C.M.P. No. 12732 and 12733 of 2020
in
O.S.A. No. 254 of 2020

R. SUBBIAH, J
and
C. SARAVANAN, J
(Order of the Court is made by **R. Subbiah, J)**
(Through Video-conferencing)

This appeal is filed against the order dated 04.11.2020 passed by the learned single Judge in O.A. No. 484 of 2020 and Application Nos. 2538 and 2539 of 2020 in Civil Suit No. 266 of 2020.

2. The appellants are the plaintiffs in the suit in C.S. No. 266 of 2020. The suit was instituted for the following relief viz.,

(a) That this Honourable Court be pleased to declare the notice dated October 1, 2020 addressed by the defendant No.1 to the plaintiffs, as illegal, null and void

(b) That this Honourable Court be pleased to grant a permanent injunction restraining the defendant Nos. 1 and 2, their successors, assigns, agents and other related parties from acting in pursuance to the notice dated October 1, 2020, addressed by Defendant No.1 to the plaintiff and from, in any manner, enforcing the securities given/created under and pursuant to Amended and Restated Debenture Trust Deed dated February 18, 2020

(c) That this Honourable Court be pleased to grant a Mandatory injunction directing Defendant Nos. 1 and 2 to strictly follow the provisions of the Amended and Restated Debenture Trust Deed dated February 18, 2020."

3. According to the Plaintiffs, the first plaintiff is a company incorporated under the Companies Act, 1956 and is engaged, *inter alia,* in the business of real estate and infrastructure development. The Plaintiffs 2 and 3 are promoters of the first plaintiff. The first defendant is a closed-end fund incorporated in India and invests primarily in debt and debt related instruments of companies/entities in real estate sector in India. The first defendant is managed by IIFL Asset Management Limited, a company incorporated under the Companies Act, 1956. The defendant No.1 is a debenture holder under Debenture Trust Deed-1 (in short DTD) and DTD- 3. The second defendant is a company incorporated under the Companies Act. The second defendant is a Securities and Exchange Board of India (SEBI) registered Debenture Trustee and incorporated in 2015. The second defendant is a security trustee under DTD-1.

4. It is stated that the plaintiffs, in order to meet certain general corporate requirements issued 13,730 redeemable, unlisted, unrated, non-convertible debentures through private placement with a face value of Rs.10,00,000/- aggregating to Rs.1373,00,00,000/- (Rupees One Thousand Three Hundred and Seventy Three Crores Only) vide Debenture Trust Deed dated 01.10.2019 executed with the second defendant. The plaintiffs have

also issued redeemable, unlisted, unrated, non-convertible debentures through private placement with a face value of Rs.10,00,000/- aggregating to Rs.135,00,00,000/- (Rupees One Hundred and Thirty Five Crores Only) vide placement cum application dated 14.01.2020 in favour of the defendant No.2. According to the plaintiffs, as per the Debenture Trust Deed No.3, in case of any default, then Defendant No.2 had a right to call upon the plaintiffs to pay the amount to the Debenture Trustee.

5. It is stated by the plaintiffs that during the nation wide lock down imposed to curb Covid-19, the plaintiffs pre-paid a part of the total outstanding amount to maintain the minimum security cover as per the terms of DTD - 3. The plaintiff has not committed default under the DTD-3 and there was no occasion to declare an event of default under DTD-3. While so, on 01.10.2020, the defendant No.1 issued a notice calling upon the plaintiffs to make payments of the entire outstanding amount under DTD-3 by invoking Clause 16 (1) (f) thereof. According to the plaintiffs, the first defendant has issued the notice dated 01.10.2020 in complete violation of DTD-3 with a malafide intention alleging event of default and sought to recover the entire outstanding amount of Rs.1233,28,00,000/- (Rupees One Thousand Two Hundred and Thirty Three Crores Twenty Eight Lakhs Only) as on 30.09.2020

under DTD-3 to maintain the security cover, even though it was maintained by the plaintiffs. By the notice dated 01.10.2020, the first defendant threatened to enforce the security interest including the sale of REITS units. It is also stated that the first defendant is only a beneficiary and therefore, it has no jurisdiction to issue the notice dated 01.10.2020. If at all, such a notice could only be issued by the second defendant. It is in those circumstances, the plaintiff has filed the suit for the relief stated supra.

