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C.R.P.No.856 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.03.2024

PRONOUNCED ON: 15.03.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.R.P.No.856 of 2024

Mrs. Divya A.Nichani

...

Petitioner

/vs/

1. Mrs.Dipti D.Palicha

2. Mr.Divyesh A.Palicha

3. Ram Charan Company Private Limited,
rep. By its Director
having registered office at
No.505, 5th floor, Delta Wing
Raheja Towers, Old No.113.134
New No.177, Anna Salai,
Chennai – 600 002

...

Respondents

Prayer : Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the order dated 05.02.2024 made in C.O.S.S.R.No.06/2024 made by the learned Commercial Court Judge, Chennai and thereby direct the registration of the case.



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For Petitioners

... Mr. S.R.Rajagopal,
for S.Varshini

ORDER

This Civil Revision Petition has been filed to set-aside the order dated 05.02.2024 passed by the learned District Judge, Chennai made in C.O.S.S.R.No.6 of 2024 made and thereby direct the registration of the case.

2. The petitioner/plaintiff has presented the plaint for the relief of recovery of amount due under the promissory note executed by the defendants and the same was returned for representation for non-compliance of Section 12-A of the Commercial Court Act 2015 on the ground that the trial court is not satisfied with the urgent interim relief sought by the petitioner/plaintiff to get over Section 12-A of the C.C. Act.

3. The learned counsel for the petitioner submitted that the prayer for an urgent interim relief should be examined by the Court with the nature and subject matter of the suit, the cause of action and the prayer for interim



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relief. The facts and circumstances of the case have to be considered from the standpoint of the plaintiff, but, the trial Court failed to consider the fact from the standpoint of the plaintiff. Therefore, he had pleaded to set-aside the impugned order dated 05.02.2024 passed by the Commercial Court. To support his argument, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in 2024 SCC online SC 1382 (Yamini Maohar /vs/ TKD Keerthi) .

4. Heard the submission made by the learned counsel appearing for the petitioner and perused the materials available on records carefully.

5. On perusal of the records, the fact reveals that the petitioner/plaintiff has presented the plaint, for the relief of recovery of amount due under promissory notes said to have been executed by the respondents/defendants, stating that the respondents/defendants, who are known person to the petitioner/plaintiff's , had availed financial assistance from the petitioner/plaintiff and there were exchange of emails, notice, reply notice, re-joinder and sur-rejoinder. The petitioner/plaintiff along with the plaint has filed a petition under Order XXXVIII Rule 5 of CPC for



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attachment before judgment, alleging that the respondents/defendants are seriously attempting to alienate the immovable properties, in which, a third party affidavit from a broker dealing with real estate business has also been produced. He has not availed the remedy provided for pre-institution mediation and settlement under Section 12-A of Commercial Court Act, 2015 and sought for exemption from invoking from the said PIMS, on the ground that the petition for ABJ would fulfill the requirements of urgent interim relief.

6. The principle under Section 12-A of the Commercial Court Act 2015 has been considered by Hon'ble Supreme Court in the case of ***Patil Automation Private Limited and others /vs/ Rakheja Engineers Private Limited reported in 2022(1) SCC 1 Act*** and summarised the principle as follows:

“ (i) Section 12-A of the 2015 Act is declared mandatory and it is held that any suit instituted violating the mandate of Section 12-A must be visited with rejection of the plaint under Order VII Rule 11 CPC. This power can be exercised even suo motu by the court as explained above. However, this



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declaration is made effective from 20.08.2022 so that stakeholders concerned become sufficiently informed, (ii) Still further, a direction is issued that in case complaints have been already rejected and no steps have been taken within the period of limitation, the matter cannot be reopened on the basis of this declaration. Still further, if the order of rejection of the complaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff, (iii) Finally, if the complaint is filed violating Section 12-A of the 2015 Act after the jurisdictional High Court has declared Section 12-A mandatory also, the plaintiff will not be entitled to the relief. “

7. With regard to the prayer for urgent interim relief, this Court considered the principle in the case of **Mr.K.Varathan /vs/ Mr.Prakash Babu Nakundhi Reddy in C.S.(comm.Div.) No.202 of 2022** and **O.A.No.612 of 2022 and A.No.4870 of 2022**. With regard to the attachment before Judgment, this Court elaborately considered the principle in **Pappammal /vs/ L. Chidambaram reported in 1983 (96) LW**



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8. On perusal of the plaint, it is noticed that the petitioner/ plaintiff filed the suit based upon the promissory notes alleged to have been executed by the respondent/defendants on 06.10.2018, 20.03.2019, 10.06.2019, & 11.06.2019.

