



CRP No.759 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.03.2024

Pronounced on : 15.03.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.759 of 2024

N.Ranjitham

... Petitioner

Vs.

1.M/s.Aquatex Engineering,
A partnership firm,
Represented by its Managing Partner,
R.Kumaravelu,
Thudiyalur, Coimbatore-641 034.

2.M/s.Real Link Engineering India (P) Ltd.,
No.4, Park Street, Kattor,
Coimbatore-641 009.

3.L.Navneethakrishnan

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decreetal order in C.F.R.No.344 and 429 of 2024 in un-numbered IA of 2024 in C.O.S.No.110 of 2023 dated 07.02.2024 passed by the Judge, Commercial Court, Coimbatore and thereby allow the above Revision.



CRP No.759 of 2024

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For Petitioner

: Mr.R.Thiagarajan
for Mr.Saurabh Mishra

For Respondents

:Mr.P.S.Raman,
Senior Counsel
for Mr.R.Bharath Kumar
for first respondent

ORDER

The civil revision petition is filed to set aside the order and decreetal order in C.F.R.No.344 and 429 of 2024 in un-numbered IA of 2024 in C.O.S.No.110 of 2023 dated 07.02.2024 passed by the Judge, Commercial Court, Coimbatore.

2. The revision petition is the third party in COS No.110 of 2023. The suit has been filed by the first respondent/plaintiff against the second and third respondents/defendants with a prayer for specific performance of Memorandum of Understanding dated 20.07.2022 after receiving the balance sale consideration of Rs.5,47,94,101/- and to execute a sale deed and alternatively praying to pay a sum of Rs.19,15,05,899/- with 24% interest



besides permanent injunction against the defendants not to induct any third party into the possession.

3. According to the petitioner, she is one of the Directors of second respondent/first defendant company i.e. M/s. Real Link Engineering India Private Limited and she participated in the day to day appearance of the first defendant company as one of the Directors. She came to know about the alleged Memorandum of Understanding dated 20.07.2022, which was created by the first respondent/plaintiff without her knowledge as if the second and third respondent defendant are vendors of the suit properties to the first respondent/plaintiff herein. Taking advantage of her innocence and financial crisis during the lock down period, Covid-19 and misunderstanding between herself and the third respondent herein, the first respondent/plaintiff has created the alleged Memorandum of Understanding dated 20.07.2012 in order to grab the suit properties for paltry sum and did not get any concurrence to enter into contract. Therefore, to save the property, she is necessary and proper party in the original suit, without her presence, the respondents are not entitled to get any remedy. Therefore, she sought to implead her as one of the



CRP No.759 of 2024

defendants in the suit, which was dismissed by the learned judge by passing the order dated 07.02.2024, on the ground that all the Directors need not be impleaded as a party and the first defendant being represented by the Managing Director and the property is not in the name of second defendant, he is not personally liable and the personal property is not the subject matter. The Managing Director of the company is contesting the suit on behalf of the first defendant company. The company being the legal entity, its members or directors are not personally liable to the creditors of the company. Challenging the said order, the petitioner has filed the present civil revision petition .

4. Learned counsel for the petitioner submitted that the order passed by the learned Judge is against the law and probabilities of the case. The Learned Judge has failed to notice the provisions contained in the Memorandum of Understanding and the Articles of Association of the first defendant company, which provides for increased involvement of the Board of Directors does not provide for unilateral discharge of powers by the Managing Director without the consent of the Board of Directors and expect the presence of at least two directors and signature of the directors subscribed to



every page, to which the seal of the company is affixed in their presence.

Thus, pleaded to set aside the impugned order and to allow the revision. To support his case, he relied upon judgment of the Hon'ble Supreme Court in the case of ***Mumbai International Airport (p) Ltd. vs Regency Conventional Centre & Hotels (P) Ltd, reported in 2010 (7) SCC 417.***

5. Learned Senior Counsel appearing for the first respondent supported the impugned order and further contended that in this case, trial has been completed, plaintiff's counsel submitted his oral argument on 12.02.2024 and also filed written argument on 16.02.2024. Defendants' counsel also submitted his oral argument on 22.02.2024 and the case was posted for defendant's side argument continuation. At this stage, the petitioner filed this application to implead her as a party to the suit. Further contended that in the Memorandum of Understanding, it is specifically stated that *to discharge of the secured creditors and also to settle its other liabilities, has decided to sell the said property, and for this purpose passed a resolution on 21.03.2022 by and under authorised by its Managing Director to enter into a Memorandum of Understanding, agreement, sale etc.* Under these



CRP No.759 of 2024

circumstances, the argument of the counsel for the petitioner that there is no board resolution authorizing the Managing Director, is devoid of merits and against the contention in the Memorandum of Understanding.

6. Learned Senior Counsel for the first respondent further contended that the petitioner is a third party to the contract entered into between the plaintiff and the defendants. Further, Order I Rule 10 (2) of the Civil Procedure Code would clearly show that the necessary parties in a suit for a specific performance of a contract of sale are the parties to the contract or if they are dead, their legal representatives has also a person, who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. Therefore, the petitioner being a third party to the contract, not a necessary party. Further, the proposed petitioner is also not a necessary party to the Court and to enable the Court effectually and completely to adjudicate the dispute before the court. In this case, the company resolution authorizing the Managing Director to enter into a transaction on behalf of the first defendant company. Therefore, the petitioner being one of the Directors need



not be impleaded as one of the party in this case. The trial court has rightly dismissed the petition. There is no reason to interfere with the impugned order. Thus, pleaded to dismiss the revision petition as it has no merit. To support his argument, he has relied upon the following judgments:

- i) Kasturi v.Iyyamperumal and Ors reported in 2005 AIR SCW 2368*
- ii) M.Rajendra Naidu vs Sterling Holiday Resorts (India) Ltd. and Ors. reported in MANU/TN/0834/2008*
- iii) G.V.Films Limited vs Prabhudas Gurumukh Singh and Ors reported in MANU/TN/0969/2023*

7. I have considered the matter in the light of the submissions made by the counsel for the parties and perused the records.

