

CMP.Nos.3599 and 8821 of 2020 in OSA.No.90 of 2020

T.S.SIVAGNANAM,J
AND
R.N.MANJULA,J

COMMON ORDER

(Order of the Court was made by T.S.SIVAGNANAM,J)

We have heard Mr.C.Manohar Gupta, learned counsel for the petitioners/appellants and Mr.M.Aravind Subramaniam, learned counsel appearing for the sole respondent, who is the plaintiff.

2. This appeal filed by the unsuccessful defendants is directed against the judgment and decree in C.S.No.343 of 2021 dated 06.11.2019.

3. The said suit was laid by the respondent – plaintiff for recovery of a sum of Rs.2,26,82,963.78 Ps together with interest at the rate of 24% per annum from the date of plaint till the date of realization and for costs.

4. When the appeal was entertained on 18.2.2020, an order of interim stay has been granted by the Division Bench subject to the condition that the petitioners/appellants should deposit 1/3rd of the decree amount to the credit of the said suit within a stipulated time. However, the petitioners did not deposit the said amount within the time stipulated and extension of time was sought by filing CMP.No. 8821 of 2020 and it was granted by us on 18.2.2021.

5. The learned counsel for the petitioners/appellants submits that 1/3rd of the decree amount to the tune of Rs.12,90,405/- has been deposited to the credit of the said suit with the Registrar – General of this Court and that the remaining portion of the judgment and decree in the said suit may be stayed till the disposal of the appeal.

6. However, the learned counsel appearing for the respondent/plaintiff submits that the respondent may be permitted to withdraw the amount lying in deposit and that the balance decree amount may also be directed to be paid to the respondent since the respondent succeeded in the said suit.

7. In turn, the learned counsel for the petitioners/appellants would submit that the learned Single Judge erred in holding that the suit claim had been admitted in terms of Ex.P.33 letter dated 30.1.2006 given by the third defendant firm. It was further submitted that the person, who signed the said letter, was not the partner of the third defendant firm and that therefore, he had no authority to acknowledge any liability. It was also submitted that Ex.P.33 letter having been given much after the expiry of the period of limitation for recovery of the amount, the said document could not have been relied upon.

8. To test the correctness of the said submissions, the learned

particular, the written statement filed by the defendants in the said suit. To be noted, a common written statement was filed and the Accounts Manager of the third appellant/third defendant firm had gone into the box on behalf of the defendants and common evidence was let in.

9. We find that during the course of cross examination, the Accounts Manager stated that the second appellant/second defendant was not the partner of the third appellant/third defendant firm. However, we also find that there was no such pleadings in the written statement. Rather, in the written statement, the decree amount had been admitted to be a liability. But, the defendants pleaded that it had been a set off by virtue of giving an embroidery machinery worth about Rs.40 lakhs. Thus, considering all these factors, we are of the considered view that the learned Single Judge was right in decreeing the said suit. The other issues, which have been raised by the learned counsel for the appellants, need to be canvassed in the main appeal. Therefore, this Court is convinced that there cannot be an absolute stay of the judgment and decree passed in C.S.No.343 of 2011 dated 06.11.2019.

10. Accordingly, the order of interim stay granted on 18.2.2020 is made absolute subject to the conditions (i) that the respondent/ plaintiff is permitted to withdraw the amount of Rs.12,90,405/-

which is lying in deposit to the credit of the said suit with the Registrar – General of this Court and (ii) that the petitioners/appellants shall furnish bank guarantee to the tune of Rs.25,00,000/- (Rupees twenty five thousand only), which would be roughly the remaining decree amount and it will also be payable by the appellants in the event the appellants not being successful in this appeal. The bank guarantee shall be furnished by the petitioners/appellants within a period of 12 weeks from the date of receipt of a copy of this order. The withdrawal of the said sum of Rs.12,90,405/- shall be permitted by the Registry at the earliest on receipt of a copy of this order. The observation made in this order is only a prima facie view and this will not, in any manner, prejudice the rights of the appellants in the main appeal or the defence that may be raised by the respondent in the main appeal. CMP.No.8821 of 2020 is ordered accordingly.

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18.3.2021

RS

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AND
R.N.MANJULA,J

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