



CRP. No.3276 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP. No. 3276 of 2023
& CMP No. 20197 of 2023

1.M/s. Real Link Engineering India (P) Ltd.,
No.4, Park Street, Kattoor,
Coimbatore,
Tamil Nadu – 641 009.

2. L. Navneethakrishnan

...Petitioners

Vs

M/s. Aquatex Engineering,
A partnership Firm, Rep. By its
Managing partner R.Kumaravelu
Having its Head office at Thudiyalur,
Coimbatore, Tamil Nadu – 641 034.

...Respondent

PRAYER : This Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 17.07.2023 in I.A No. 4 of 2023 in C.O.S No. 110 of 2023 on the file of the Court of Judge, Commercial Court (District Judge Cadre), Coimbatore.

For Petitioners : Mr. Sri Kaviya Nagarajan



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For Respondent: Mr. R. Bharath Kumar

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ORDER

Challenging the impugned order dated 17.07.2023 passed in I.A No. 4 of 2023 in C.O.S No. 110 of 2023 by the Commercial Court (District Judge Cadre), Coimbatore, the petitioner filed this petition.

2. The petitioners herein are the defendants in C.O.S No. 110 of 2023 filed by the respondent herein/plaintiff to direct the defendants or anybody claiming through them to execute and register the sale deed in favour of the plaintiff concerning the suit properties as per memorandum of understanding dated 20.07.2022 after receipt of the balance sale consideration of Rs. 5,47,94,101/- and deliver vacant possession of the suit properties to the plaintiff within a time to be fixed by the Court failing which execute and register the sale deed through its officer in favour of the plaintiff or in alternative direct the defendants to pay a sum of Rs.19,52,05,899/- together with interest at the rate of 24% p.a from the date of suit till payment and also grant a charge decree over the suit properties for the decree amount, with subsequent and cost and other consequential relief. After receipt of the notice the defendants/petitioners filed the petition



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under Order VII Rule 11 (a) & (d) Section 151 of CPC to reject the plaint on the ground that the claim of the plaintiff does not comes under purview of the Section 2(c) (i) to (xxii) of the Commercial Court Act, 2015 because the present suit has been filed for specific performance based on the alleged Memorandum of Understanding (hereinafter referred as MOU) dated 20.07.2022 and other plaint mentioned document, which were created by the respondent/plaintiff as if he is a vendor of the suit properties against the defendants though the defendants not admitting the case of the plaintiff in any way whatsoever. Hence, the Court has no territorial jurisdiction to try the suit against the defendants. Further the defendants stated that the plaintiff ought to have obtained leave from the Court in an application for attachment of immovable property in I.A Nos. 2 and 3 of 2023 as urgent interim relief which is mandated in Section 12-A(1) of the Commercial Court Act vide notification dated 03.07.2018. Besides, no leave was granted by the Court for getting an urgent interim relief by the respondent by way of the present suit, till date. Therefore, without invoking a mandatory provision as contemplated in the special law, the present suit is not maintainable against the defendants. Further, he stated that the plaintiff ought to have sent pre-mediation notice, which is a mandatory one, in view of Section



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12(A) of the Act and without referring mediation by the respondent as regards the alleged dispute took place between the parties, the present suit is hit by adhering to the requirement of Section 12-A of the Act. Further he stated that without filing a statement of Truth, despite this court directed by the respondent, the respondent has not at all invoked provision under Order VI Rule 15 A and Order XI Rule 2 of CPC (Amended Act for the commercial Courts Act 2015) and therefore, the present suit is not maintainable and not in accordance with law and on facts of the present case. Further it was stated that without reference to nature of the use of the suit properties in trade or commerce as on the date of the present suit/on the alleged cause of action of the present, the present suit does not come under Section 2 (c) (vii) of the Commercial Courts Act, 2015 because the suit properties were under the custody of Hypothecation and not under the custody of the respondent, till date. Besides, the alleged agreement between the parties cannot be said to be an agreement of trade or for any commercial purpose and therefore, in view of the Hon'ble Apex Court judgement rendered in (Ambalal Sarabha Enterprises Ltd., Vs. K.S. Infraspace LLP & ano), the court has no jurisdiction or whatsoever to try the present suit, which is laid by the respondent/plaintiff under Commercial courts Act,



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2015, much less as alleged by the respondent/plaintiff in their plaint.

