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CRP No.4161 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-12-2022

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

CRP No.4161 of 2022

And

CMP Nos.21755, 21764 and 21765 of 2022

The Tamil Nadu Civil Supplies Corporation Ltd.,
Represented by its Managing Director,
No.12, Thambusamy Road,
Kilpauk,
Chennai-600 010.

.. Petitioner

VS.

1.S.Muthukumar

2.M/s.Zinc Foods Pvt. Ltd.,
Represented by its Director,
3/127-D-1, Swamy Nagar,
Salem Road,
Namakkal – 637 001.

3.M/s.Arnica Enterprises Pvt. Ltd.,
Represented by its Director,
First Floor, Harini Complex,
Perundurai Road, Thindal Medu,
Erode – 638 012.

1/16



CRP No.4161 of 2022

4.Mr.V.Muthan

.. Respondents

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PRAYER : This Civil Revision Petition is filed under Article 227 of the Constitution of India to strike off the plaint in O.S.No.745 of 2022 on the file in the Court of the Additional District Munsiff Court at Coimbatore.

For Petitioner : Mr.M.K.Kabir,
Senior Counsel for Dr.K.Thirugnanam.

ORDER

The present Civil Revision Petition has been instituted to strike off the plaint in OS No.745 of 2022 on the file of the Additional District Munsif Court, Coimbatore.

2. The petitioner is the Tamil Nadu Civil Supplies Corporation Ltd., and the first defendant in the suit instituted by the first respondent in the present Civil Revision Petition.



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3. The first respondent herein instituted a suit for the relief to grant a decree of permanent injunction in favour of the plaintiff by restraining the defendants, their men, agents, subordinates or any other authorities connected therewith, their officials from interfering with the plaintiff's operation and business interests, in any manner, including from terminating or modifying the agreements entered into between defendants 1 to 3 for transportation of essential food commodities pursuant to the proceedings No.MT9/47397/2019 dated 07.01.2020 issued by the first defendant and work orders dated 23.01.2020 and 19.01.2020 issued by the defendants 2 and 3 to the plaintiff under Clause 9 of the tender conditions, grant a decree of permanent injunction restraining the first defendant from floating any tenders for selection of any transport contractor(s) including the fourth defendant for the purpose of transportation of food materials covered under the contract entered into between the defendants 1 to 3 in view of the adverse reaction on the plaintiff till the end of the five years contract period and for award of costs.



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4. The learned Senior Counsel appearing on behalf of the petitioner mainly contended that the plaintiff is an alien to the contract entered into between the first defendant and the defendants 2 and 3. The first defendant has not entered into any contract with the plaintiff and thus the suit against the revision petitioner is not entertainable.

5. To substantiate the said contention, the learned Senior Counsel appearing on behalf of the petitioner drew the attention of this Court with reference to the terms and conditions agreed between the parties in the contract entered into between the revision petitioner and the defendants 2 and 3 in the suit. Even as per the terms and conditions of contract, the contract is terminable and therefore, the suit is not maintainable and thus the suit filed by the first respondent is to be strike off.

6. The learned Senior Counsel appearing on behalf of the petitioner is of an opinion that the power under Article 227 of the Constitution of India is to be exercised whenever there is an abuse of process.



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7. In the present case, the revision petitioner has unnecessarily been dragged into the civil litigation and because of that the Corporation is suffering huge monetary loss and an order of interim injunction was granted and the revision petitioner has already filed the counter-statement. Under these circumstances, the plaint is to be strike off as it is an abuse of process against the revision petitioner-Corporation.

8. It is further contended that in respect of the disputes between the revision petitioner and the defendants 2 and 3, Arbitration Clause has been agreed between the parties and thus the suit cannot be entertained in any circumstances.

9. The learned Senior Counsel appearing on behalf of the petitioner referred the findings of the Trial Court in the interim order granted on 15.07.2022, wherein the Trial Court made an observation that “the first respondent/defendant is the only authority engaged in the distribution of the



essential commodities through Public Distribution System. Copy of the Circular issued by the Department of Food and Public Distribution is produced as Document No.2. The second and third respondents/defendants are also operating the business activities either directly or indirectly through the reliable Transporters like the petitioner/plaintiff to execute the work contract as per the agreement with the first respondent/ defendant. Copy of the tender for movement of transportation stocks issued by the first respondent/defendant is produced as Document No.3”.

10. The learned Senior Counsel appearing on behalf of the petitioner contended that the entire transaction between the revision petitioner and the defendants 2 and 3 are no way connected with the plaintiff and he may be an agent of the defendants 2 and 3. However, the institution of a suit by the third party against the revision petitioner amounts to abuse of process and thus the suit is to be strike off.

11. In support of the said contention, the learned Senior Counsel



relied on Section 14 (d) of the Specific Relief Act, 1963 and accordingly a contract, which is in its nature determinable cannot be enforced. Section 41 of the Specific Relief Act, 1963, enumerates injunction when refused and sub-clause (e) stipulates that “to prevent the breach of a contract the performance of which would not be specifically enforced”. Relying on the said provisions, the learned Senior Counsel made a submission that the plaint is not maintainable and it amounts to abuse of process and thus the case on hand is a fit case for entertaining a revision petition exercising the powers under Article 227 of the Constitution of India.

