A.Nos.1411 & 1412 of 2022

in

CS.No.980 of 2007

R.N.MANJULA,J.

The applications in A.Nos.1411 & 1412 of 2022 have been filed by a third party, seeking the following reliefs:

(i) to direct the 7th respondent not to raise an invoice for the months of January to March 2022 herein , pending disposal of the above CS.No.980/2007 in A.No.1411 of 2022 and

(ii) to direct the respondents 1 to 9 to repay the full refundable security to a sum of Rs.2 Crores as paid to the applicant herein, pending disposal of the above CS.No.980/2007 in A.No.1412 of 2022 .

2. The applicant is the third party. The first respondent company is the absolute owner of four screens, namely Udhayam, Mini Udhayam, Suriyan and Chandran in a theatre complex called "Udhayam Theatre Complex'. The 7th respondent receiver is in-charge and administrator of the theatre owned by the 1st respondent/plaintiff's company. The theatre complex of the 1st respondent/plaintiff contains seven canteens and a two-wheeler and four-wheeler parking area. After getting appropriate orders from this Court, the 7th respondent receiver issued a paper publication for issuing the licence for the said premises through auction.

3. Since the applicant was a successful bidder, the licence for running the canteen and two-wheeler and four-wheeler parking areas was granted to the applicant for 3 years, from 01.04.2019 to 31.03.2023. The applicant had to deposit a sum of Rs.2 crores as a refundable security deposit. The applicant had transferred Rs.2 crores by availing a loan from the Federal Bank on 24.9.2019. Due to Covid-19 pandemic and resultant lock down, the theatre was closed for nearly 14 months and occupancy was also reduced due to social distancing adopted during pandemic.

4. The 1st respondent had terminated the agreement on 31.12.2021. So the 1st respondent is not entitled to raise an invoice from the month of January 2022 to March 2022 towards any licence fee. Since the applicant had incurred a huge loss, the 1st respondent should be directed to refund the security deposit of Rs.2 crores. Hence the applications have been filed to direct the 7th respondent not to raise an invoice for the months of January to March 2022 herein, and to direct the respondents 1 to 9 to repay the full refundable security to a sum of Rs.2 Crores as paid to the applicant herein, pending disposal of the above

CS.No.980/2007.

5. The applicant is not a party to the proceedings, and he is said to be the successful bidder who took the licence through auction, by being a successful bidder in the auction conducted for the licence to run the canteen and two-wheeler and four-wheeler parking areas at the 1st respondent's theatre complex.

6. The said facts were not denied by the respondents either. The agreement entered into between the parties in this regard is also not denied. But the suit has been filed by the 1st respondent/plaintiff for the relief sought for certain transactions, along with permanent injunction. During the pendency of the suit, the 7th respondent receiver has been appointed to administer the proceedings.

7. The transactions between the applicant/third party and the receiver for the 1st defendant with regard to the licence rights in respect of the canteen and parking areas have nothing to do with the reliefs sought by the plaintiff. If the applicant has any cause of action against any of the respondents, his remedy lies elsewhere and not by filing any applications in the suit pending between the plaintiff and the respondents.

8. The claim made by the applicant is based on the contract and the scope of the suit has nothing to do with the contract. Allowing the applicant to file this kind of application would be like creating a suit in a suit and that can be permitted. The scope of the suit cannot be extended by a third party by seeking some relief based on the agreement between himself and any of the parties in this suit. Since the applications filed by the applicants themselves are not maintainable, it is needless to state that the relief sought by the applicants cannot be granted in these proceedings.

Thus, the applications in A.Nos.1411 & 1412 of 2022 are rejected as not maintainable.

15.06.2023

jrs

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