



CRP (PD) No.2586 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

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and CMP No.19191 of 2021

M/s.Vinayaga Capitals,
A Partnership Firm Registered
Under the Indian Partnership Act,
Represented by its Managing Partner,
R.P.Rajendran,
No.169 C, Thuraiyur Main Road,
Namakkal.

... Petitioner

Vs

1. M/s.Aishwarya Feeds,
A Partnership Firm,
Represented by its Partners,
Mr.R.Gunasekaran and N.Shanthi,
No.4/132, 45h K.M.Mohanur Road,
Vagurampatti,
Sanyasikaradu post,
Namakkal District.

2. R.Gunasekaran

3. G.Shanthi

... Respondents



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Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, against the docket order dated 17.11.2021 and to grant ad-interim injunction in I.A.No.5 of 2021 in O.S.No.274 of 2021 on the file of the Principal District Court, Namakkal.

For Petitioner : Mr.R.Rajarajan

ORDER

The challenge in this Civil Revision Petition is to an order of the learned Additional District Judge, Namakkal, dated 17.11.2021, wherein the learned District Judge, had ordered notice in the injunction application filed by the petitioner in I.A.No.5 of 2021.

2. The original suit in O.S.No.274 2021 has been filed by the petitioner seeking recovery of a sum of Rs.85 lakhs with subsequent interest due and payable on several promissory notes executed by the defendants 1 and 2. The 3rd defendant is a partner of the 1st defendant and the wife of the 2nd defendant. Along with the said suit, the petitioner filed two applications in I.A.No.3 of 2021, seeking attachment of the property and another application in I.A.No.5 of 2021 under Order 39 Rule 1 and 2 of the Code of



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Civil Procedure, seeking interim injunction restraining the respondents/defendants from alienating the properties.

3. The learned District Judge ordered notice returnable by 29.11.2021 in both these applications.

4. I have heard Mr.R.Rajarajan, learned counsel appearing for the petitioner.

5. Mr.R.Rajarajan, learned counsel appearing for the petitioner would vehemently contend that under Order 39 Rule 1 (b) of the Code of Civil Procedure, the Court is empowered to grant injunction restraining alienation when it is proved that the defendant is attempting to defraud his creditors by alienating the properties. Therefore, according to the learned counsel, the trial Court had refused to exercise the power vested in it and hence it is a fit case for interference under Article 227 of the Constitution of India invoking the supervisory jurisdiction.



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6. I have considered the submissions of the learned counsel for the petitioner.

7. No doubt, there is some substance in the learned counsel's submissions. But at the same time, an order directing issuance of notice, neither determine the rights of the parties nor it determine any issue in the suit. May be, it implies that the Court was not satisfied with the *prima facie* case pleaded by the petitioner in order to favour him/her with an exparte order of ad-interim injunction. I therefore find that the revision itself cannot be maintained.

8. However, considering the grievance expressed by the learned counsel for the petitioner and enormity claim in the suit, I am of the opinion that the claim of the petitioner should have been considered much more seriously by the trial Court. I therefore direct the trial Court to reconsider the *prima facie* case again on 29.11.2021, when the application is listed for hearing before the trial Court and examine the need for grant of an injunction without being influenced by any of the observations in this order.



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The trial Court will also consider the need for grant of an interlocutory order in order to protect the interest of the petitioner on 29.11.2021. The Civil Revision Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

23.11.2021

vum

Note: Issue order copy on 25.11.2021

Index: Yes/No

Speaking order / Non speaking order

To:

The Principal District Court, Namakkal.



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R.SUBRAMANIAN, J.

vum

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