



WEB COPY

1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 12TH DAY OF AUGUST 2021

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

A.Nos.2640 and 2641 of 2021

in

A.No.1414 of 2021

in

C.S.(Comm.Div.)No.128 of 2021

Aavanor Systems Private Limited,
Represented by its
Managing Director Mr.M.Vennimalai,
S-60, 20th Street,
Anna Nagar, Chennai – 600 040.

...Applicant/Plaintiff

-Vs-

PERS Enterprises Private Limited,
No.3, Veeraswamy Street,
West Mambalam,
Chennai – 600 033.

... Respondent/Defendant

A.Nos.2640 and 2641 of 2021:-

PERS Enterprises Private Limited,
Represented by its Authorised Signatory,
Mr.B.Anandakrishnan,
Having Office at No.3, Veeraswamy Street,
West Mambalam, Chennai – 600 033.

... Applicant /Defendant

-Vs-

Aavanor Systems Private Limited,
Represented by its
Managing Director Mr.M.Vennimalai,
S-60, 20th Street, Anna Nagar,
Chennai – 600040.

...Respondent/Plaintiff

**A.No.2640 of 2021:-**

Application praying that this Hon'ble Court be pleased to set aside the ex-parte order dated 30.06.2021, passed in A.No.1414 of 2021 in C.S.No.128 of 2021.

A.No.2641 of 2021:-

Application praying that this Hon'ble Court be pleased to raise the order of attachment dated 23.07.2021 passed in A.No.1414 of 2021 in C.S.No.128 of 2021.

These applications coming on this day before this court for hearing in the presence of Mr.Sathish Parasaran, Senior Counsel appearing for M/s Vijayan Subramanian, advocates for the applicant in A.Nos.2640 and 2641 of 2021 and Mr.C.Suraj, advocate for the respondent in A.Nos.2640 and 2641 of 2021 and upon reading the Judges Summons and the affidavit of B.Ananda Krishnan, and counter affidavit of M.Vennimalai filed in A.Nos.2640 and 2641 of 2021 and the order dated 30.06.2021 made in A.No.1414 of 2021 and this court having observed that since the applicant/defendant is running a hospital catering to the public needs and equipment now sought to be attached, are in use in their hospital, to give an opportunity for them to defend the case on merits, and **it is ordered as follows:-**



WEB COPY

That the applicant in A.Nos.2640 and 2641 of 2021 be and is hereby directed to furnish security of Rs.51,50,000/- (Rupees Fifty One Lakhs Fifty Thousand only) which is approximately 50% of the suit claim on or before 12.09.2021.

2. That the order of attachment granted in pursuance of the order dated 23.07.2021 made in A.No.1414 of 2021 shall be kept in abeyance till 12.09.2021.

3. That the A.Nos.2640 and 2641 of 2021 in 1414 of 2021 in C.S.No.128 of 2021 be posted on 15.09.2021.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
12th DAY OF AUGUST 2021.

Sd/-

ASSISTANT REGISTRAR (COMM.CASES)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



WEB COPY

MU

27.08.2021

4

A.Nos.2640 and 2641 of 2021
in
A.No.1414 of 2021
in
C.S.(Comm.Div.)No.128 of 2021

ORDER:

DATED : 12.08.2021

THE HON'BLE DR. JUSTICE
G.JAYACHANDRAN

FOR APPROVAL: 31.08.2021

APPROVED ON: 01.09.2021



WEB COPY

5

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 12TH DAY OF AUGUST 2021

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

A.Nos.2640 and 2641 of 2021

in

A.No.1414 of 2021

in

C.S.(Comm.Div.)No.128 of 2021

Aavanor Systems Private Limited,
Represented by its
Managing Director Mr.M.Vennimalai,
S-60, 20th Street,
Anna Nagar, Chennai – 600 040.

...Applicant/Plaintiff

-Vs-

PERS Enterprises Private Limited,
No.3, Veeraswamy Street,
West Mambalam,
Chennai – 600 033.

... Respondent/Defendant

A.Nos.2640 and 2641 of 2021:-

PERS Enterprises Private Limited,
Represented by its Authorised Signatory,
Mr.B.Anandakrishnan,
Having Office at No.3, Veeraswamy Street,
West Mambalam, Chennai – 600 033.

... Applicant /Defendant

-Vs-

Aavanor Systems Private Limited,
Represented by its
Managing Director Mr.M.Vennimalai,
S-60, 20th Street, Anna Nagar,
Chennai – 600040.

