A.Nos.1526 to 1528 of 2023 in
C.S.No.814 of 2006

R.N.MANJULA,J.

These applications have been filed to direct the Commissioner of Income Tax, Income Tax Department, Ayakar Bhavan, Nungambakkam High Road, Chennai 600 006, to produce the Income Tax Returns of K.Jayaraman (PAN No.AADPJ4230E) and M/s.Jaydan Impex Private Limited (CIN No.U52599TN1996PTC035865) No.23, Sait Colony 2nd Street, Egmore, Chennai 600 008 for the financial years from 2005-06 to 2021-22; to direct the Registrar of Companies, Sastri Bhavan, Nungambakkam, Chennai 600 006, to produce the Audited Annual Returns of M/s.Jaydan Impex Private Limited, (CIN No.U52599TN1996PTC035865) No.23, Sait Colony 2nd Street, Egmore, Chennai 600 008 for the periods from 2005-06 to 2021-22; to direct the Karnataka State Bar Council, Bangalore to produce the entire certificates of Educational qualification of the respondent.

2. The applicants are the defendants. It is submitted by the applicants that they had shown their *bonafideness* by depositing Rs.25,00,000/- pursuant to the order of this Court dated 24.01.2022 made in A.No.2898 of 2020 which set aside the *exparte* decree in order to give the applicants / defendants an opportunity to defend the suit. The possibilities for arriving at mutual settlement has also been explored, but the settlement cannot be arrived. The applicants without verifying the merits of the suit claim, just with an intention to put an end to the agony of litigating, were willing to pay the balance of Rs.85,00,000/- by deposit into Court by selling their mortgaged property held by the respondent with the leave of the Court. In this regard, a draft memo dated 17.11.2022 has also been circulated. On 18.11.2022, the respondent retracted his earlier assurance for settlement and refused for settlement. Hence the applicants were compelled to undergo the rigor of trial.

2.1. On 02.12.2022, notice has been issued to produce the certificate of Incorporation of M/s.Jayadan Impex Pvt. Ltd. and Income Tax Returns were served on the respondent / plaintiff. By his reply dated 07.12.2022, the respondent has stated that the said documents are not relevant. In fact, the respondent despite having the legal custody of the documents, has refused to produce the same. Since there is a necessity to secure those relevant documents for trial, the present applications have been filed.

3. The respondent / plaintiff filed a counter by stating that the suit is of summary nature based on the promissory note executed by the defendants. The information sought for has no bearing or relevancy with M/s.Jaydan Impex Private Limited. No cause of action arises out of this one single event to call for the documents which are irrelevant and inadmissible. The discovery of those documents will not narrow down the controversy or solve the litigation. Those documents are not going to throw any light on the matter in controversy.

3.1. The suit has been filed in the year 2006 for recovery of money availed by the defendants from the plaintiff on various dates. The defendants executed a registered mortgage deed dated 26.07.2005 as security. Further the defendants procured the goods and raw materials from various firms. Further, the plaintiff had also paid the money for stationing handling units at the plant of the first defendant and also to meet out their sales tax and Electricity Bill payments. The defendants had executed promissory note by admitting their liability on 29.07.2006.

3.2. The plaintiff has filed two applications for attachment before judgment and appointment of Commissioner. The application for appointment of Commissioner has been allowed on 13.11.2006. An *exparte* order of attachment has been passed on 08.12.2006 in A.No.4487 of 2006. The defendants filed an application in A.No.20 of 2007 for leave to defend and A.No.2441 of 2007 to convert the summary suit to normal one and in which, a common order was passed on 02.11.2007 with a direction to deposit the pro-note sum of Rs.74,05,180/- on or before 10.12.2007. The defendants preferred an appeal against the above order before this Court and the order has been modified to the effect that the defendants were directed to provide bank guarantee to the tune of Rs.9,00,000/-. Subsequently, the defendants furnished the Bank guarantee and suit has been converted as a normal suit.

3.3. The appeal preferred against the order passed in A.No.1015 of 2007 was dismissed on 03.02.2011. However, in view of the bank guarantee furnished by the defendants, the suit was converted into a normal suit.