9. On perusal of the plaint, in paragraph no.14 the plaintiff has pleaded the circumstances for filing the attachment before judgment petitions. The relevant portion runs as follows :-

“Now, it has come to plaintiff's notice that the 3rd defendant owns a flat/commercial space No.150/132, measuring 1960 sq.ft. Plinth area, in 5th floor building known as “CISSONS Complex”, at 1/30, earlier part of panteon road now Montieth Road, Egmore, Chennai 600 008, which property, 3rd defendant has offered for sale the and had engaged the services of a real estate agent Mr.Vijay Bajaj for sale of the property. The plaintiff states that Mr.Vijay Bajaj had informed the plaintiff's husband Mr.Ajay S.Nichani on



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12.12.2024, that the aforesaid property is for sale and that the 3rd defendant represented by its Directors had asked Mr.Vijay Bajaj to offer for the said property for a sum of Rs.75,00,000/- since Mr.Ajay S.Nichani was in look out to purchase property in said locality. The plaintiff further states that since Mr.Ajay S.Nichani showed interest for purchasing the property, Mr.Vijay Bajaj had furnished a copy of the sale deed to Mr.Ajay S.Nichani, (the copy of the sale deed is filed as document along with the plaint) and informed that the 3rd defendant wants to alienate the property at the earliest, as they are in dire need of funds. The plaintiff states that the 3rd defendant herein with a view to cheat and defraud plaintiff who had lent money to the defendants, are attempting to alienate the property belonging to the 3rd defendant and therefore, the plaintiff herein is also filing an interlocutory application seeking for an urgent interim relief for attaching the property belonging to the 3rd defendant, therefore, the seeks for waiver of the proceedings under Section 12-A of the Commercial Courts Act, 2015. The plaintiff states that the



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plaintiff is seeking such urgent interim relief, if the same is not grant would cause immense prejudice and hardship to the plaintiff. In light of the above fact, it is clear that the defendants herein are conducting the hectic parleys to dispose of its assets to avoid execution of the decree.”

10. The learned counsel for the petitioner relied upon this portion of pleading to show the circumstances to take his case out of requirement of Section 12-A of the Act. To support his argument, he relied upon the affidavit of one Vijay Balaji, third party, filed along with the plaint for attachment before judgment, in paragraph 2 & 3 of the affidavit, he stated as follows :-

“ 2. I submit that the directors of the 3rd defendant herein had sought my assistance if the property of the respondent/3rd defendant could be sold at approx Rs.75,00,000/-(approx).

3. I submit that in that circumstances, the Directors of the 3rd defendant Mr.Divyesh A. Palicha (2nd defendant) and Mr.Kaushik A.Palicha(other director of the 3rd defendant) had



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handed over the xerox copy of the sale deed in respect of the flat/commercial space no.150/132 of plinth area of 1960 sq.ft in 5th floor building known as “CISSONS COMPLEX”, at 1/30, earlier part of Pantheon Road, now Montieth Road, Egmore, Chennai 600 008, and requested me to find a suitable purchaser for the property of the respondent/3rd defendant, as they are planning to dispose of the assets of the respondent/3rd defendant and start business in a new place. “

11. It exposes the fact that the petitioner/plaintiff sought assistance of the above said Ajay Balaji, the person, who filed the affidavit. But, there is no material to show that the defendants have entered into any sale agreement and received any advance amount from any person with regard to sell the property. At this stage, the principle stated by our Court in “**Pappammal case**” is to be considered. This Court in paragraph 6 of this judgment observed as follows :-

“ 6. The essential requirements for invoking the power of Court to effect an attachment under Order 38, R.5(1) CPC, are that the Court must be satisfied that the defendant is about to



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dispose of the whole or any part of his or her property, or the defendant is about to remove the whole or any part of his or her property from the local limits of the jurisdiction of the Court and the defendant is intending so to do with a view to cause obstruction or delay the execution of any decree that may be passed against him or her. It is incumbent that the plaintiff should state precisely the grounds on which the belief or apprehensions are entertained that the defendant is likely to dispose of or remove the property. It may even be necessary in some cases to give the source of information and belief. A mere mechanical repetition of the provisions in the code or the language therein without any basic strata of truth underlying the allegation or vague and general allegations that the defendant is about to dispose of the property or remove it beyond the jurisdiction of the court totally unsupported by particulars would not be sufficient compliance with the first part of order 38 Rule 5(1) of CPC “

12. In this case, no such particulars have been given to the



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satisfaction of the Court that the defendants with a view to defeat or cause obstruction or delay the execution of any decree about to dispose of the whole or any part of delivery of property or even to remove the whole or any part of the property from the local limits of the jurisdiction of the Court. Thus, the primordial requirements of Order 38, Rule 5(1) of CPC, have not been satisfied.

13. Therefore, the Trial Court, after examining the nature and subject matter of the suit and the prayer for interim relief, found the prayer for urgent interim relief is to bypass the statutory mandate of pre-litigation mediation and therefore, returned the plaint for representation for complying the requirement under Section 12-A of the Commercial Court Act 2015. I find no infirmity in the impugned order passed by the Trial Court and there is reason to interfere with the same and I find no merit in the revision and the same is liable to be dismissed.

14. Accordingly, this Civil Revision Petition is dismissed. No costs.

15.03.2024



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To

The District Judge,
Commercial Court,
Egmore , Chennai 8



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V.SIVAGNANAM ,J.

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Pre-delivery order made
in
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15.03.2024