

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2019

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

CMA. No.2264 of 2018
and
C.M.P.No.17324 of 2018

M/s.Selva Kumar Spinners Private Limited,
Represented by its Managing Director,
Mr.P.M.Ramasamy,
Having Business at SF No.10/3 & 936,
Selva Nagar, Thandampalayam Post,
Tirupur - 638 109. ... Appellant

Vs.

M/s.Liberty Clothing Company,
Represented by its proprietor,
R.Meharaj,
W/o.Mr.Rahim,
Having business at
No.13/1, Appachi Nagar Main Road,
Tirupur - 641 607. ... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Order XLIII Rule 1 of C.P.C against the order of the learned Principal District Judge, Tirupur dated 12.07.2018 passed in I.A.No.931 of 2018 in O.S.No.265 of 2018.

For Appellant : Mr.C.P.Palanichamy

For Respondent : Mr.V.R.Kamalanathan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the order of the learned Principal District Judge, Tirupur dated 12.07.2018 passed in I.A.No.931 of 2018 in O.S.No.265 of 2018.

2. The above appeal is directed against an ex-parte injunction granted by the trial Court in I.A.No.931 of 2018 dated 12.07.2018, wherein the trial Court directed the appellant/defendant not to supply the material other than to the

respondent/plaintiff, till the disposal of the suit as per the terms of contract. After receipt of the order, without approaching the trial Court, the appellant has preferred the above appeal directly. The trial Court in exercise of discretionary power after recording reasons only granted an order of interim injunction. It is always open to the appellant/defendant to approach this Court by filing an affidavit to get the injunction vacated on merits. The appeal does not disclose any extraordinary circumstances or irreparable loss warranting interference. On the other hand, on the very same issue, out of the very same contract, both the parties have settled their dispute. Normally this Court does not interfere with the discretionary power exercised by the Court unless it is fainted with arbitrary exercise of such power, patently illegal or capricious. The appellant cannot approach this Court without exhausting the effective remedy available to him. Therefore, without going into the merits of the appeal, this Court directs as follows:

(i) The appellant is given liberty to approach the trial Court with appropriate application to vacate the injunction.

(ii) On such an application being filed, the trial Court is directed to dispose of the same within a period of three months from the date of filing of the application.

3. Accordingly, the Civil Miscellaneous Appeal is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bri

To

1. The Principal District Judge,
Tirupur

2. The Section Officer,
V.R.Section, High Court, Madras-104

+1cc to Mr. P.Palanichamy, Advocate, S.R.No.37476

+1cc to Mr.Kamalanathan, Advocate, S.R.No.37439

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KK(CO)
vum(24/05/2019)