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3. The contention of the plaintiff was that the plaintiff is the Registered partnership firm, first defendant is the Private Limited company and the second defendant is the Managing Director of the first defendant company. The first defendant represented by its managing director Mr.L. Navaneethakrishnan/second defendant purchased the suit properties as a vacant land under Sale deed dated 11.10.2010 and thereafter he put up compound wall around the lands so purchased and also constructed industrial buildings for its business purposes and commenced its business activities and he availed credit facilities from Tamil Nadu Industrial Investment corporation(hereinafter referred as " TIIC") for its business purposes and by way of security for the credit facilities so availed, the first defendant deposited its title deeds concerning its properties measuring an extent of 5.333 acres with an intention to create equitable mortgage over the same. Apart from TIIC, the first defendant also availed credit facilities with Indian Overseas Bank(hereinafter referred as IOB), Dr. Nanjappa Road Branch, Coimbatore. The first defendant by securing these credit facilities created a second charge over the said extent of 5.333 acres besides created first charge in respect of another extent of 1.35 acres by depositing the



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original title deed with IOB. The defendant were unable to adhere the repayment schedule as agreed by them while availing the credit facilities from TIIC and IOB, instead committed default. In view of their breach TIIC started proceedings against the defendants under State Financial Corporation Act by bringing the secured property for sale. During this period IOB classified the accounts of the 1st defendant as non performing Asset and initiated proceedings under the provisions of the Securitisation & Reconstruction of Financial Assets and Enforcement of security Interest Act, 2002 and also advertised for auctioning of the mortgaged properties. Due to the said financial crisis, the defendants decided to sell the properties and approached the plaintiff in or about the month of June 2020 and offered to sell the suit properties and handed over the xerox copies of the aforesaid sale deeds and rectification deeds to the plaintiff to show their title with regard to the suit properties and narrated the aforesaid facts. Thereafter elaborate discussions and negotiations between the defendants and the plaintiff, and Mr. T. Narendran for the the purpose of fixing the sale consideration. During the negotiations the second defendant furnished a letter signed by him and his wife, with regard to the shareholders details of the first defendant. The said letter revealed that the second defendant and



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his wife Mrs.N.Ranjitham alone are the shareholders and directors of the first defendant. The said original undated letter furnished by the second defendant. After various discussions the plaintiff and the defendants reached a conclusive agreement orally and decided the sale price of the suit properties as Rs.25,00,00,000/- on 20.07.2022 and same was recorded in writing on the same day under written document as memorandum of understanding (hereinafter referred as "MOU"). The second defendant being the managing director of the first defendant signed the said MOU on behalf of the first defendant. The vice president (Finance & Administration) by name Mr.T.Narendran signed the said MOU on behalf of the plaintiff. The plaintiff and the defendants bound by the said MOU. Accordingly, the defendant settled the loan due to the TIIC and also to the IOB the said payment was made through cheque issued by the plaintiff to that effect he filed the details of the cheque. Therefore, on various payments the plaintiff paid total sum of Rs. 19,52,05,899/- to the defendants by way of part sale consideration out of the agreed sale consideration of Rs. 25,00,00,000/-. The balance amount payable by the plaintiff is only Rs.5,47,94,1010/- and the plaintiff/respondent herein is also always ready and wiling to pay the same and to get the sale deed executed and registered including delivery of



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vacant possession of the suit properties. But the defendants committed breach on their part intentionally. The defendants till date failed to furnish proof that they have settled the dues in full i.e Settlement of all the arrears payable by them to TANGEDCO, Appanaickenpatty Panchayat and TNPCB. Thus, it is clear that the defendants committed breach of their part of contract. As per MOU, the plaintiff are entitled to collect the original deeds concerning the suit properties from THIC and IOB after settling the dues payable by the defendants in full, by the plaintiff. By the defendants in breach of the terms of the said MOU somehow collected all the original title deeds from those financial institutions and failed to hand over the same. The custody of those documents on the part of the defendants in breach of the MOU dated 20.07.2022 and the defendants are bound to hand over those original title deeds to the plaintiff. The failure in handing over the title deeds also clear breach on the part of the defendants as per the said MOU. Further, the plaintiff all along hoping that the defendants are going to settle it dues payable to TANGEDCO, Appanaickenpatty Panchayat and TNPCB. But whenever asked, the defendants stated that they are in the process of getting some waiver. In the meantime, the defendant started pestering the plaintiff to purchase the machineries in the suit properties. The suit property