6. Pending suit, the plaintiffs filed O.A. No. 484 of 2020 seeking to grant an ad-interim injunction restraining the defendant Nos. 1 and 2, their successors, assigns, agents and other related parties from acting in pursuance to the notice dated 01.10.2020 addressed by the defendant No.1 to the plaintiffs and from, in any manner, enforcing the securities given/created under and pursuant to Amended and Restated Debenture Trust Deed dated 18.02.2020 as per the facts and circumstances of the case.

7. By order dated 09.10.2020, the learned single Judge granted an interim injunction restraining the respondents 1 and 2/defendants 1 and 2 from acting pursuance to the notice dated 01.10.2020 addressed by the defendant No.1 to the plaintiffs and from in any manner enforcing the securities

given/created under and pursuant to Amended and Restated Debenture Trust Deed dated 18.02.2020, till 29.10.2020. The relevant portion of the order dated 09.10.2020 is to the following effect:-

> "8. Having examined the documents which have been presented, I hold that, as a fact, the plaintiff had an agreement only with the second defendant and it is not known on what basis the first defendant had raised the demand in the notice dated 01.10.2020. I also take specific note of the pleadings wherein the plaintiffs have very specifically stated that they have not availed any facility under the IIFL Real Estate Fund Series -2, IIFL Real Estate Fund Series -3, IIFL Yield Enhancer Fund and IIFL India Housing Fund Series - 2. This statement in the plaint is also reiterated in the affidavit filed in support of the present application.
>
> 9. Taking note of that specific stand, an order of injunction is granted as prayed for. However, if on issuance of notice, if the first defendant produces document to show that the said documents are covered under any of the borrowings and have been offered as security towards any borrowings under IIFL Real Estate Fund Series - 2, IIFL Real Estate Fund Series -3, IIFL Yield Enhancer Fund and IIFL India Housing Fund Series - 2, by the plaintiff or by any other party, wherein the plaintiff had indirectly or directly consented for such grant of security, then this order shall be revisited.
>
> 10. Interim order as prayed for is granted by this Court till 29.10.2020. Order 39 Rule 3A to be complied with and an affidavit in that regard to be filed on or before 13.10.2020. Notice to the respondents through Court and privately returnable by 29.10.2020."

8. On notice, Application No. 2539 of 2020 was filed by the first defendant to vacate the interim injunction granted on 09.10.2020 in O.A. No. 484 of 2020 in C.S. No. 266 of 2020 and to dismiss O.A. No. 484 of 2020 in

C.S. No. 266 of 2020. By order dated 29.10.2020, the learned single Judge passed the following order:-

> "2. An order was passed on 09.10.2020 in O.A. No. 484 of 2020 in C.S. No. 266 of 2020, wherein interim order was granted.
>
> 3. In paragraph 7 of the order, the representation made by Mr. N.L. Rajah, learned Senior Counsel, that any notice can be initiated only on behalf of the second defendant and not on behalf of the first defendant has been recorded.
>
> 4. It is pointed out that the decree which had been drafted by the Registry, however, states that both the 1st and 2nd defendants are injuncted from proceeding further.
>
> 5. Mr. N.L. Rajah, learned Senior counsel, however states that there is a strong possibility of settlement being reached with respect to the issues raised in the plaint.
>
> 6. The representation by Mr. P.S. Raman, learned Senior counsel that the order of injunction was directed only against the first defendant and not against the second defendant is recorded.
>
> 7. If the vakalat of Mr. P. Giridharan, learned counsel who has entered appearance on behalf of the 2nd defendant is in order, Registry may also print the name of the learned counsel.
>
> 8. List the matter once again on 19.11.2020. Interim order already granted by this Court is extended till then."

9. Subsequently, on 29.10.2020, the Original Application Nos. 484, 2538 and 2539 of 2020 were listed before the learned single Judge to clarify the order dated 09.10.2020 and the further order dated 29.10.2020. On 04.11.2020, the learned single Judge passed the below mentioned order:-

> "Today, the matter is posted under the caption for being mentioned.
>
> 2. An order had been passed on 09.10.2020 and a further order had been passed on 29.10.2020. The parties to

the suit may interpret the orders and the reasoning thereof reading both the orders in conjunction, and also the observations made by the learned Senior counsel for the plaintiffs and the observations of the Court in the said orders.