3.4. During the pendency of the proceedings, the parties sat together to resolve the controversy. Subsequently, they entered into a memo of compromise on 01.10.2012. As per the memo of compromise, the plaintiff shall release the mortgage as and when the defendants find suitable and prospective purchaser for the land mortgaged and the defendants should execute the sale deed in favour of the purchaser, but the sale consideration shall be directly paid to the plaintiff / respondent towards the satisfaction of the loan. The said process was completed and the sale price of Rs.48,40,000/- was paid to the plaintiff / respondent and hence, there is a partial discharge of the loan amount. As there was remaining sum due, the interest got accrued.

3.5. Despite that, the applicants / defendants issued a letter on 02.02.2017 calling upon the plaintiff to withdraw the suit on the basis of partial satisfaction made towards the claim amount. The defendants have also filed A.No.4290 of 2017 with a petition to condone the delay of 3720 days in filing the written statement. When the said application was pending, an another application in A.No.1043 of 2018 was filed to set aside the memo of compromise dated 01.10.2012. By a common order dated 20.02.2018, both the applications were dismissed. The order of dismissal was not challenged by way of filing any appeal and hence it has become final.

3.6. However, the learned Master erroneously assumed jurisdiction to pass a decree as a summary suit and directed the plaintiff to file an affidavit of claim on 10.12.2018. The defendants also filed a counter affidavit and eventually the learned Master passed a decree for a sum of Rs.1,92,29,727/- on 15.02.2019. The execution proceedings have also been filed by the respondent / plaintiff to execute the decree. The applicants / defendants filed an application in A.No.2201 of 2020 to condone the delay in filing an application in SR.No.88236 of 2019 and the same was allowed on 23.11.2020 on the ground no credit has been made for the payment of Rs.48,40,000/- made by the defendants pursuant to the compromise and the sale. However, when the matter was posted subsequently before this Court, the compromise efforts were encouraged. The defendants deposited a sum of Rs.25,00,000/- to set aside the decree passed by the Master on 24.01.2022 and thereafter, the matter was referred to the learned Master for recording evidence by affording an opportunity to the defendants. In a suit for recovery of money based on the promissory note, unnecessary documents have been sought to be produced after a lapse of 20 years just to harass the plaintiff who is a senior citizen. There is no nexus between the qualification of the plaintiff and hence, those documents are unnecessary.

3.7. The respondent / plaintiff has just mentioned that he is one of the directors of M/s.Jaydan Impex Private Limited. But the loan has been given by the respondent / plaintiff in his individual capacity. Hence the Company need not be dragged unnecessarily. The claim has already been settled and a memo of understanding has been entered into and the same has been recorded in the order passed by this Court in A.Nos.4487 of 2006 and 4653 of 2012 dated 17.10.2012. The applicants / defendants are aware of the consequences of the compromise. So, there is no question of fraud as alleged by the applicants. There is a registered mortgage along with execution of a promissory note; the memo of understanding has been acted upon by the parties. So the cumulative effect of all the orders passed by this Court would only show that the defendants have not only committed default in paying the loan and also honouring the commitments or undertakings given by them before this Court. The applications have been filed with a sole object of causing delay and obstruct the logical end for the litigation. Hence the applications are liable to be dismissed.

4. The applicants are the defendants. These applications have been filed to issue subpoena to the Commissioner of Income Tax to produce the income tax returns of the plaintiff for the period from 2005-06 to 2021-22; to the Registrar of Companies to produce the audited annual returns of the plaintiff's Company for the period from 2005-06 to 2021-22 and the Karnataka State Bar Council, Bangalore to produce the entire certificates of educational qualification of the respondent / plaintiff.

5. The suit has been filed by the respondent/plaintiff for recovery of money based on the promissory note and mortgage deed executed by the defendants. It is to be noted that during the course of the said proceedings, the parties have entered into a memo of compromise and the same has been recorded. As per the terms of compromise, the plaintiff agreed to release the mortgage as and when the defendants find suitable and prospective purchaser of the lands mortgaged on the understanding that the sale price should be paid to the plaintiff. After a prosperous buyer was spotted, the sale price paid to the mortgaged land to the tune of Rs.48,40,000/- was paid to the plaintiff.

6. The applicants have already filed an application for converting the summary suit into a normal suit and that was allowed on a condition in A.No.20 of 2017 and A.No.2441 of 2007 to deposit a sum of Rs.74,05,180/- on or before 10.12.2007. Since the defendants had challenged the same, the above order was modified to the effect that the defendants should furnish a bank guarantee for Rs.9,00,000/-. Since the defendants furnished bank guarantee on 01.02.2011, the suit got converted into a normal suit and thereafter only, the above mentioned compromise was entered. In view of the compromise, the application filed by the defendants to condone the delay of 3720 days in filing the written statement, has been dismissed.

