

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 24th DAY OF FEBRUARY 2021

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A.No.942 of 2020
in
C.S.No. 89 of 2020

Abiruchi Hotels and Resorts
Represented by its Proprietor
Mr.P.Jayagopal
S/o.P.Sundrababu
R-2, 65th Street, 10th Sector
K.K.Nagar, Chennai 600 078.

...Applicant/Plaintiff

-VS-

1.Mr.Sanjay Jalan
S/o.R.K.Jalan
Suite No.215, "The Bentley",
(Formerly "Lewaterina The Seaside Boutique Hotel")
No.35, Kaveri Nagar, Thiruvannamipur
Kottivakkam Beach
Chennai 600 041.

2.Mr.R.Prabhaakaran
S/o.Mr.Radhakrishnan
No.1/1, Besant Road, Royapettah
Chennai 600 014.

3.M/s.Goibibo-MMT Extranet
Represented by its Regional Head
Having its, Regional Office
Opp. To Starbucks Coffee
No.10, Khader Nawaz Khan Road,
Nungambakkam, Chennai 600 034.

..Respondents/Defendants

Application praying that this Hon'ble Court be pleased to direct the Respondent to furnish security for a sum of Rs.1,02,95,085/- (Rupees one crore two lakhs ninety five thousand and eighty five only), within a time fixed by this Hon'ble Court, that may be sufficient to satisfy the ensuing decree, failing which pass an order attachment of the schedule property mentioned as detailed hereunder, before judgment, pending disposal of the main suit.

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

This application has been filed taking advantage of Order 38 Rule 5 of the Code of Civil Procedure by the plaintiff calling upon, primarily the first defendant, though not specifically indicated in the Judges Summons, to furnish security to the value of the suit claim, a sum of Rs.1,02,95,085/- (Rupees One Crore Two Lakhs Ninety Five Thousand and Eighty Five only), failing which to attach the property mentioned in the schedule to the Judges Summons to secure the said amount.

2. I have had the benefit of hearing arguments advanced by Mr.Rathina Asokan, learned counsel for the plaintiff and Mr.Arun Karthick Mohan, learned counsel for the first defendant at quire some length.

Ms.V.Susithra, learned counsel for the second defendant also assisted the Court and the Court places its deep appreciation towards all the learned

counsels for the sanguine manner in which arguments were advanced.

3. Brief facts leading to the institution of the present suit are that the first defendant apparently, having control over a property which could provide sufficient returns if let out as a Hotel / Resort at Kottivakkam in Chennai had entered into a lease deed with the second defendant on 01.07.2016.

4. Mr.Rathina Asokan took the Court through the terms of the lease deed. As is normal, there were provisions relating to payment of monthly lease which were bifurcated into two parts, one primarily for the occupation and the other for amenities provided. Advance amounts / security deposit was also paid. There was a lock in period of 33 months. The lease was to extend for a period of 88 months.

5. It is the contention of the plaintiff that the second defendant who had entered into the lease deed was actually an investor and it was the plaintiff who was the defacto lessee of the premises. However, this contention has been seriously disputed by Mr.Arun Karthick Mohan who pointed out that in the lease deed, the plaintiff had signed only as a witness

and none of the covenants in the lease deed would be binding on the

plaintiff. Naturally then, the plaintiff would require opportunity to prove that he was the actual lessee and that the second defendant was only a screen which he had borrowed up to enable him to run the Hotel business. Even on this very starting point as to who was actually the lessee, I hold that caution requires that parties are invited to adduce evidence and clarify.

6. However, the Hotel / Resort business commenced and went into loss. I am informed that as on March 2017, the closure date of the first financial year, the business was in the red to a sum of around Rs.48 Lakhs. This required adjustments not only with respect to the accounts but also with respect to the relationships between the parties. It is the claim of the plaintiff that the plaintiff officially stepped into the shoes of the second defendant and took over the running of the Hotel. It is the further claim of the plaintiff that to this end a meeting had been arranged among the plaintiff, the first defendant and the second defendant and terms had been agreed which have been reduced and stated in the plaint and also in the affidavit filed in support of the application now under consideration.

7. However, this aspect is also seriously disputed by Mr.Arun Karthick Mohan. Again when an averment is made and is disputed it gives rise to an issue to be framed for trial. In this case, several issues requiring examination of evidence has thus arisen.

8. Be that as it may, it is the further contention of Mr.Rathina Asokan that the plaintiff continued thereafter to run the Hotel / Resort and continued to make payments to the first defendant towards rent. It is however the case of the first defendant that these payments were actually adjusted towards the pre-existing arrears towards rent and also towards the payment of unpaid salaries to the staff and dues to the suppliers. There has been a flow of money from the plaintiff's account to the account of the first defendant. Adjustment of the same is again an issue to be decided during trial. Whether these amounts had been paid by the plaintiff on his own behalf or on behalf of the second defendant are also issues to be decided during trial.

9. It is the contention of the plaintiff that there had been a total flow of about Rs.1.32 Crores to the account of the first defendant. The first defendant however claims that they had a crystallised due of Rs.1.58 Crores to settle which included Rs.66 Lakhs towards rent for six months adjusted as a matter of right owing to the plaintiff / second defendant withdrawing themselves as lessees without issuing the stipulated notice period. It is claimed that Rs.1.58 Crores is far more than the amount of Rs.1.32 Crores which had been transferred by the plaintiff. Naturally, again issues which

parties themselves graze the witness box and assist the Court in untying the web in which they had knotted themselves and which they expect the Court to adjudicate.

10. The second defendant has also filed a counter in the present application and it is seen that the first defendant had paid a sum of Rs.20 Lakhs to the second defendant and the second defendant in their counter have raised a claim of Rs.24 Lakhs as against the plaintiff. I am crystal clear that in view of these self inflicted complications, it would only be appropriate that I do not enter into any discussion based on the documents presented. These documents will have to be proved in manner known to law. They would have to be first established to be relevant to the issues raised. They would also have to be admissible in the eyes of law.

11. Both the parties relied on statements from the Bank records and it is only essential that they are supported by affidavits / certificates as required under Section 65B(4) of the Indian Evidence Act, 1872.

12. In view of all these facts with due apologies to the learned counsels who had advanced arguments, I hold that the proper approach would be to relegate the parties to trial, of course without prejudice to

whatever contentions they had raised in the affidavit filed in support of the present application or in the counter affidavits filed. The parties must adduce oral evidence, and produce supporting documents to substantiate the oral evidence and thereafter invite the Court to appreciate such evidence and determine the issues which had arisen between them.

13. I am not consciously withdrawing from passing orders in this application, but I hold that it would only be appropriate that, since the issues raised in the present application are a mirror of the issues raised in the pleadings, the parties are relegated to trial and given an opportunity to express themselves on oath.

14. This application is closed and disposed accordingly without prejudice to the parties' rights to raise all the issues during trial. No costs.

Sd/-C.V.K.J

24.02.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

JJ 01/03/2021

COURT OFFICER(O.S.)

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