3. The matter to be listed on the date already noted namely, 19.11.2020."

10. It is as against the order dated 04.11.2020, the present appeal is filed before this Court.

11. On 13.11.2020, an urgent motion was moved before this Court seeking interim relief pending the appeal. Taking note of the ensuing holidays and the urgency expressed by the counsel for the appellants, this Court granted an order of injunction till 19.11.2020. Subsequently, at the instance of the counsel for the respondents, urgent mention was made for suspending the interim order on 19.11.2020. This Court, by order dated 16.11.2020, directed the appeal to be posted today for admission.

12. Heard Mr. M.S. Krishnan, learned Senior counsel; Mr. N.L. Rajah, learned Senior counsel and Mr. Ar.L. Sundaresan, learned Senior counsel appearing for Mr. Mahesh Kumar, learned counsel for the appellants, Mr. P.S. Raman, learned Senior Counsel for Mr. Arun Karthik Mohan, learned counsel for first respondent and Mr. Aryama Sundaram, learned Senior

counsel assisted by Ms. Rohini Musa for Mr. P. Giridharan and Santosh, learned counsel for the second respondent.

13. Mr. M.S. Krishnan, learned Senior counsel would submit that the interim order granted by the learned single Judge on 09.10.2020 is in force and it has not been modified or varied. The respondents 1 and 2, taking advantage of the order dated 04.11.2020 passed by the learned single Judge to the effect that the parties may interpret the orders and the reasoning thereof on their own, attempting to enforce the security interest including the sale of REITS units. If the REITS units are sold, it will be difficult for the plaintiffs to recover the same even if they succeed in the suit. It is also contended that the argument that the relief sought for in the suit has become infructuous is not correct and the dispute in the suit remains to be adjudicated on merits. According to the learned Senior counsel, in an extraordinary circumstances of this nature, without going into the technicalities, the interest of the appellants/plaintiffs has to be protected and the dispute must be adjudicated on merits. This Court, as a Court of equity, has to protect the interest of the appellants and should not made them to suffer. There are several disputed questions remain to be adjudicated in the suit and therefore, he prayed for continuation of the order of injunction passed by this Court on 13.11.2020.

14. Mr. N.L. Rajah, learned Senior counsel for the appellants would bring to the notice of this Court that the appellants are taking earnest efforts to arrive at a settlement of the dispute between the parties. While so, if the interim injunction granted by this Court is vacated, it will render the efforts taken by the appellants to arrive at a settlement ineffective and therefore, he prayed for extending the interim order granted by this Court on 13.11.2020.

15. Mr. Ar.L. Sundaresan, learned Senior counsel for the appellants would contend that the order dated 04.11.2020 passed by the learned single Judge is sought to be interpreted by the second defendant in such a way that the injunction granted by the learned single Judge will not bind the second defendant and it was only directed against the first defendant. The learned single Judge granted an interim injunction "as prayed for" to indicate that the defendants 1 and 2 are jointly restrained from pursuing any further action on the basis of the notice dated 01.10.2020 issued by the first defendant. The respondents 1 and 2 cannot be allowed to interpret the order dated 04.11.2020 passed by the learned single Judge to suit their convenience and to cause prejudice to the appellants. According to the learned Senior counsel, the order of interim injunction granted by the learned single Judge on 09.10.2020 has not been modified or varied in the subsequent order dated 04.11.2020.

Therefore, the learned Senior counsel prayed for continuance of the interim injunction granted in this appeal on 13.11.2020 for a further period.

16. Mr. P.S. Raman, learned Senior counsel for the first defendant would contend that the learned single Judge, in the order dated 29.10.2020, specifically recorded and observed that the order of interim injunction was directed only against the first defendant and not against the second defendant. If the order dated 04.11.2020 passed by the learned single Judge is read along with the previous order dated 29.10.2020, it will make it abundantly clear that the order of interim injunction can only be enforced as against the first defendant and it has got nothing to do with the second defendant. Further, the order dated 04.11.2020 passed by the learned single Judge is not an appellable order and therefore, this appeal itself is not maintainable. By the order dated 04.11.2020, the learned single Judge has only clarified the earlier orders dated 09.10.2020 and 29.10.2020 by leaving it open to the parties to interpret it in conjunction with the observations made therein. Further, the suit itself has been filed on receipt of the notice dated 01.10.2020 issued by the first defendant but during the pendency of the suit, another notice was issued by the second defendant, which has not been challenged by the plaintiffs till date. In such circumstances, when the relief sought for in the suit itself has become

infructuous, the learned Senior counsel for the first defendant prayed for dismissal of the appeal as not maintainable.

