

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2019

Coram

The Honourable Mr. Justice R. Subbiah
and
The Honourable Mrs. Justice T. Krishnavalli

Original Side Appeal Nos. 241, 242 and 244 of 2019
and
C.M.P. Nos. 20974, 20976, 20985, 20992, 20995, 22182 and 22204
of 2019

1. Arif Buhary Rahman
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.. Appellants in all the Appeals

Versus

1. Siddesh Kshirsagar

Room No.332, Amar Veer Serva Sangh
Jijamata Nagar, G.D. Ambedkar Marg
Kalachowki, Mumbai - 400 033

2. Pueblo Holdings Limited

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

.. Respondents in all the appeals

O.S.A. No. 241 of 2019:- Appeal filed Clause 15 of the amended Letters Patent read with Order XXXVI Rule 1 of the Original Side Rules against the Order dated 05.07.2019 passed in O.A. No. 510 of 2019 in C.S. No. 320 of 2019 on the file of this Court.

O.S.A. No. 242 of 2019:- Appeal filed Clause 15 of the amended Letters Patent read with Order XXXVI Rule 1 of the Original Side Rules against the Order dated 05.07.2019 passed in Application No. 4033 of 2019 in O.A. No. 509 of 2019 in C.S. No. 320 of 2019 on the file of this Court.

O.S.A. No. 244 of 2019:- Appeal filed Clause 15 of the amended Letters Patent read with Order XXXVI Rule 1 of the Original Side Rules against the Order dated 05.07.2019 passed in O.A. No. 509 of 2019 in C.S. No. 320 of 2019 on the file of this Court.

Prayer in Application No.509 of 2019: 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 grant an interim injunction restraining the respondents/defendants from proceeding with e.P.No.40/2019, or taking any steps in furtherance thereof, pending disposal of the suit.

Prayer in Application No.510 of 2019: 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 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.

Prayer in Application No.4033 of 2019:-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 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.

Prayer in C.S.No.320 of 2019:

a. To declare that in the light of the decision of the Hon'ble Supreme Court dated 26.11.2018 in Special Leave Petition No.22057 to 22070 of 2018, this Honourable Court does not have the territorial jurisdiction to adjudicate upon the title of inter alia the plaintiff's shares in Star Health.

b. To declare that in light of the decision of the Hon'ble Supreme Court dated 26.11.2018 in Special Leave Petition No.22057 to 22070 of 2018, this Honourable Court does not have the territorial jurisdiction to entertain E.P.No.40 of 2019 instituted by the defendants against inter alia the plaintiffs.

c. For a permanent injunction restraining the defendants from proceedings with E.P.No.40 of 2019 of taking any steps in furtherance thereof.

d. To declare that the defendants have committed the tort of malicious legal process.

e. To declare that the defendants have committed the tort of abuse of legal process.

f. To declare that the defendants have committed the tort of conspiracy.

g. For a permanent injunction restraining the 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 contracting the Buyers and/ or any authorities and/ or any person connected to the transaction.

h. Damages if INR 1,00,01,000/- payable jointly and severally by the defendants to the Plaintiffs due to the abuse of legal process, conspiracy and interference with the transaction by the defendants, and any further sums due and payable to the plaintiffs as compensation for actual loss suffered.

I. Costs of the Suit.

J. Such further orders as this Honourable Court may deem fit and proper in the interests of justice.

For Appellants : Mr. K. Sukumaran
for Mr. N. Senthil Kumar & A.S. Bhargavnath
in OSA No.241 of 2019

Mr. J. Sivanandaraj
for Mr. N. Senthil Kumar & A.S. Bhargavnath
in OSA No. 242 of 2019

Mr. Ar.L. Sundaresan, Senior Advocate
for Mr. N. Senthil Kumar & A.S. Bhargavnath
in OSA No. 244 of 2019

For Respondents : Mr. Ratnaka Banerji, Senior Advocate
for Mr. K. Mukund Rao
in all the appeals

COMMON JUDGMENT

R. SUBBIAH, J

All these appeals arise out of a common order dated 05.07.2019 passed by the learned single Judge in Original Application Nos. 509, 510 and Application No. 4033 of 2019 in C.S. No. 320 of 2019.

