IN THE HIGH COURT OFJUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 21ST DAY OF JANUARY 2020

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

A.Nos.8851, 8852, 4039 and 5955 of 2019
in
C.S.Nos.434 and 438 of 2018 and 365 and 483 of 2019

C.S.No.434 of 2018 :

R.Deepak,
S/o.B.Rameshchand,
23/45, Chengalvarayan Street,
Triplicane,
Chennai-600 005. ..Plaintiff

-Versus-

V.Pramod,
S/o.B.Vijayraj,
No.51, 1st Main Road,
New Colony,
Chrompet,
Chennai-600 044. ..Defendant

A.No.8851 of 2019:

V.Pramod,
S/o.B.Vijayraj,
No.51, 1st Main Road,
New Colony,
Chrompet,
Chennai-600 044. ..Applicant

-Versus-

R.Deepak,
S/o.B.Rameshchand,
23/45, Chengalvarayan Street,
Triplicane,
Chennai-600 005. ..Respondent

Application praying that this Hon'ble Court be pleased to direct the Respondent/Defendant to furnish bank guarantee for the suit claim of Rs.2,37,22,180/- (Rupees two crores thirty seven lakhs twenty two thousand one hundred and eight only) within the time stipulated by this Hon'ble Court pending disposal of the suit.

C.S.No.438 of 2018

R.Deepak,
S/o.B.Rameshchand,
23/45, Chengalvarayan Street,
Triplicane,
Chennai-600 005. ..Plaintiff

-Versus-

V.Vishal
S/o.B.Vijayraj,
No.51, 1st Main Road,
New Colony,
Chrompet,
Chennai-600 044. ..Defendant

A.No.8852 of 2019:

V.Vishal
S/o.B.Vijayraj,
No.51, 1st Main Road,
New Colony,
Chrompet,
Chennai-600 044. ..Applicant

-Versus-

R.Deepak,
S/o.B.Rameshchand,
23/45, Chengalvarayan Street,
Triplicane,
Chennai-600 005. ..Plaintiff

A.No.8852 of 2019

Application praying that this Hon'ble Court be pleased to direct the Respondent/Defendant to furnish bank guarantee for the suit claim of Rs.2,59,58,219/- (Rupees two croes fifty nine lakhs fifty eight thousand two hundred and nineteen only) within the time stipulated by this Hon'ble Court pending disposal of the suit.

C.S.No.365 of 2019 in A.No.4039 of 2019:

R.Deepak,
S/o.B.Rameshchand,
23/45, Chengalvarayan Street,
Triplicane,
Chennai-600 005. ..Applicant/Plaintiff

-Versus-

Mr.V.Saroja
W/o.B.Vijayraj
No.51, 1st Main Road,
New Colony
Chrompet,
Chennai 600 044. ..Respondent/Defendant

A.No.4039 of 2019

Application praying that this Hon'ble Court be pleased to furnish security for the suit claim of Rs.2,07,80,730 (Rupees two crores seven lakhs eighty thousand seven hundred and thirty only) within the time stipulated by this Hon'ble Court failing which, to pass an order of attachment before Judgment of immovable property belonging to the Respondent/ Defendant to the extent of 1/4 share in house property situated at Old Door No.23, New Door No.45, Chengalvarayan Street, Triplicane, Chennai 600 005 pending disposal of the above suit.

C.S.No.483 of 2019 in A.No.5955 of 2019:

R.Deepak,
S/o.B.Rameshchand,
23/45, Chengalvarayan Street,
Triplicane,
Chennai-600 005. ..Applicant/Plaintiff

-Versus-

B.Vijayraj
No.51, 1st Main Road,
New Colony

Chrompet,
Chennai 600 044 ..Respondent/Defendant

A.No.5955 of 2019

Application praying that this Hon'ble Court be pleased to direct the Respondent/Defendant furnish security for the suit claim of Rs.6,10,34,925/- (Rupees six crores ten lakhs thirty four thousand nine hundred and twenty five only) within the time stipulated by this Hon'ble Court failing which, to pass an order of attachment before Judgment of immovable properties belonging to the Respondent/ Defendant as mentioned in the schedule of Property against the Schedule mentioned property No.2 to issue precept through the District Munsif Court, Alandur and schedule mentioned property No.3 to issue precept through the District Munsif Court, Poonamallee pending disposal of the above suit.

These Applications coming on this day before this Court for hearing, the Court made the following order:

Application Nos.4039 and 5955 of 2019 are filed by the applicant against Saroja and Vijayraj respectively to direct the respondents/defendants to furnish security for the suit claim of Rs.2,07,80,730/- in C.S.No.365 of 2019 and Rs.6,10,34,925/- in C.S.No.483 of 2019. In addition, Application Nos.8851 and 8852 of 2019 are filed by a common applicant R.Deepak against V.Pramod and V.Vishal respectively to direct the respondents to furnish the bank guarantee for the suit claim of Rs.2,37,22,180 in C.S.No.438 of 2018 and Rs.2,59,58,219/- in C.S.No.438 of 2018.

