



C.M.A.No.3555 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 12.08.2022

PRONOUNCED ON: 13.10.2022

CORAM

THE HON'BLE Ms.JUSTICE P.T.ASHA

C.M.A.No.3555 of 2021

&

C.M.P.No.20711 of 2021

M/s. Dennis Steel Pvt. Ltd.,
No.134/2, Valavanandu, Kalavoor Post,
Alappuzha - 688522,
Rep. by its Managing Director,
Mr.Konath Jacob Dennis` ... Appellant/Respondent/Defendant

Vs.

1.M/s.Annai Builders Real Estates Pvt. Ltd.
Alpha Center 4th Floor,
150/151, North Usman Road,
T.Nagar, Chennai - 600017,
Rep. by its Aauthorised Signatory
Mrs.S.Vedavalli.

2.M/s.Rainbow Foundations Ltd,
No.4, Thanikachalam Road,
T.Nagar, Chennai - 6000178.
Rep. by its Joint Managing Director
Mr.Gajraj Jain.

... Respondents/Petitioners/Plaintiffs



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PRAYER : This Civil Miscellaneous Appeal is filed under Order XLIII Rule (1) of Civil Procedure Code to set aside the impugned order dated 08.11.2021 passed in I.A.No.143 of 2016 in O.S.No.45 of 2016, on the file of the II Additional District Court, Ranipet (previously I.A.No.230 of 2016 in O.S.No.102 of 2016 on the file of the Principal District Judge, Vellore), and dismiss the same as unsustainable, irrational, against law, fact and equity and allow the above Appeal.

For Appellant : Mr.Om Prakash, Senior Counsel
assisted by Mr.P.Elayarajkumar for
M/s.Ramalingam & Associates.

For Respondents : Mr.S.Ramesh [R.1 and R.2]

J U D G M E N T

Aggrieved by the order of injunction under provisions of Order 39 Rule 1 of CPC granted by the II Additional District Judge, Vellore @ Ranipet in I.A.No.143 of 2016 in O.S.No.45 of 2016, the defendant is before this Court. The brief facts which are necessary for disposing of the above Civil Miscellaneous Appeal is herein below narrated and the parties are referred to in the same ranking as before the Trial Court namely the II Additional District Judge, Vellore @ Ranipet.

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2. The plaintiffs had filed the suit O.S.No.45 of 2016 on the file of the II Additional District Court, Ranipet (previously O.S.No.102 of 2016 on the file of the Principal District Judge, Vellore) for the following reliefs:-

A] To declare that that the letter dated 18.10.2016 issued by the defendant to cancel/revoke the General Power of Attorney dated 23.06.2015 Registered on 27.04.2015 at SRO Joint II Arakkonam in Doc. No.3689/2015 to the extent of 83 Acres 27 cents the "B" Schedule Property executed in favour of the plaintiffs based on their Board Resolution dated 12.10.2016 is illegal and unlawful and void ab-initio.

B] To declare that letter dated 21.10.2016 issued by the defendants to cancel the sale agreement dated 01.11.2013 entered between the 1st plaintiff and Defendant based on their Board Resolution dated



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12.10.2016 is illegal and unlawful and void ab-initio.

C] Permanent injunction restraining the Defendant's, their men, agents servants or anybody claiming through them from alienating or encumbering or altering or interfering in the peaceful possession and enjoyment of the "B" schedule property.

D] for costs of the suit and

E] for such further or other orders as the Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

3. The sum and substance of the pleadings of the plaintiffs was that the defendant who was engaged in coir business at Kerala had taken over the Tamil Nadu Steels Limited at Arakkonam which was under liquidation. On 31.08.2006, a sale deed was executed by the Official Liquidator in favour of the defendant. Unfortunately, the defendant was not able to restructure the Steel Industry and since they had borrowed from the State Bank of India, Alappuza by mortgaging the above property



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and had defaulted in paying the installments, the bank had brought the property for sale by initiating SARFAESI proceeding. In order to settle the bank, the defendant had come forward with the proposal to sell the A schedule property exclusive of plant and machinery and other movable and immovable assets. The total extent of the A schedule property under various survey numbers was an extent of 502 Acres 40 cents. The 1st plaintiff had agreed to purchase the above property and on 01.11.2013 an agreement of sale was entered into between the 1st plaintiff and the defendant for purchasing the above property for a total sale consideration of Rs.200,00,00,000/- [Rupees Two Hundred Crores Only]. The time for performance was 12 months.