2. The appellants herein are the plaintiffs in C.S. No. 320 of 2019. They have instituted the suit for the following relief:-

"a. To declare that in the light of the decision of the Hon'ble Supreme Court dated 26.11.2018 in Special Leave Petition No. 22057 to 22070 of 2018, this Honourable Court does not have the territorial jurisdiction to adjudicate upon the title of inter alia the plaintiff's shares in Star Health;

b. To declare that in light of the decision of the Hon'ble Supreme Court dated 26.11.2018 in Special Leave Petition No. 22057 to 22070 of 2018, this Honourable Court does not have the territorial jurisdiction to entertain E.P. No. 40 of 2019 instituted by the defendants against inter alia the plaintiffs;

c. For a permanent injunction restraining the defendants from proceedings with E.P. No. 40 of 2019 or taking any steps in furtherance thereof;

d. To declare that the defendants have committed the tort of malicious legal process

e. To declare that the defendants have committed the tort of abuse of legal process

f. To declare that the defendants have committed the tort of conspiracy

g. For a permanent injunction restraining the 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 contracting the Buyers and/or any authorities and/or any person connected to the transaction

h. Damages of INR 1,00,01,000/- payable jointly and severally by the Defendants to the plaintiffs due to the abuse of legal process, conspiracy and interference with the transaction by the defendants, and any further sums due and payable to the plaintiffs as compensation for actual loss suffered;

i. Costs of the suit

j. Such further orders as this Honourable Court may deem fit and proper in the interests of justice."

3. Thus, it is evident that the suit itself has been filed by the plaintiffs by specifically contending that this Court has no jurisdiction to entertain the Execution Petition which was filed to execute the foreign award dated 09.04.2017 and 06.08.2017 passed by the Sole Arbitrator Mr. David Farrington.

4. Pending suit, the appellants/plaintiffs have filed Application No .509 of 2019 praying 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.

5. The appellants/plaintiffs also filed another application being Application No. 510 of 2019 praying 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 contracting the Buyers and/or any authorities and/or any person connected to the transaction pending disposal of the suit.

6. The learned single Judge earlier granted an order of interim injunction on 25.04.2019 in O.A. No. 509 of 2019 in C.S. No. 320 of 2019. Seeking to vacate the order of interim injunction, the respondents/defendants herein have filed Application No. 4033 of 2019 in O.A. No. 509 of 2019 in C.S. No. 320 of 2019.

7. Before institution of the present suit in C.S. No. 320 of 2019, a suit was filed in C.S. No. 33 of 2018 among the parties herein with respect to the same subject. Pending C.S. No. 33 of 2018, Application No. 1387 of 1392 of 2018 in Application No. 292 of 2018 in C.S. No. 33 of 2018 was filed. It is seen that Application No. 1387 and 1388 of 2018 have been filed by the first defendant in the suit in C.S. No. 33 of 2018 to revoke the leave granted to institute the suit in and by order dated 12.01.2018 passed in Application No. 292 of 2018 in C.S. No. 33 and to reject the suit. The learned single Judge by a common order dated 06.06.2018 granted leave to sue inter alia dismissed the application of the defendant to reject the plaint.

8. Challenging the order dated 06.06.2018 passed in Application No. 1387 of 1392 of 2018 in Application No. 292 of 2018 in C.S. No. 33 of 2018 was filed, O.S.A. Nos. 220, 221, 22, 223, 227, 228, 230 to 237 of 2018 have been filed before the Division Bench of this Court. The Division Bench, by Judgment dated 03.08.2018 held that no relief either direct or indirect can be sought against the defendants under the Indian Law and therefore, this Court has no jurisdiction to entertain the suit. Accordingly, the Division Bench reversed the decision rendered by the learned single holding that this Court has no jurisdiction to decide the question of title to the share and the Courts in Dubai alone have the territorial jurisdiction to decide the dispute. A challenge has been made to the Judgment dated 03.08.2018 in O.S.A Nos. 220 of 2018 etc., before the Honourable Supreme Court by filing SLP No. 22057 to 22070 of 2018. The Honourable Supreme Court dismissed the Special Leave Petitions on 11.08.2018. Thereafter, the aforesaid three applications were taken up for hearing by the learned single Judge.