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contained heavy and big machineries that had been installed by the defendants and despite substantial payments by the plaintiff the defendants had not removed the same and failed to take any preparatory measures for removing the same. Since the defendants are bound to deliver the vacant possession of the property to the plaintiff but he failed. Having received the part of sale consideration, the defendants failed to execute the sale deed despite readiness on the part of the plaintiff the plaintiff with balance sale consideration. Having committed breach of the terms of MOU, the defendants attempted to create encumbrance over the suit property in favour of the third parties and also demanded higher amount which is contrary to the terms. Therefore, the necessity arose for the plaintiff to rush to the Court and obtained interim order in order to prevent the defendant to create third party interest in the suit property and also contend that suit come within the scope of the Commercial Court Act. **Further the suit filed for urgent relief, the plaintiff can exist remedy pre-mediation as per Section 12 A of the Commercial Court, Act** accordingly summarised the cause of action arose for the suit. Hence he prayed to dismiss the petition filed by them for rejection of plaint.



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4. Considering the submissions on either side, the Court below held that the suit property was used for commercial purpose till 2008 and the machineries are still available in suit property, even though the respondent is not going to purchase the said machineries or factory and also not going to run the said factory, the dispute is in respect of immovable property over which factories is available or commerce or trade or business activity were conducted or the petitioners used the same, which is commercial in nature, it is not necessary that the respondent should purchase or enter into a agreement in respect of running factory or is going to run the same factory. Further, he held that machineries used in the factory had already been hyphothecated with IOB and no recovery proceedings under Section 14 of the DRT Act. Therefore, the jurisdiction with commercial Court is maintainable. In respect of invoking Section 12 A of the Commercial courts Act, the Trial Court held that dispute between the parties are commercial in nature and necessary leave was granted by this Court to present the suit by over looking Section 12 A of the Commercial Courts Act. In view of urgency contemplated in the case, the application to reject claim as per Section 12A and issuing notice to the petitioners for premeditation does not



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arise. Thereby, no separate application under section 12A of the said Act is also necessary and the respondent need not to be directed to appear before the DRT also, accordingly dismissed the petition. Challenging the same, the petitioner filed this Civil Revision petition.

5. The learned counsel for the petitioners/defendants submitted that the court below failed to appreciate the fact that the claim in the suit is not commercial dispute, so also, not fall under Section 2 (1) (c) (Vii) of the Commercial Courts Act, 2015. Further he submitted that as per Section 2 (1) (c) (7) of the Commercial Court Act, means that the immovable property that is the subject matter of the dispute shall be used exclusively in trade or commerce at the time of entering into the agreement. The learned judge failed to see that the suit property was not used for the commercial purposes on the date of entering into MOU. Commercial property was immovable property was ceased to be used for commercial purposes on the date of alleged MOU. Further, he would submit that the plaintiff has violated Section 12 A which granted pre institution and mediation: was made; notwithstanding the fact that there is no existing commercial dispute between the parties. Further he would submitted that the Trial Court failed to appreciate that the plaintiff averment which does not contemplate any



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actual urgent interim relief. The factual background for which the plaintiff was in violation of Section 12 A of the Act, the plaintiff simply pleaded that they are apprehending that the defendants/petitioners herein would encumber the property to overcome the mandate under Section 12 A on bare reading of the plaint averment that there was no dispute between the parties the Court ought to have rejected the plaint. Further, the Court below failed to appreciate the discussion with regard to modification in the terms of MOU on 26.01.2012 which increased sale consideration as Rs.30,00,00,000/- including sale of machinery of the first petitioner company. Hence, there is no cause of action for the suit as alleged by the plaintiff but the Court below failed to reject the plaint. Hence he prayed to allow this petition.

6. By way of reply, the learned counsel for the respondent submitted the agreement relating to immovable property used exclusively in trade or commerce it comes under the commercial dispute filed under Section 2 (1) (c(vii) of the Act to that effect he the relied the ratio laid down in the case of ***Ambalal Sarabhai Enterprises Limited Vs K.S Infraspac LLP reported in 2020 15 SCC 585:***

37. A dispute relating to immovable property per se may not be a



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commercial dispute. But it becomes a commercial dispute, if it falls under

Sub-clause (vii) of Section 2(1)(c) of the Act viz. The agreements relating to immovable property used exclusively in the trade or commerce. The works "used exclusively in trade or commerce" are to be interpreted purposefully. The word "used" denotes "actually used" and it cannot be either "really for use" or "likely to be used" or "to be used". It should be "actually used".