7. Even though the compromise was acted upon and partial sum has been paid towards satisfaction of the part of the suit amount, the defendants once again filed the applications in A.No.4290 of 2017 and A.No.1043 of 2018 to condone the delay of 3720 days in filing the written statement and to set aside the memo of compromise dated 01.10.2012. Both the applications were dismissed by a common order dated 20.02.2018 and that was not challenged by the applicants / defendants and therefore, that has attained finality. So the impact of the order dated 20.02.2018 is that the defendants cannot have any objection to the suit claim and the grounds stated by them to set aside the memo of compromise dated 01.10.2012 were also rejected. Thereafter, the suit ought to have been decreed for the remaining amount by giving credit to the sum of Rs.48,40,000/- already paid towards the partial satisfaction of the suit amount. Unfortunately, the subsequent proceedings were to the effect of decreeing the suit in entirety, without giving credit to a sum of Rs.48,40,000/- paid to the plaintiff on 14.10.2014.

8. It is learnt that the decree passed by the learned Master for a larger sum which was inclusive of the sum already paid by the defendants was set aside. Even then the matter has to take from the point of compromise and the compromise decree ought to have been passed by giving credit to the sum already paid. But once again the applicants / defendants has taken a plea that the memo of compromise is a fraudulent one and the defendants were forced to sign the same. It it too late to come out such contentions and that too when the defendants lost their opportunity to file any written statement. When the stage of the suit is almost riped for conclusion and the scope is also very limited, the applications have been filed by the applicants / defendants to send for the income tax returns submitted to the Registrar of Companies and certain documents from Karnataka Bar Council. The applicants had chosen to call for the income tax returns of the plaintiff by stating that the plaintiff did not have means to lend the suit loans to the defendants. But the applicants / defendants had already admitted the liability and in fact, had made partial satisfaction of the loans availed by them.

9. At the risk of repetition, it is reiterated that the applicants / defendants have not given with any liberty to file a written statement in view of the compromise that has been already entered into between the parties. So, it is too late to come and say that the respondent / plaintiff did not have means to lend the suit loans and hence, the income tax returns of the plaintiff should be called for in order to show the wherewithals of the plaintiff. Just because the defendants had chosen to file the applications to produce certain documents and which the plaintiff did not opt to produce the same, the defendants cannot seek to summon the public officials to produce the income tax returns for several years.

10. The applicants have also prayed that summons should be issued to the Registrar of Companies, Chennai to produce audited annual returns of M/s.Jaydan Impex Private Limited for the periods from 2005 - 06 to 2021 – 22. The Company by name M/s.Jaydan Impex Private Limited is not a party to the proceedings. It is neither the case of the plaintiff nor the case of the defendants that the suit transactions has connected to the Company where the respondent / plaintiff is holding a post of Director. This is an yet another sample to know that the intention of the applicants / defendants is nothing but to drag the proceedings and harass not only the plaintiff but also the Institutions and the persons attached with the plaintiff in some way or other.

11. The harassing attitude of the applicants / defendants is apparent from his anxiety to send for the certificates of educational qualification of the respondent / plaintiff from the Karnataka State Bar Council, Bangalore. The matter in issue does not have got anything to do with the educational qualification of the respondent / plaintiff. The cause of action for the suit is based upon giving loans to the applicants / defendants. Since the educational qualification of the respondent / plaintiff has got nothing to do with the suit cause of action, it is utterly unnecessary to send subpoena to the Karnataka State Bar Council, Bangalore, for the purpose of producing the entire certificates of the educational qualification of the respondent / plaintiff.

12. The course of the suit proceedings and the previous orders passed by this Court and also the stage of the proceedings do not warrant summons to be issued to the third parties for production of certain documents as sought by the applicants / defendants. The opportunities which should be used in the interest of justice, cannot be allowed to be misused for any self-serving reasons of the parties. Causing unnecessary delay would not only prejudice the respondent, but also defeat the ends of justice. The applications filed by the applicants / defendants does not have any iota of merit to be considered positively.

13. Hence, the applications in A.Nos.1526 to 1528 of 2023 in C.S.No.814 of 2006, are dismissed.

06.04.2023

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R.N.MANJULA,J.

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