17. Mr. Aryama Sundaram, learned Senior counsel for the second defendant would contend that the suit itself was filed only as against the notice dated 01.10.2020 issued by the first defendant, which could be evident from the cause of action pleaded in the suit. Even as admitted by the plaintiffs, a subsequent notice dated 05.10.2020 was issued by the second defendant calling upon the plaintiffs to pay the outstanding amount. While so, when the relief sought for in the suit itself has become infructuous, an interim injunction cannot be granted or extended at the instance of the appellants. By filing the present appeal, the plaintiffs are attempting to keep the suit alive when the relief sought for itself has become infructuous. In this context, reliance is placed on the decision of the Honourable Supreme Court in the case of (**Shipping Corporation of India Ltd., vs. Machado Brothers and others)** reported in **(2004) 11 Supreme Court Cases 168** wherein it has been held that if the original proceeding has become infructuous, *ex debito justitiae*, it will be the duty of the Court to take such action as is necessary in the interest of justice, which includes disposal of infructuous litigation.

18. Mr. Aryama Sundaram also submitted that the order which is impugned in this appeal is not an appealable order, while so, the appeal is not maintainable at all. In this context, the learned Senior counsel for the second defendant placed reliance on the decision of the Division Bench of this Court in **M/s. Magic Frames, Partnership firm, represented by its Partner Sarath Kumar Versus Radiance Media Limited, Chennai reported in 2019 (4) CTC 497 = 2019 (5) MLJ 479**. The learned Senior counsel also advanced detailed arguments relating to the merits of the case and the default committed by the plaintiff in fulfilling their obligations under the contract. He also submitted that because of the pendency of the present proceedings, the value of security offered by the plaintiffs is diminishing day by day and any further delay would cause utmost prejudice to the individual debenture holders. In such circumstance, the learned Senior counsel prayed for suspending the interim injunction granted by this Court on 13.11.2020 and to dismiss the appeal.

19. Though very many contentions were advanced by the respective counsel for the parties, having regard to the scope of this appeal against the order passed by the learned single Judge, we are not inclined to go into the merits of the case. The order, which is questioned in this appeal, is the one

passed by the learned single Judge to clarify the earlier order *inter alia* leaving it open to the parties to interpret those orders in their own way. According to the interpretation of the Senior counsel for the appellants, the order, which is impugned in this appeal, would bind the second defendant as well inasmuch as the learned single Judge has categorically held that there will be an injunction as prayed for, meaning thereby, the order of injunction will bind the second defendant from proceeding further to enforce the securities offered by the plaintiff. On the other hand, the learned Senior counsel for the respondents would interpret the order of the learned single Judge to the effect that it will only bind the first defendant and it will not have any force as against the second defendant and therefore, it is open to the second defendant proceed further to recover the outstanding amount by invoking Clause 16 (1) (f) of DTD-3.

20. When this appeal was moved before us on 13.11.2020, we have passed an order of interim injunction taking note of the urgency expressed on behalf of the appellants and the ensuing Court holidays at the instance of the counsel for the appellants. In such view of the matter, we grant liberty to the parties to this appeal to approach the learned single Judge, seeking any further clarification that may be required by them, as against the orders dated

09.10.2020, 29.10.2020 and 04.11.2020, which is impugned in this appeal. While so, the interim injunction granted on 13.11.2020, which was subsequently extended on by us 16.11.2020, need not be continued. Therefore, the order dated 13.11.2020 and 16.11.2020 passed by us in this appeal is suspended. Registry is directed to post this appeal for further hearing after four weeks.

(R.P.S.J.,) **(C.S.N.J.,)**

20.11.2020

rsh

R. SUBBIAH, J
and
C. SARAVANAN, J

rsh

CMP Nos. 12732 & 12733 of 2020
in
O.S.A. No. 254 of 2020

20-11-2020