4. On the date of the agreement, a sum of Rs.5,00,00,000/-[Rupees Five Crores Only] was paid as an advance and the remaining consideration was to be paid in 3 installments. The first installment of Rs.45,00,00,000/- [Rupees Forty Five Crores Only] was to be paid within a month, the second installment of Rs.25,00,00,000/- [Rupees Twenty Five Crores Only] was to be paid before December 2013 and the third



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installment which constituted the remaining amount was to be completed within a period of 12 months from the date of signing of the agreement.

5. One of the clauses of the agreement was that the defendant had to execute a power of attorney in favour of the plaintiffs or their nominees and the defendant had to hand over all the original title deeds and parent documents pertaining to the A schedule property on the receipt of a sum of Rs.75,00,00,000/- [Rupees Seventy Five Crores Only]. That apart, the defendant was to obtain a No Objection Certificate from their bankers.

6. It turned out that the defendant was unable to get the NOC from their bank for selling the A schedule property. They had therefore, submitted a one time settlement offer (OTS) to their bank under which they had sought for the release of a portion of A Schedule property measuring 99.63 Acres on the receipt of a sum of Rs.50,00,00,000/- [Rupees Fifty Crores Only] in no lien account. However, the defendant was unable to get the NOC. On 15.04.2014, the defendant had addressed a letter to the 1st plaintiff stating that the banker was demanding a higher



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rate of interest and requested the plaintiff to make the payment. On 28.04.2014, the 1st plaintiff sent a reply that despite the defendant not complying with their part of the terms of the agreement, the 1st plaintiff would offer a sum of Rs.25,00,00,000/- [Rupees Twenty Five Crores Only] and the defendant was directed to furnish the list of documents pertaining to the A schedule property for making further payments. On 17.09.2014, the 1st plaintiff sent a letter to the defendant agreeing to pay a sum of Rs.15,00,00,000/- [Rupees Fifteen Crores Only] towards the loan account and with a direction to the defendant to obtain an NOC from their banker for the sale of 83.27 Acres which constitutes the B Schedule property, a portion of the A schedule property. The defendant sent a reply dated 18.09.2014 wherein they had stated that the property would be released as soon as Rs.15,00,00,000/- [Rupees Fifteen Crores Only] is received.

7. The 1st plaintiff had paid a sum of Rs.50,30,00,000/- [Rupees Fifty Crores Thirty Lakhs Only] to the defendant and requested them to make arrangement with their Banker to release the B schedule property



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i.e, 83.27 Acres of land. However, no steps were taken in this direction. A reminder letter was sent by the plaintiff dated 18.05.2015 and to this letter the defendant had issued a reply that they cannot return the advance at this stage.

8. The plaintiff would submit that despite paying a sum of over Rs.50,30,00,000/- [Rupees Fifty Crores Thirty Lakhs Only], the defendant had not taken any steps to get the property released. Therefore, the 1st plaintiff has issued a letter to the defendant's banker requesting them to accept the OTS submitted by the defendant. This proposal was forwarded on 08.06.2015 by the 1st plaintiff to the defendant's banker. On 12.06.2015, the defendant's banker had sent a reply stating that they had no knowledge about the arrangement between the plaintiffs and the defendant and that the letter dated 29.11.2013 was only a part of the OTS proposal for releasing a portion of the land from out of the A schedule property. Ultimately, by a letter dated 11.07.2015, the banker had given them No Objection for selling the B schedule property. On 27.07.2015, this letter was forwarded to the 1st plaintiff.



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9. On receipt of the above letter, the plaintiffs on 21.09.2015 had entered into an agreement with one P.Pandian for selling the B schedule property. On 26.10.2015, the plaintiffs entered into an MOU with the said P.Pandian to cancel the earlier agreement dated 21.09.2015 and to enter into a fresh one after obtaining the plan approval for 240 plots. The plaintiffs and P.Pandian had canceled the agreements on 26.10.2015. On 09.10.2015, the plaintiffs had informed the defendant that they were ready with the remaining amount and that they were ready to immediately pay a sum of Rs.15,00,00,000/- [Rupees Fifteen Crores Only] within a period of 10 days and requested to get the NOC from the banker.

