



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 2ND DAY OF JANUARY 2020

THE HON'BLE MR. JUSTICE M.SUNDAR

A.No.3569 of 2018

in

C.S.No.843 of 2007

Sridhar Nagarajan,
Proprietor,
Shree Velan Properties,
4/1, Balaji Apartments,
Seethammal Colony First Cross Street,
II Main Road, Alwarpet,
Chennai-600 018.

..Applicant/Plaintiff

-Versus-

1.Indiabulls Real Estate Ltd.,
having Branch Office at
New No.27, New MGR Main Road,
Taramani, Perungudi-Taramani By Pass Road,
Kandanchavadi, Chennai 600 096.

2.M/s.Selene Estate Private Limited,
having Branch Office at
New No.27, New MGR Main Road,
Taramani, Perungudi-Taramani By Pass Road,
Kandanchavadi, Chennai 600 096. ..Respondents/Defendants

Application praying that this Hon'ble Court be pleased to direct the Respondents/Defendants to furnish security in respect of the suit claim of Rs.15,00,00,000/- before such date as may be specified by this Hon'ble Court, failing which pass an order of attachment before Judgment of the property described in the schedule annexed to the Judges'



This application coming on this day before this court for hearing, the Court made the following order:

Instant application has been taken out by the plaintiff inter alia under Order XXXVIII Rule 5 and Section 151 of 'The Code of Civil Procedure, 1908' (hereinafter 'CPC' for the sake of brevity) with a prayer for 'attachment before judgment' (hereinafter 'ABJ' for the sake of brevity).

2. The defendants have filed a counter affidavit.

3. Notwithstanding very many averments in the counter affidavit, learned counsel for defendants draws the attention of this Court to the fact that a similar Order XXXVIII Rule 5 CPC application i.e., ABJ application was taken out by the plaintiff earlier and the same came to be dismissed by another Hon'ble Single Judge, vide order dated 31.07.2008. To be noted, this is a common order in injunction application and application in A.No.6417 of 2007. This common order reads as follows:

'Pending suit for recovery of a sum of Rs.15 crores as and by way of damages with future interest and for permanent injunction, the plaintiff has come up with the present applications O.A. No. 1096 of 2007 and A.No.6417 of 2007, seeking inter alia (i) an interim order of injunction restraining the respondents from alienating the suit schedule property and (ii) a direction to the



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respondents to furnish security for the suit of claim, failing which to pass an order of attachment before judgment.

Heard Mr.T.V.Ramanujam learned senior counsel appearing for the applicant, plaintiff and Mr.V.Lakshmi Narayanan learned counsel appearing for the respondents/defendants.

The entire claim of the plaintiff in the suit is on the bases that he entered into agreement with the defendants for the purchase of certain properties and for the sale of those properties with a view to share the profits and losses and that the respondent is backed out of those agreement, leading to a loss of income for the applicant/plaintiff. In essence, the suit is one for recovery of damages.

The suit is of the year 2007. It is not for specific performance of any agreement of sale. The written statement has also been filed. Under such circumstances, I am of the considered view that an injunction of the nature prayed for and an order under XXXVII Rule 5 CPC, cannot be granted at this stage. Therefore be the applications are closed'.



4. What is of relevance is the concluding paragraph.

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5. The suit is at a more advanced stage now as this Court is informed without any disputation or contestation that recording of evidence/marketing of documents or in other words, trial has been completed and that the suit is ready for arguments. This Court is informed without any disputation or disagreement that there is no intra court appeal against the aforementioned order dated 31.7.2018 made by another Hon'ble Single Judge of this Court. Therefore, as a matter of judicial discipline, there is absolutely no basis for this Court to take a different view as, if at all, the suit is at a more advanced stage as alluded to supra. Besides this, both parties before this Court i.e., the plaintiff and the two defendants undertake to have the main suit argued as expeditiously as possible, preferably, in the ensuing fortnight. In the light of all these determinants, instant application is also closed.

Sd./-M.S.J
02.01.2020

//Certified to be true copy//
Dated at Madras this the day of 2020.

JJ 20/01/2020

COURT OFFICER(O.S.)

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