BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.08.2023

Pronounced on : 06.12.2023

CORAM :

THE HONOURABLE Mrs. JUSTICE **K.GOVINDARAJAN THILAKAVADI**

C.R.P.(MD).No.1264 of 2023
and C.M.P.(MD).No.6212 of 2023

1.S.M.Subbiah Chettiar,
2.S.Mariyatha Selvam. ...Petitioners

Vs.

Annamalai & Co, Palani,
rep. by tis Proprietor A.N.Meiyappan,
No.276, Gandhi Salai,
Palani Town and Taluk,
Dindigul. ...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair order and decretal order dated 17.04.2023, in I.A.No.116 of 2023 in O.S.No.83 of 2023 on the file of the Additional District Court, Palani.

For Petitioners : Mr.V.R.Shanmuganathan

For Respondent : Mr.R.Sundar Srinivasan

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O R D E R

This revision is preferred as against the order dated 17.04.2023 in I.A.No. 116 of 2023 in O.S.No.83 of 2023 on the file of the learned Additional District Judge, Palani.

2.According to the revision petitioners, the respondent was running a finance company in the name Annamalai & Co. at Palani, in a rental premises. The first petitioner herein, was running a finance company in the name Visalam & Co. at Door No.127, Gandhi Street, Palani. The respondent and the first petitioner belong to the same community and they were associated to their sangam and had good acquaintance. The respondent was permanently residing at Karaikudi and facing trouble in his business and handed over his company to the first petitioner by shifting the same to the place of business of the first petitioner. In 2017, the first petitioner closed his business by merging the same with the respondent's firm and was running the company. On account of his age, he employed his son/the second petitioner, as the Manager of the concern and was running the firm in the name M/s.Annamalai & Co.

3.The respondent did not pay any amount towards rent or salary to the petitioners. The respondent had paid a sum of Rs.50,000/- p.m, as rent, for his previous place of business. The first petitioner had borrowed loans from various persons and financed the same to various borrowers. He also conducted auction of jewels after shifting the business in the year 2017 and the said amount was withdrawn by the respondent. The first petitioner also paid a sum of Rs.25,000/- p.m to the respondent from 31.05.2008 till 25.03.2021 through bank. Apart from that, he had paid to a sum of Rs.10 lakhs in cash whenever the respondent demanded. While so, a dispute arose between the respondent and the first petitioner on account of questioning the respondent, pertaining to the action of the respondent in receiving donations to the tune of Rs.25 lakhs for constructing sangam building for which the amount was collected and given through the first petitioner. The respondent, all of a sudden, issued a legal notice dated 24.05.2022, requesting the first petitioner to hand over the accounts, locker keys and alleging that a sum of Rs.18 lakhs which was earned through auction. A suitable reply was given by the first petitioner on 01.06.2022, objecting to the allegations. The respondent issued a rejoinder on 09.07.2022 and also lodged a police complaint as if the first petitioner threatened to kill him, when the respondent demanded Rs.18 lakhs from the first petitioner, which was admitted by him that he owed the said amount to the respondent in the reply notice. The police had dropped the action, after finding that the said complaint was false. Thereafter, the respondent filed a suit in O.S.No.83 of 2023, before the learned Additional District Court, Palani for rendition of accounts and for handing over of the locker keys, account books, etc. The respondent also filed two applications in I.A.No.115 of 2023 to appoint an Advocate Commissioner for taking inventory of articles in the said concern and I.A.No.116 of 2023 to deposit a sum of Rs.18 lakhs which is alleged to have been admitted in the reply notice given by the first petitioner. The learned Additional District, Judge by an *ex parte* order dated 17.04.2023, allowed I.A.No.116 of 2023. Aggrieved by the same, this revision is preferred.

4.The learned counsel for the revision petitioner would submit that under Order XXXIX Rule 10 of C.P.C, any order can be passed only after issuance of notice and providing an opportunity to the respondent/defendant. The learned counsel would submit that it is a settled principle of law that there cannot be an ad interim mandatory direction, more particularly, to deposit such a huge sum of Rs.80 lakhs. He would further submit that the Trial Judge failed to see that an application under Order XXXIX Rule 10 of C.P.C is maintainable only when it is a money suit and capable of delivery or something capable of delivery. In the instant case, the suit is for rendition of accounts and for direction to hand over certain articles mentioned in the suit which does not come under the money suit. Therefore, invoking Order XXXIX Rule 10 of C.P.C, the payment of money can be directed only, if there exists ingredients of Order XII Rule 6 of C.P.C and there must be an admission with respect to the payment due. In the present case, there are no ingredients as contemplated under Order XII Rule 6 of C.P.C.

