application i.e., I.A.No.2 of 2019 as well as the suit in accordance with law.

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23.With the aforesaid observations and directions, both the Civil Revision Petitions are disposed of. No costs. Consequently, connected

Miscellaneous Petition are closed.

06.11.2019

Index : Yes

Speaking Order : Yes

Note: Issue order copy on 12.11.2019

Sgl

To
The District Munsif,
Pollachi.

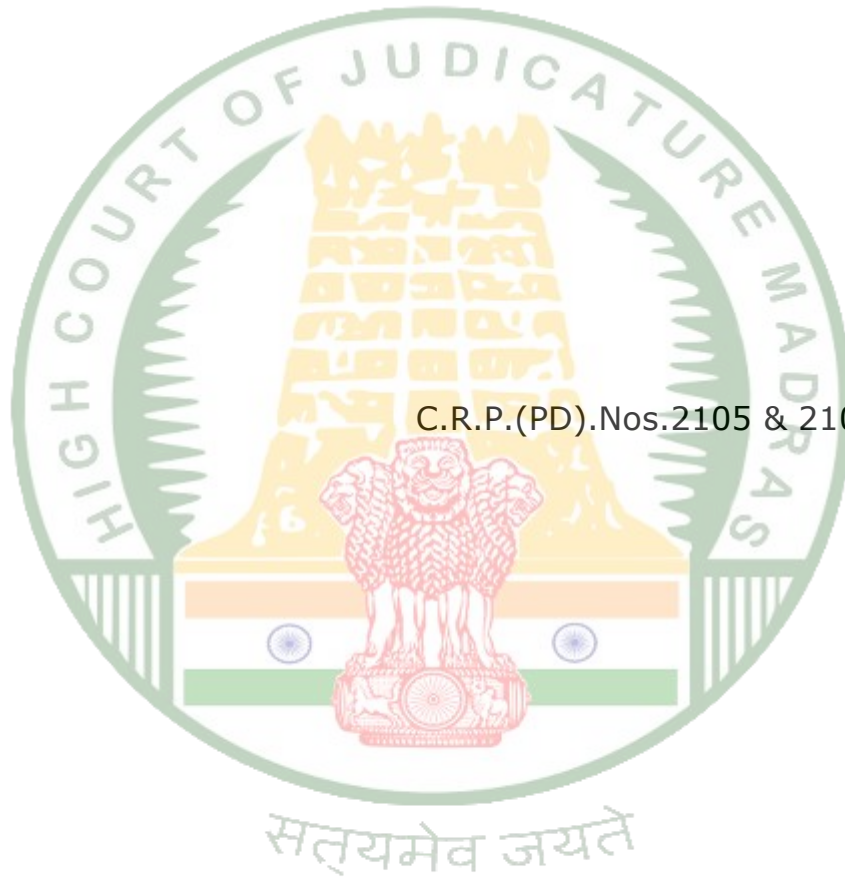


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R.SURESH KUMAR, J.

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