7. Thereby he contend that though MOU was entered to purchase the immovable property which was used by the first defendant for industrial purposes so the Trial judge rightly dismissed the petition. Further, he submitted that in respect of Section 12 A of the Commercial Court Act, if the suit is filed for urgent interim relief, then, the question of relegating the plaintiff to exhaust the remedy of pre-institution mediation as contemplated under Section 12 A of the Commercial Courts Act, 2015, since the plaintiff filed suit with prayer for urgent interim relief before the commercial court can satisfy that whether there are limits which prime facie indicates that suit may contemplate the urgent interim relief irrespective of the fact as to whether the plaintiff evidentially succeed in getting interim relief. **If the plaintiff contemplates the urgent relief pleading on record as**



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established sufficiently in such circumstances it is not necessary for the plaintiff to enter into pre institution and mediation by invoking Section 12

A of the commercial Court Act too that effect he relied the judgment of the Court in the case of *M/s Patil Automation Private Ltd and others Vs Rakheja Engineers Private Ltd, reported in MANU SC 1004 (2022)*

"63..... In Section 12A also, the bar of intitution of the suit is applicable only in a case in which the plaintiff does not contemplate urgent interim relief...."

8. By relying above judgement the learned counsel for the respondent submitted that the Trial Court rightly dismissed the petition for rejecting the plaint which needs no interference.

9. Considering the submission on either side and also on records, the fact reveals that on 20.07.2003 MOU was said to be entered between the parties in respect of suit properties wherein, the defendants agreed to sell the property for total sale consideration of Rs. 25,00,00,000/- with other terms. Accordingly, the plaintiff also agreed to settle the long dues with TIIC and IOB and others. As per the plaint avernments, as on date plaintiff paid Rs.19,52,05,899/- and ready to pay the balance amount to get the sale deed. But as per the contract, till date, the defendants/petitioners herein not paid dues to TANGEDCO. Beside, the petitioners herein/defendants



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attempted to alienate the suit property with third parties. Hence the plaintiff approached the Court for the relief of specific performance. Immediately the defendant filed application to reject the plaint stating that there is no cause of action arose since because it is not commercial dispute but the Trial Court observed that the subject in issue is immovable property which was used by the defendants for commercial purposes and till date machineries are in the suit property. Therefore, Commercial Court is having jurisdiction and also held that on considering the relief claimed by the plaintiff contemplate the urgent interim relief and the question of relegating the plaintiff the existing remedy on pre institution mediation is not contemplate under Section 12 A of the Commercial court Act, , the said Act can be invoked only wherein if the plaintiff not plead any emergency relief, the plaintiff filed I.A No. 2 of 2023 for urgent interim relief along with suit thereby court found prime facie case in favour of the plaintiffs. Moreover, the defendants not denied the execution of MOU with plaintiff as per the affidavit filed in I.A No. 4 of 2023. Further, they also admits that they gave draft supplemental MOU insisting the plaintiff to purchase the machineries by paying additional amount of ten crores totally thirty five crores, the same has not been accepted by the plaintiff. Therefore, as per the terms the



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plaintiff paid 85 % of the amount as agreed in MOU to the IOB and THIC to settle the dues as directed by the defendants. On the other hand, the defendants wanted to purchase the machineries hence the dispute arose between the parties. As per the plaint, it reveals that after settling the issue title deed is now under the hands of the defendants. So, the plaintiff apprehends that the defendants may create encumbrance over the suit property and they also the petitioners herein/defendants admitted to create third party interest over the property so they approached the Court with urgent relief. The trial judge rightly appreciated all the facts and circumstances of the cases as well as the urgent relief claimed by the plaintiff. Further, as rightly pointed by the plaintiffs counsel the plaintiff's apprehension that the defendants may create encumbrance over the suit properties hence he approached the Court with urgent interim relief, it prime facie satisfied by the contact of the parties, the Trial Judge rightly take the case on file, hence non-issuance of pre-suit mediation notice is not fatal to the proceedings. In view of the above and for the reasons stated above, this court does not find any infirmity in the order dated 17.07.2023 passed by the Commercial Court (District Judge Cadre), Coimbatore in I.A No. 4 of 2023 in C.O.S No. 110 of 2023.



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10. In result, this petition is dismissed. No Cost. Consequentially

connected miscellaneous petition is closed.

09.11.2023

pbl

To

1. The Commercial Court (District Judge Cadre), Coimbatore.



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T.V.THAMILSELVI,J.

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