Though it is the case of the revision petitioner that in the reply notice, the revision petitioner admitted that there is a sum of Rs.18 lakhs in the account of M/s.Annamalai & Co., so as to invoke the provision of Order XXXIX Rule 10 of C.P.C, the said reply notice is neither pleaded nor admitted before the Court of law. Even in the said reply notice, it is not admitted by the revision petitioner that a sum of Rs.80 lakhs is liable to be paid to the respondent. The content in the reply notice is only to the effect that a sum of Rs.80 lakhs is standing in the account of the concern and after taking the amount, which is due to the revision petitioner, the balance is worked out to a sum of Rs.40 lakhs and the first revision petitioner is ready to repay the balance amount to the respondent at a sum of Rs.5 lakhs per month. While so, the learned District Judge erroneously directed the revision petitioner to deposit a sum of Rs.18 lakhs by way of an interim order. The learned counsel would further submit that the issue in the main suit is the dispute pertaining to the financial concern and there are lot of factual disputes relating to the rendition of accounts and other things and the liabilities of the parties either way could be concluded only after a full-fledged trial and through the evidence of both the parties. Therefore, without hearing the opposite party, directing the revision petitioner to deposit the amount is highly arbitrary and unsustainable and hence, the order passed by the learned Additional District Judge in I.A.No.116 of 2023 dated 17.04.2023 is liable to be set aside.

5.On the other hand, the learned counsel appearing for the respondent would contend that the civil revision petition is not maintainable, since no final orders have been passed in the petition. Therefore, the present civil revision petition is liable to be dismissed.

6.The learned counsel for the respondent would further submit that during the pendency of interlocutory application, the petitioner ought to have approached the Trial Court, by having entered appearance therein and should have filed his counter instead of filing this civil revision petition. The learned counsel for the respondent would further submit that no revision would be maintainable against an interim order and without exhausting the remedies before the Trial Court, this Court cannot be approached under Section 115 of C.P.C.

7.He would further submit that the respondent is the Proprietor of the concern under the name and style “Annamalai and Co.” at Palani and the said business has been carried on in a rented premises belonging to the first petitioner and the second petitioner was employed as Manager and the first petitioner was to submit accounts to the respondent regarding the income and expenses of the business and to remit the amounts payable after adjustment of rent of Rs.3,500/- p.m and salary totaling Rs.25, 000/- (Rs.15,000/- to the first petitioner and Rs.10,000/- to the second petitioner namely his son). However, the petitioners have not submitted the accounts properly and also defaulted in the matter of making remittances. In the said state of affairs, notice dated 24.05.2022 has been caused to be issued to the petitioner. In the said notice, it has been pointed out that the petitioners have not complied with their obligation to render accounts and to make remittances and that they are guilty of manipulations of accounts of the business and for the said notice, the petitioners have sent a reply dated 01.06.2022 through their counsel. In the said reply notice, there has been categorical admission that a sum of Rs.18,08,556.44/- is the credit balance of Annamalai and Co. However, the petitioners have made a novel claim as if the petitioners are entitled to Rs.40,00,000/- out of the said credit balance due from the respondent and offered to pay the said sum of Rs. 40,00,000/- by means of monthly installments of Rs.5,00,000/- each. For the said reply notice, a re-joinder dated 09.07.2022 has been issued and the petitioners have been called upon to render proper accounts and to hand over the accounts, jewels, cash and locker keys of the business to the respondent. Since the said demand was not complied with, the suit for rendition of accounts came to be filed. Along with the suit, two applications have been filed, one for appointment of Advocate Commissioner under Order XXVI Rule 9 of C.P.C., for taking inventory and another for direction to deposit the admitted amounts for safe custody under Order XXXIX Rule 10 of C.P.C.

8.In the application for appointment of Advocate Commissioner for taking inventory in I.A.No.115 of 2023, notice has been ordered and in the other application in I.A.No.116 of 2023, an order was passed directing the revision petitioners to deposit the amounts admittedly in the credit of Annamalai and Co. and the Trial Court has applied its mind and passed a detailed order and also ordered notice to the revision petitioners and the said application has not been finally disposed of by the Trial Court and is still pending and the revision petitioners have also entered appearance before the Trial Court and sought for filing of counter. Without contesting the said application before the Trial Court, the revision petitioners have approached this Court by filing this civil revision petition during vacation and have obtained an order of interim stay by making representation as if the Trial Court has granted the relief that has been sought for in the main suit by way of interim relief and that there is no power for the Trial Court to pass any such order and that passing of such an order is beyond the scope of the suit. The learned counsel for the respondent would submit that both the said contentions are factually incorrect and legally unsustainable. The main prayer in the suit is for rendering of accounts and even as per the allegations of the revision petitioner, the revision petitioners were in management of the business on behalf of the respondent. As such, the revision petitioners are legally bound to render true and proper accounts about the transactions done by them, on behalf of the business concern namely, Annamalai and Co., which belongs to the respondent. Only on rendering of accounts, the exact amount payable by the revision petitioners could be ascertained. However, even as per the admission of the revision petitioners in the reply notice, a sum of Rs.18,08,445.44 is the credit balance and whether the revision petitioners would be entitled to adjustment of Rs.40,00,000/- out of the same is the matter to be decided after trial. In the said background, the Trial Court, in order to safeguard the interests of both parties, has exercised its discretionary power under Order XXXIX Rule 10 of C.P.C. In this connection, it is pertinent to note that provisions of Order XXXIX, Rule 10 of C.P.C is squarely applicable to this case which reads as follows:

> *"10.Deposit of money, etc., in court:*
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> *Where the subject matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other things as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in court or delivered to such last named party, with or without security, subject to the further direction of the court."*

9.In this case, one suit is for rendering of accounts and another for payment of amounts due to the respondent. On such rendering of account and for handing over of jewels etc, the revision petitioners in the reply notice, have categorically admitted about their employment in the business on behalf of the respondent and also admitted about the credit balance of Rs.18,08,556/-. Therefore, all the ingredients of Order XXXIX Rule 10 of C.P.C., have been available in this case and the Trial Court, after perusing all the materials, including the contentions raised in the reply notice, has passed the impugned order and therefore, there is no error of jurisdiction by the Trial Court and the said order is not a cryptic or mechanical order, but, on the other hand, is a speaking order and the matter has not been finally disposed of and the revision petitioners had an opportunity to raise their objections, if any, by way of filing counter. Except that, the present C.R.P is not legally sustainable and misconceived and it is nothing but, an abuse of process of law. By virtue of the order of interim stay that has been granted by this Court, the Trial Court could not proceed with the matter and the revision petitioners are enjoying the amounts due to the respondent. Therefore, interest of justice requires that this Court may vacate the order of the stay which has been granted on 11.05.2023 in C.M.P.No.6212 of 2023. The present application as well as the main civil revision petition are abuse of process of law and liable to be dismissed.

10.Heard both sides and perused the records.

11.Admittedly, the respondent/plaintiff filed the above suit in O.S.No.83 of 2023 for rendition of accounts against the revision petitioners/defendants and for handing over the locker keys, ledgers and account books, etc, mentioned in the suit. The respondent/plaintiff had also filed two applications in I.A.No.115 of 2023 for appointment of Advocate Commissioner to take inventory of articles from the disputed concern and I.A.No.116 of 2023 to deposit a sum of Rs.18 lakhs, which is alleged to have been admitted in the reply notice given by the revision petitioners. Aggrieved by the order passed in I.A.No.116 of 2023, the present revision is preferred.

12.A specific objection made by the learned counsel for the respondent/plaintiff is that this civil revision petition itself is not maintainable and that no revision would be maintainable against an interim order without exhausting remedies available before the Trial Court. To support his contention, he has relied upon the judgment of the Hon'ble Supreme Court in A.Venkatasubbiah Naidu Vs.Chellappan and others, dated 19.09.2000, wherein it has been held as under:

> *"Now what remains is the question whether the High Court should have entertained the petitioner under Article 227 of the Constitution when the party had two other alternative remedies.*

Though no hurdle can be put against the exercise of the constitutional powers of the High Court it is a well recognized principla which gained judicial recognition that the High Court should direct the party to avail himself of such remedies one or the other before he resorts to a constitutional remedy. Learned single judge need not have entertained the revision petition at all and the party affected by the interim ex parte order should have been directed to resort to one of the other remedies. Be that as it may, now it is idle to embark on that aspect as the High Court had chosen to entertain the revision petition.

In the light of the direction issued by the High Court that the Trial Court should pass final orders on the interlocutory application filed by the plaintiff on merits and in accordance with law, we may further add that till such orders are passed by the Trial Court, status-quo as it prevailed immediately preceding the institution of the suit would be maintained by the parties."

13.Therefore, in the light of the above observation, this Court directs the revision petitioners to resort to one or the other remedies available to them before the Trial Court and the Trial Court is directed to pass final orders in the Interlocutory Application filed by the respondent/plaintiff on merits and in accordance with law. This Court further adds that until such time, status quo as it prevailed immediately preceding the institution of the suit, would be maintained by the parties.

14.With the above observation, this Civil Revision Petition is disposed of. Connected miscellaneous petition is closed. There shall be no order as to costs.

06.12.2023

Internet : Yes/No
Index: Yes/No
apd

To

The Additional District Judge, Palani.

K.GOVINDARAJAN THILAKAVADI

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