9. By the common order dated 05.07.2019, which is assailed in these appeals, the learned single Judge dismissed the applications filed by the appellants for grant of interim injunction and vacated the interim injunction granted on the ground that the question relating to jurisdiction can very well be decided by the Executing Court. For more clarity, the observations made by the learned single Judge in Para No.36 of the common order dated 05.07.2019 is as follows:-

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 Execution 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 the 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 C.S. 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. Sivanandaraj, 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 to 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 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 and Application No. 4033 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 to decide the question of title to the shares."

10. Assailing the order passed by the learned single Judge, the present Original Side Appeals have been filed by mainly contending that the observations made by the learned single Judge in para No.39 of the order to the effect that the Execution Court can definitely go into the question as to whether it has jurisdiction to entertain the Execution Proceedings and also decide whether it has jurisdiction to go into the question of title to the shares.

11. The learned counsel for the appellants would only contend that this Court has no jurisdiction to decide the question of title/beneficial interest over the shares held in a

foreign company and the Courts at Dubai are competent to decide the dispute. Merely because the subject shares have been issued by an Indian Company does not mean that cause of action has arisen in India. Therefore, it is vehemently contended that the foreign arbitral awards dated 06.04.2017 and 09.08.2017 cannot be executed before this Court by way of EP No. 40 of 2019. The learned single Judge failed to consider the aforesaid aspects and therefore the learned counsel prayed for setting aside the order dated 05.07.2019 passed by the learned single Judge.

12. The learned Senior counsel appearing for the respondents vehemently opposed the appeals and would contend that the learned single Judge only held that the Execution Court can examine the question as regards the jurisdiction of the Court to entertain the Execution Petition as well as the title to the shares. Such an order passed by the learned single Judge is perfectly in order. The question as regards jurisdiction can very well be examined by the Executing Court and there is no embargo for the same. In such view of the matter, the order passed by the learned single Judge does not call for any interference by this Court and therefore the learned Senior counsel appearing for the respondents prayed for dismissal of the appeals.

13. We have heard the counsel for both sides and perused the material records. The only question required to be examined by us in these appeals is whether the Executing Court can go into the question as to whether it has jurisdiction to entertain the execution proceedings and also to decide whether it can examine the title to the shares in dispute. It is contended that the foreign arbitral awards passed by an Arbitrator outside India is sought to be executed before the Executing Court and therefore the Executing Court has no jurisdiction at all to take up the Execution Petition.

14. The learned single Judge negatived the contentions urged on behalf of the appellant and held that the Executing Court can decide the question of jurisdiction and proceed with the execution proceedings. In effect, the learned single Judge held that if the Execution Court finds that it cannot decide the question of ownership of shares and concludes that such a question has to be decided only by the Court in Dubai, it need not proceed with the Execution Proceedings leaving the parties to work out their remedy in a manner known to law. We are in complete agreement with such a finding rendered by the learned single Judge. When the question of jurisdiction is raised, the Executing Court is competent to decide as to whether it has jurisdiction to entertain the Execution Petition and to decide the disputes raised thereof. This can be taken up as a preliminary issue for consideration by the trial Court. If the

Executing Court comes to the conclusion that it has got jurisdiction to deal with the Execution Petition, then it can decide whether it has got jurisdiction to go into the dispute with respect to the title of the share. Such an exercise shall be completed by the Executing Court preferably within a period of eight weeks from the date of receipt of a copy of this order.

15. In the result, we confirm the order dated 05.07.2019 passed by the learned single Judge, which is impugned in these appeals. The Original Side Appeals are dismissed. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

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To

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

+2cc to Mr.K.Mukund Rao, Advocate, SR.Nos.87683 & 87684.

+3cc to Mr.N.Senthikumar, Advocate, SR.Nos.87968 to 87970.

Common Judgment
in OSA Nos. 241, 242 & 244/2019

SSP(CO)

CSR:m 20.03.2020

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