8. The revision petitioner is the third party to the suit in COS No.110 of 2023 filed by the first respondent/plaintiff against the respondents 2 and 3/ defendants on the file of the Commercial Court (District Judge Level), Coimbatore. On a perusal of the plaint, it is noticed that the plaintiff filed the suit against the defendants with a prayer for specific performance of



CRP No.759 of 2024

Memorandum of Understanding dated 20.07.2022 after receiving the balance sale consideration of Rs.5,47,94,101/- and to execute a sale deed and alternatively praying to pay a sum of Rs.19,15,05,899 with 24% interest besides permanent injunction against the defendants not to induct any third party into the possession.

9. On a perusal of the case diary, it is noticed that in this case, the trial has been completed and plaintiff's counsel submitted his oral argument on 12.02.2024 and also filed written argument on 16.02.2024. The defendants' counsel submitted his oral argument on 22.02.2024 and not filed his written arguments. Further, it is noticed that the defendants were instructed to file written argument on or before 14.03.2024, failing which, the judgment will be pronounced on 15.03.2024. Then the case is posted now for judgment on 15.03.2024. Further, it is noticed that at the end of the trial, this petitioner filed this petition to implead her as one of the party to the suit on the ground that she is one of the Directors to the first defendant company and the company property has to be protected and the defendants 2 and 3 are colluding to sell the company property. The fact is the petitioner is the wife of



second defendant is admitted. She is not having knowledge about the transaction of her husband is unbelievable.

10. Further, it is also not disputed that in the Memorandum of Understanding dated 20.07.2022, it is specifically mentioned that the company passed resolution authorizing the Managing Director to enter into Memorandum of Understanding and sale. Under these circumstances, the argument of the learned counsel for the petitioner that the Managing Director is not authorized by passing resolution is not acceptable one when the company by passing the resolution authorized the Managing Director to act on behalf of the company to enter into Memorandum of Understanding and to sell. One of the Director has no right to question the action of the managing director. Therefore, the company is properly represented by the managing director. Further, it is also not disputed that the petitioner and her husband, second defendant/managing director of the company is living in the same house. Further, it is also not disputed that the company's property was brought to sale under SARFAESI Act and the second and third respondents with the help of first respondent/plaintiff discharged the loan borrowed from



CRP No.759 of 2024

the Indian Overseas Bank and TIIC and collected all the original title deeds in respect of the suit property. Under these circumstances, the Memorandum of Understanding was executed to sell the suit property to the first respondent/plaintiff for a sum of Rs.25,00,00,000/-. The suit property is in the name of the first defendant company, which is represented by the Managing Director.

11. The Learned Judge by relying upon the principles stated in the judgments i) *Salomon vs Salomon and Co.Ltd.*, reported in 1897 AC 22, ii) *Telco vs State of Bihar* reported in (1964) 6 SCR 885, iii) *Balwant Rai Saluja vs AIR India Ltd.* reported in (2014) 9 SCC 407, iv) *Hrushikesh Panda vs Indramani Swain* reported in 1986 SCC OnLine Ori 92, v) *Mukesh Hans vs Uma Bhasin* reported in 2010 SCC OnLine Del 2776 and vi) *Saurabh Exports vs Blaze Finlease & Credits (P) Ltd.*, 2006 SCC OnLine Del 336, came to the conclusion that the petitioner is not a proper and necessary party to adjudicate the issue before the Court.

12. It is also not disputed that the petitioner is a third party to the



contract. Now the question is whether the third party to the contract is entitled to be added in a suit for specific performance of contract for sale as a defendant. To decide whether a party is a necessary party to test or to satisfy:

- i) There must be a right to some relief against such party in respect of the controversies involved in the proceedings.
- ii) No effective decree can be passed in the absence of such party.

13. In this case, the petitioner has not satisfied the above two tests. The principle stated by the Hon'ble Supreme Court in the case of ***Kasturi vs Iyyamperummal and Ors reported in 2005 AIR SCW 2368*** is applicable to the case on hand.

14. In view of the above, the petitioner being a third party to the sale agreement, her presence before the court is not necessary in order to enable the court to effectually and completely adjudicate upon and settle all the questions involved in the suit. The trial court has rightly dismissed the said application of the petitioner. I find no infirmity in the impugned passed by the trial court. There is no ground and reason to interfere with the order dated



CRP No.759 of 2024

07.02.2024 passed by the Trial Court. There is no merit in the Revision.

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Hence, the civil revision petition is dismissed. There shall be no order as to costs. Consequently, CMP No.5649 of 2024 is closed.

15.03.2024

Index: Yes/No

Internet: Yes/No

mrn

To

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



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CRP No.759 of 2024

V.SIVAGNANAM, J.

(mrn)

Pre-delivery judgment in
CRP No.759 of 2024

15.03.2024