10. In this backdrop, the plaintiffs came to learn that the bank had issued a sale notice and fixed an E-Auction on 19.01.2016 to sell the properties excluding the B schedule properties. The defendant had immediately filed a writ petition before the High Court of Kerala and ultimately, the High Court had disposed of the said writ petition by their



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order dated 14.06.2016 directing the defendant to pay the entire balance amount covered by Ext.P.3 letter dated 07.04.2015 together with interest at 12% per annum from 30.06.2015. The 1st plaintiff received this letter from the defendant who called upon them to clear the loan within a period of 10 days. Thereafter, by letter dated 21.10.2016, the defendant had stated that since the 1st plaintiff had not complied with the notice dated 30.06.2016, they were rescinding the agreement of sale and appropriating the money paid till then. On 18.10.2016, the 1st plaintiff had received a letter informing the cancellation/revocation of the power of attorney dated 23.06.2015.

11. In all, the defendant had received a sum of Rs.57.19 Crores from the plaintiffs and the 1st plaintiff on the strength of the power of attorney had sold 21 plots apart from which, 28 plots have been booked for purchase. The plaintiff had spent a sum of Rs.5,53,84,895/- [Rupees Five Crores Fifty Three Lakhs Eighty Four Thousand Eight Hundred Ninty Five Only] to develop the property by laying roads etc. On account of this development, the value of the land had gone up. The plaintiff



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would contend that the value of the land for the extent of 502 Acres and 40 cents was Rs.200,00,00,000/- [Rupees Two Hundred Crores Only]. Out of this the plaintiff was purchasing only 83 Acres 27 cents for which the proportionate value is only Rs.33,14,88,853/-[Rupees Thirty Three Crores Fourteen Lakhs Eighty Eight Thousand Eight Hundered Fifty Three Only], however, the 1st plaintiff has paid a sum of Rs.57,19,00,000/-[Rupees Fifty Seven Crores Nineteen Lakhs Only] and had also developed the land in question. Therefore, the plaintiff had come forward with the above interlocutory application.

12. The plaintiffs had filed I.A.No.230 of 2016 along with a plaint seeking an ad interim injunction restraining the defendant, their men, agents, servants or anybody claiming through them from alienating, encumbering or altering or interfering in the plaintiff's possession and enjoyment of the B schedule property.

13. The affidavit filed in support of the petition was more or less a



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verbatim repetition of the plaint. The defendant had primarily resisted the application on the ground that the plaintiffs have not sought for the relief of specific performance and that apart, by letter dated 09.02.2015, marked as Ex.P.23, the plaintiffs had in very clear terms stated that they were ready to pay the money as per the agreement. Further, the plaintiffs have paid much more than what was to be paid for the extent of 83.27 acres. Therefore, the plaintiffs would contend that the interlocutory application ought to be granted. Aggrieved by the same the defendant is before this Court.

14. The application which is the subject matter of this appeal is an interlocutory application, whereby the plaintiffs seek to safeguard the property in respect of which they had entered into an agreement from falling into the hands of 3rd party or their physical appearance being altered. It has been admitted that the defendants had received much more than the amount that was payable for the extent of 83.27 acres calculated on the basis of the total sale consideration fixed for the A schedule property in its entirety.



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15. Further, the actions of the defendant clearly shows that they have an intent to alienate the property. The plaintiffs have invested a huge sums of money and the contract has not gone through. It is no doubt true that the plaintiffs have not sought for the relief of specific performance, however, the plaintiffs have taken out an application for raising the issue of specific performance at a later date. Considering the above facts, I see no reason to interfere with the order passed by the learned II Additional District Judge, Vellore @ Ranipet in IA No.143/2016 in O.S.No.45/2016. Consequently, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes / No
speaking Order : Yes / No

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- 1.The II Additional District Court, Ranipet.
2. Principal District Judge, Vellore.
- 3.The Section Officer,
V.R.Section,
High Court, Madras -104.



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P.T.ASHA, J.,

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Pre-delivery Judgment in
C.M.A.No.3555 of 2021
&
C.M.P.No.20711 of 2021

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