...Respondent/Plaintiff

**A.No.2640 of 2021:-**

Application praying that this Hon'ble Court be pleased to set aside the ex-parte order dated 30.06.2021, passed in A.No.1414 of 2021 in C.S.No.128 of 2021.

A.No.2641 of 2021:-

Application praying that this Hon'ble Court be pleased to raise the order of attachment dated 23.07.2021 passed in A.No.1414 of 2021 in C.S.No.128 of 2021.

These Applications coming on this day before this court for hearing **the court made the following order:-**

Heard the Learned Counsel for the applicant/defendant and the Learned Counsel for the respondent/plaintiff.

2. Application No.2640 of 2021, to set aside the *exparte* order dated 30.06.2021 and Application No.2641 of 2021, to raise order of attachment dated 23.07.2021, are taken into consideration.

3. The suit is filed for recovery of money for a sum of Rs.1,04,52,423/- with interest.

4. The applicant came up before this Court on 09.04.2021 along with A.No.1414 of 2021, to direct the defendant/respondent to furnish security and in the event of failure to furnish security, to attach schedule



mentioned properties.

WEB COPY

5. This Court, on considering the pleadings and the averments made in the plaint as well as the affidavit filed along with A.No.1414 of 2021, ordered notice to the respondent returnable by 08.06.2021. Private Notice was also permitted. The record indicates that the notice in this application was served on 19.04.2021. It is also brought to the notice of this Court by the Learned Counsel for the respondent/plaintiff that on 19.06.2021, he received the e-mail from the Learned Counsel for the defendant that he has been instructed to appear on behalf of the defendant and he wants to know the hearing date. Thereafter, when the matter was called on 30.06.2021, there was no representation on behalf of the defendant and this Court directed the defendant to furnish security to the suit amount of Rs.1,04,52,423/- on or before 23.07.2021.

6. Mr.Vijayan Subramanian, Learned Counsel, appeared before this Court on 23.07.2021 and reported that he has been instructed by the defendant to appear on their behalf and sought time to file vakalat. However, taking note of the fact that the respondent has not furnished security within the time granted, this Court on *prima facie* material to infer the defendant may dispose or remove the property, ordered attachment of the schedule mentioned property.



filed by the Applicant/defendant for the relief as mentioned in the prayer.

WEB COPY

8. The Learned Counsel for the applicant/defendant in these two applications would submit that the employees who were looking after the defendant's legal affairs, were affected by Covid-19 and they were not able to intimate about the receipt of the notice and summons in the suit to the appropriate person for them to appear before this Court in time and file counter. Therefore, taking note of the reasons stated in the affidavit for not filing the vakalat in time and contesting the applications, the order passed on 30.06.2021, followed by attachment order dated 13.07.2021 has to be revisited.

9. However, the Learned Counsel for the respondent/plaintiff would submit that the reasons are not *bona-fide* and genuine. Even prior to this suit, there was exchange of notice between the parties and litigations were pending at Civil Court and NCLT. The notice in this proceedings was served on the applicant/defendant on 19.04.2021 privately and on 04.06.2021 through Court but till 30.06.2021, they did not thought it fit to enter appearance in this suit to defend the case. However, only after the order of attachment when bailiff reached the premises on 02.08.2021 they obstructed the execution and had come before this Court on 03.08.2021 for setting aside the *exparte* order and to raise attachment. The conduct of the



cause to consider the prayer. Hence, these applications are to be dismissed.

WEB COPY

10. Heard the Learned Counsels and records perused. The suit is for recovery of money filed after exchange of pre suit notice. In the affidavit filed in support of this Application No.2641 of 2021, to raise order of attachment, there is nothing to inspire the confidence of this Court that the applicant/defendant will not dispose or remove the property pending suit. Also there is lapse on the part of the applicant/defendant in responding to the notice sent by this Court. Despite that, since the applicant/defendant is running a hospital catering to the public needs and equipment now sought to be attached, are in use in their hospital, to give an opportunity for them to defend the case on merits, it is appropriate to direct them to furnish security of Rs.51,50,000/- which is approximately 50% of the suit claim. The said security should be furnished on or before 12.09.2021, till then, the order of attachment shall kept in abeyance. Accordingly, the Application Nos.2640 & 2641 of 2021 are disposed off.

12. Post the matter on 15.09.2021.

Sd./-G.J.J.
12.08.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.