IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.11.2020

PRONOUNCED ON : 10.12.2020

CORAM

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

CRP (PD) No.4737 of 2014

R.Shakeel Ahmed ...Revision Petitioner/Defendant

Vs

S.Syed Ghouse ... Respondent / Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records comprised in I.A.No.12365 of 2014 in O.S.No.5899 of 2013 on the file of the VII Assistant Judge, City Civil Court, Chennai and to set aside the order made in the said I.A.No.12365/14 dated 27.11.2014 thereby allowing the same.

For Petitioner ... Mr.V.Ayyadurai, Senior Counsel for Mr.A.Durai Eswar

For Respondent ... Mr.K.J.Parthasarathy

ORDER

This Civil Revision Petition has been filed by the Petitioner / Defendant against the dismissal of the application in I.A.No.12365 of 2014 in OS.No.5899 of 2013 on the file of the VII Assistant Judge, City Civil Court, Chennai, dated 27.11.2014.

2. The Petitioner herein has filed the application in I.A.No.12365 of 2014 in OS.No.5899 of 2013 on the file of the VII Assistant Judge, City Civil Court, Chennai under Order XVI Rule 1(2) and 6 of C.P.C and Section 162 of Evidence Act to issue Subpoena to the Assistant Commissioner, Commercial Tax, Porur Circle, Chennai – 87 to produce the Sales Tax Monthly Return-Form-1 pertaining to the "Optical Expressions" situated at K.K.Nagar and to give evidence and the Income Tax Asessing Officer, Income Tax Department, Nungambakkam High Road, Chennai – 34, to produce the Assessment pertaining to the respondent for the Financial Year from 2009-2010; 2010-2011; 2011-2012; 2012-2013 and 2013-2014 and to give evidence. The learned VII Assistant Judge, City Civil Court, Chennai, by the order dated 27.11.2014 had dismissed the said application. Aggrieved by the same, the Petitioner / Defendant has filed the present Civil Revision Petition.

3. Heard Mr.V.Ayyadurai, the learned Senior Counsel Assisted by Mr.A.Durai Eswar, learned counsel for the petitioner and Mr.K.J.Parthasarathy, learned counsel for the respondent.

4. The learned Senior Counsel for the petitioner has submitted that the respondent herein had filed a suit in O.S.No.5899 of 2013 on the file of the VII Assistant Judge, City Civil Court to declare that the negotiable instruments / cheques listed in suit 'A' Schedule are non-est factum and for permanent injunction restraining the Petitioner herein from interfering with his business and peaceful possession in the suit 'B' Schedule property and also for mandatory injunction to direct the Petitioner herein to return the cheques listed in the suit – A-Schedule. He further submitted that the respondent herein has pleaded in his Plaint that the Petitioner herein was employed by him as Manager to look after the optical business which is running at K.K. Nagar, Vadapalani, Medavakkam and Thoraipakkam in the name and style of 'M/s.Optical Expressions'. He further submitted that in the said suit, the respondent also pleaded that since the Petitioner herein betrayed him and commenced identical optical business in the name and style of 'Vision Expressions' at Thoraipakkam and also at K.K.

Nagar in the name and style of 'Glassion' by swindling the money and stock from his shop, he terminated the petitioner from his employment. He further submitted that the Petitioner is the own brother-in-law of the respondent and both of them entered into partnership and started business in the name and style of 'Vision Expressions' at Thoraipakkam and also at K.K.Nagar. Subsequently, orally they dissolved the said partnership and orally partitioned the said business. The shop at K.K. Nagar, which is described in Plaint B Schedule Property has been allotted to the share of petitioner and the shop at Thoraipakkam was allotted to the shop of the respondent.

5. He further submitted that due to business rivalry, the respondent taking advantage of the fact that Sales Tax Registration stands in his name, he has filed the above suit claiming exclusive right in the said business. He further submitted that the petitioner has filed written statement mentioning the aforesaid facts. He further submitted that the Corporation License was issued in the name of the petitioner in respect of B Schedule Property, which was also one of the property in the said business. He further submitted that the petitioner has filed an Application in I.A.No.997 of 2014 to appoint an interim receiver to take over the possession and administration of the

B Schedule property and also filed another application in I.A.No.998 of 2014 to vacate the ad-interim injunction which was granted in I.A.No.15977 of 2013. He further submitted that in order to establish his claim in I.A.Nos.997 and 998 of 2014, the petitioner issued notice dated 09.06.2014 to the respondent under Order 11 Rule 16 of C.P.C to produce the original accounts written by him, which is in his possession, pertaining to the investment and expenditure of the suit B schedule property, but the respondent on 23.06.2014 gave an evasive reply. He further submitted that the petitioner had sent an Application to the Commissioner of Income Tax under Right to Information Act to provide Income Tax Assessment details of respondent for the Financial year 2009-2010; 2010-2011; 2011-2012; 2012-2013. The Commissioner of Income Tax had forwarded the said application to the Income Tax Officer and the Income Tax Officer by reply dated 12.08.2014 had stated that the Information could not be disclosed in view of the bar under Section 8(j) of the said Act and hence the petitioner had filed an Application in I.A.No.12365 of 2014 under Order XVI Rule 1(2) and 6 of C.P.C and Section 162 of Evidence Act to summon the Assistant Commissioner Commercial Tax to produce Sales Tax particulars and Income Tax Officer to produce Income Tax Returns pertaining to the respondent, but the learned Trial Court Judge had erroneously dismissed the said application. He further submitted that the aforesaid documents are absolutely necessary to prove that the petitioner herein and the respondent were running optical business as a partnership firm and therefore he prays to allow this Civil Revision Petition and to set aside the order passed by the learned Trial Judge in I.A.No.12365 of 2014.