12. In paragraph 14 at page 217 of **Waryam Singh and another vs. Amarnath and another [AIR 1954 SC 215]**, the Supreme Court neatly formulated the ambit of High Court’s power under Article 227 in the following words:

“The power of superintendence conferred by Article 227 is, as pointed out by Harries C.J., in ‘Dalmia Jain Airways Ltd. vs. Sukumar Mukherjee’, AIR 1951 Calcutta 193 (SB) (B), to be exercised most



sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

13. The Chief Justice Harries in the Full Bench decision in **Dalmia** case (supra) stated the principles on which the High Court can exercise its power under Article 227 very succinctly which would better, quote : “Though this Court has a right to interfere with decisions of Courts and tribunals under its power of superintendence, it appears to me that that right must be exercised most sparingly and only in appropriate cases. The matter was considered by a Bench of this Court in **Manmathanath vs. Emperor [AIR 1933 Calcutta 132]**. In that case a Bench over which Sir George Rankin C. J. presided held that Section 107, Government of India Act (which roughly 2 corresponds to Article 227 of the Constitution), does not vest the High Court with limitless power, which may be exercised at the Court's discretion to remove the hardship of particular decisions. The power of superintendence it confers is a power of a known and well-recognised character and should be exercised on those judicial principles which give it its character. In general



words, the High Court's power of superintendence is a power to keep Subordinate Courts within the bounds of their authority, to see that they do what their duty requires and that they do it in a legal manner.”

14. The power of the High Court under Article 227 to be plenary and unfettered, but at the same time, the High Court should be cautious in its exercise. No doubt, when there is gross abuse of jurisdiction, the High Court can interfere under Article 227, whether there is gross abuse or not, is the factual aspect, which is to be considered in each case. Every case cannot be brought under the principles of gross abuse of jurisdiction.

15. In the present case, there is no question of abuse of jurisdiction, since the plaintiff was indirectly carrying out certain business activities through the Contractors admittedly by the revision petitioner-Corporation. The defendants 2 and 3 entered into a contract with the revision petitioner-Corporation. The defendants 2 and 3 further engaged the services of the plaintiff for performing certain duties and responsibilities and therefore, there



is an indirect business activities with the revision petitioner-Corporation as per the contentions raised in the plaint.

16. This Court cannot form any opinion in respect of the nature of the contract or the business activities of the plaintiff with the defendants 2 and 3, which is based on the contract entered into between the petitioner-Corporation and the defendants 2 and 3. All these aspects require an effective adjudication with reference to the documents and evidences available on record. The High Court, at this stage, cannot adjudicate those aspects, so as to deprive the parties to establish their respective case in the manner known to law.

17. The right of institution of a suit is the basic right, which cannot be taken away unnecessarily by the Courts. Even there is an iota of doubt regarding these aspects, the High Court must allow the Trial Court to try the



suit by following the procedures. Nipping the suit in the bud is not desirable at all circumstances, since the basic right of the parties will be taken away and it cannot be done so merely by exercising the powers under Article 227 of the Constitution of India.

18. This exactly is the reason why the Constitutional Courts across the country have repeatedly emphasised that the High Court should exercise restraint, while exercising the power under Article 227 of the Constitution of India and wherever there is a factual dispute or unnecessary parties have been impleaded or certain parties are claiming as alien to the suit or otherwise, are to be decided on merits and in accordance with law.

19. That apart, those parties raising such grounds are having alternate remedy under the Code of Civil Procedure by filing an appropriate application before the Court concerned and the Court must be allowed to exercise such powers conferred under the Code of Civil Procedure.



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20. When efficacious alternate remedy is contemplated under the Code of Civil Procedure, the High Court may not exercise its powers under Article 227 of the Constitution of India.

21. In the present case, if the plaint is not maintainable or the revision petitioner has unnecessarily been impleaded as a party in a suit, they can either opt for an application to strike off or file an application for rejection of the plaint, which is to be adjudicated on merits and in accordance with law.

22. Certain judgments relied on by the revision petitioner-Corporation cannot be a ground to entertain the present Civil Revision Petition. As far as the power under Article 227 of the Constitution of India is concerned, the facts of each case are to be considered to form an opinion whether there is an unwarranted assumption of jurisdiction not vested in Court or unjustifiable refusal to exercise of the jurisdiction vested in Courts



or gross abuse of jurisdiction. Though, generally it is raised that the present suit amounts to gross abuse of jurisdiction, the facts and circumstances narrated in the plaint would reveal that there are some linkage between the plaintiff and the revision petitioner-Corporation, which requires adjudication.

23. Though the revision petitioner-Corporation has stated that there is no contract exist between the plaintiff and the revision petitioner-Corporation, the plaintiff in the plaint has categorically stated that the plaintiff is performing certain services through the defendants 2 and 3 with whom the revision petitioner-Corporation entered into a contract. Such complex facts and circumstances cannot be considered without full-fledged trial. However, the parties are at liberty to approach the Court by filing an appropriate application for striking off or for rejection of plaint or otherwise in the manner known to law, which is to be adjudicated.

24. Prima facie, this Court found that there is no reason to exercise the powers under Article 227 of the Constitution of India, as the basic right of



CRP No.4161 of 2022

the citizen for institution of a suit need not be taken away unnecessarily without any complete adjudication of issues involved. Even thousands of frivolous suits are instituted all over the country and if the High Court started interfering with such suits under Article 227 of the Constitution of India, this Court is afraid that the rights are infringed and the Courts would not do so, while exercising the powers under Article 227 of the Constitution of India.

25. In view of the facts and circumstances, the revision petitioner-Corporation is at liberty to move the Trial Court.

26. Accordingly, the present Civil Revision Petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are also dismissed.

16-12-2022

Speaking Order/Non-Speaking Order.
Internet : Yes/No.

14/16



CRP No.4161 of 2022

Index: Yes/No.

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To

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- 2.The Managing Director,
Tamil Nadu Civil Supplies Corporation Ltd.,
No.12, Thambusamy Road,
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S.M.SUBRAMANIAM, J.

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