2. I heard the learned counsel for the applicant and the learned counsel for the respondent in the respective applications. The learned counsel for the applicant submitted that a Memorandum of Understanding dated 17.06.2015 was entered into between the respondents in Application Nos.4039 and 5955 of 2019 and the applicant for the sale and purchase of shares owned by the respective respondents. He further submitted that pursuant to the said Memorandum of Understanding, the applicant made payments towards the purchase of the said shares. Thereafter, on 14.07.2016, a deed of cancellation was executed whereby the Memorandum of Understanding dated 17.06.2015 was cancelled. As a result of such cancellation, he submitted that the amounts paid under the Memorandum of Understanding are liable to be refunded to the applicant. In support of the contention that these amounts were paid to the respondent, he referred to and relied upon the balance sheet of the applicant as on 31.03.2017. From the said balance sheet, he pointed out that the payment to Saroja and Vijayraj are reflected under the Column "Loans and Advances" on the Assets side of the Balance Sheet. He further submitted that notices were exchanged with regard to this transaction and that in the notice from the lawyer for the respondents, the receipts of these amounts towards consideration for purchase of shares was admitted at Paragraph No.7 of the reply dated

14.06.2018 from the lawyer for the respondents. Consequently, he submitted that this is an admitted liability and that it is just necessary that the respondents should be directed to provide security for the suit claim at least to the extent of 25%.

3. In reply, the learned counsel for the respondent in the respective applications submitted that Mr.Vijayraj was the Managing Director of M/s.Pradeep Stainless India Pvt. Ltd., which is the company whose shares were transferred. He further submitted that a family arrangement was entered into on 17.05.2016, whereby it was agreed that Vijayraj would exit from M/s.Pradeep Stainless India Pvt. Ltd., subject to payment of consideration towards the shareholding of himself and his wife in the said company and also towards remuneration payable to them. In this regard, he referred to the said family arrangement and pointed out that a total sum of Rs.17.70 crore was payable in terms of said family arrangement. All the subsequent agreements were entered into for the purposes of giving effect to the said family arrangement according to the learned counsel.

4. As regards the Memorandum of Understanding dated 17.06.2015, he pointed that the said Memorandum of Understanding was cancelled by deed of cancellation dated 14.07.2016 so as to adopt a new tax efficient mode of

transferring the shares to the family of Ramesh Chand viz., brother of Vijayraj. Therefore, he pointed out that gift deeds were executed by Vijayraj and his wife Saroja on 28.07.2016 to and in favour of Ramesh Chand whereby the entire shareholding of Vijayraj and his wife were transferred by way of gift to Ramesh Chand, who is the father of the applicant/plaintiff. In this connection, he also pointed out that the Directors of M/s.Pradeep Stainless India Pvt. Ltd., at a meeting on 08.08.2016, approved the transfer of the shares of Vijayraj and Saroja to Ramesh Chand pursuant to the gift deeds that were referred to above. On the above basis, the learned counsel submitted that there is no debt due from the respective respondents to the applicant because Vijayraj and Saroja transferred their entire shareholding to Ramesh Chand pursuant to the family arrangement and the gift deeds that were executed. He further submitted that Vijayraj and his family are carrying on a separate and independent business from premises that are adjacent to that of Ramesh Chand and family. Therefore, he submitted that there is no risk whatsoever of the respective respondents exiting from the jurisdiction of this Court or alienating their assets so as to defeat the fruits of the decree.

5. I considered the submissions of the learned counsel and examined the relevant documents. From the document dated 17.06.2015, which was executed by Ramesh Chand,

Vijayraj and Rakesh, it is clear that it was agreed that an aggregate sum of about Rs.17.70 crore would be paid to Vijayraj and his family in respect of the following:

> *(i). Transfer of the shares of M/s.Pradeep Stainless India Pvt. Ltd. for a sum of about Rs.11 crore; and*
>
> *(ii). The remainder towards repayment of loan outstanding and remuneration to Vijayraj and Saroja.*

6. It is also evident that gift deeds were executed on 28.07.2016 and that the Board of M/s.Pradeep Stainless India Pvt. Ltd. passed a resolution dated 08.08.2016 approving the transfer of the shares from Vijayraj and Saroja to Ramesh Chand.

7. In light of the above facts, the applicant has failed to establish, at this interlocutory stage, that there is a debt due and payable from the respective respondents to the applicant. In addition, it appears that there are highly disputed questions of fact that would have to be examined in the trial and final disposal of the proceedings. Furthermore, there is no evidence at all that the respective respondent would move their assets out of the jurisdiction of this Court so as to defeat the fruits of the decree that may be obtained by the

applicant/plaintiff. For all these reasons, I am of the view that the applicant has failed to make out a case under Order 38 Rule 5 CPC. Accordingly, these applications are dismissed.

Sd./-S.K.R.J
21.01.2020

//Certified to be true copy//

Dated at Madras this the day of 2020.

JJ 31/01/2020 COURT OFFICER(O.S.)

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