6. Per contra, the learned counsel for the respondent has submitted that the case of the Petitioner is that the optical business has been running by himself and the respondent as partners and that being so, he has to establish the said contentions by producing oral and documentary evidence in the suit. He further submitted that as per the submissions made in the affidavit filed in support of I.A.No.12365 of 2014, the aforesaid documents are absolutely necessary to prove his claim in I.A.No.997 which has been filed to appoint an interim receiver to take over the possession of the suit B schedule property and I.A.No.998 of 2014 has been filed to vacate the ad-interim injunction which was granted in I.A.No.15977 of 2013. He further submitted that since the Trial Court has taken up the suit itself for Trial and on the side of the Plaintiff, the plaintiff examined himself as PW.1 by filing proof affidavit and also marked Ex.P.1 to Ex.P.3, the applications in I.A.Nos.997 of 2014 and 998 of 2014 need not be

taken into for enquiry and there was no necessity at all to issue summons to the Assistant Commissioner Officer and the Income Tax Officer to produce the petitioner's mentioned documents and give evidence. He further submitted that even as per the affidavit filed by the petitioner in I.A.No.12365 of 2014, admittedly, the Registration Certificate for the suit B schedule property stands in the name of the respondent and the Income Tax Returns sought to be produced also stands in the individual name of the respondent and as such the said documents are not relevant for deciding the issue either in the aforesaid I.A.Nos.997 and 998 of 2014 or in the suit. Taking into consideration the said fact, the Trial Court had dismissed the said application and in the said order, this Court need not interfere and therefore he prays to dismiss this petition.

7. A perusal of the typed set of papers filed by the petitioner shows that the respondent herein had filed the suit in OS.No.5899 of 2013 on the file of the VII Assistant Judge, City Civil Court to declare that the negotiable instruments / Cheques listed in suit A schedule property are non-est factum; for permanent injunction restraining the defendant therein from utilising the cheques issued; for permanent injunction restraining the defendant therein from interfering with the

business and possession of the suit B schedule property which is situated at K.K. Nagar and for Mandatory injunction to direct the defendant therein to return the aforesaid cheques.

8. According to the respondent, he was carrying optical business at Thoraipakkam, Vadapalani, Medavakkam and K.K.Nagar in the name and style of 'M/s.Optical Expressions' and he commenced the said business in the year 2003. His further case is that his sister got married to the petitioner herein in the year 2005 and he was employed as Manager in K.K.Nagar Branch, but subsequently, the petitioner herein had betrayed him and commenced identical optical business in the name and style of 'Vision Expressions' at Thoraipakkam and at K.K. Nagar in the name and style of 'Glassion' by swinding the stock, cash and stolen the hard disk which contains the details of all clients and suppliers and hence he terminated the petitioner from his employment and enraged by the same, the petitioner made attempts to interfere with the business which he runs in K.K. Nagar. His further case is that the petitioner had stolen the cheques and tried to misuse the same and hence he was constrained to file the above suit.

9. The petitioner has filed written statement stating that he and the respondent had been running optical shops in the name and style of 'Optical Expressions' at Thoraipakkam and K.K.Nagar in partnership. He further stated that subsequently, the said partnership was orally dissolved and by oral partition, the business which is running at K.K. Nagar (suit B schedule property) was allotted to his share and the shop at Thoraipakkam was allotted to the respondent. The said facts to be proved by adducing oral and documentary evidence such as partnership deed, etc.,

10. In the affidavit filed in support of I.A.No.12365 of 2014, the petitioner has stated that he filed an application in I.A.No.997 of 2014 to appoint an interim receiver to take possession of the suit B schedule property and I.A.No.998 of 2014 to vacate the ad-interim injunction which was granted in I.A.No.15977 of 2013 and in order to prove his claim in the said I.As., the production of Sales Tax monthly returns pertaining to “Optical Expressions” - TIN No.33491388086 for the period of February 2010 to August 2013 and Income Tax returns pertaining to the respondent here in PAN.No.AZBPS 2027A for the financial year 2009-2010, 2013-2014 are absolutely necessary. A perusal of the impugned order passed in I.A.No.12365 of 2014 shows

that already Trial commenced in the suit and the plaintiff examined himself as PW.1 by filing proof affidavit and also marked 3 documents as Exhibits P.1 to P.3 and under the said circumstances, it appears that the petitioner instead of defending the said suit by adducing evidence he pressed the Trial Court to take up the interlocutory applications which were filed to vacate the ad interim injunction and to appoint interim receiver. The conduct of the petitioner shows that he was not interested in conducting the main suit and he was interested only in conducting interlocutory application.

11. It is also to be pointed out that the petitioner himself has admitted in his written statement that the registration certificate for the business running in the B schedule property stands in the name of respondent only and, in such a case, the production of Sales Tax monthly return pertaining to the said business would not serve any purpose for deciding the issue namely whether the said business was run by a Partnership Firm or not. Further, the petitioner wants to summon the Income Tax Officer to produce Income Tax returns pertaining to the individual name of the respondent. The said document also would not help the Court to decide the issue whether the said business was run by a Partnership Firm. Though the Trial

Court has not stated in its order with clear terms that the aforesaid documents are not relevant for this case, it has been stated that the said application has been filed only to drag on the case as already the Trial was commenced and PW-1 was examined in Chief and 3 documents were marked as exhibits. Therefore, this Court does not find any infirmity in the said order. Hence, this Civil Revision Petition is liable to be dismissed.

12. In the result, this Civil Revision Petition is dismissed. No costs.

10.12.2020

Index: Yes/No
Speaking/Non-speaking Order
drl

To

The VII Assistant Judge,
City Civil Court, Chennai

P. RAJAMANICKAM,J.
drl

Pre-delivery Order made in

CRP (PD) No.4737 of 2014

10.12.2020