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O.S.A.No.65 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.02.2024

CORAM

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

O.S.A.No.65 of 2022
and C.M.P.No.5085 of 2022

M/s.ARC International Fertility
and Research Centre Private Limited,
represented by its Authorized Signatory,
Mr.Pradeep,
Having its registered office at 22/2,
ESI Hospital Road,
Peravallur, Perambur,
Chennai – 600 011.

Vs.

...

Appellant

1.Uma Jannet,
W/o.Visvendran.

2.N.Visvendran,
S/o.P.Neelan.

... Respondents

Original Side Appeal filed under Order 36 Rule 1 of the Original Side
Rules read with Clause 15 of the Letters Patent against the judgment and
decree dated 09.03.2022 passed in O.A.No.596 of 2021 in C.S.No.286 of
2021.

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For Appellant : Mr.A.Abdul Hameed

For Respondents : Mr.Thamizhavel

JUDGMENT

[Judgment of the Court was made by R.MAHADEVAN, J.]

Challenging the order dated 09.03.2022 passed by the learned Judge in O.A.No.596 of 2021 in C.S.No.286 of 2021, the appellant has preferred the present appeal.

2. According to the appellant, they are running Hospitals in the name and style of M/s.ARC International Fertility and Research Centre Pvt. Ltd., throughout the Tamil Nadu and Andhra Pradesh and in countries like Sri Lanka and Malaysia, etc., and is providing traditional and modern therapy for treating infertility. In 2006, after undergoing training, the first respondent was appointed as Pharmacist, at the main Perambur Branch of the appellant, in-charge of procurement of medicines for the hospitals from various Pharmaceutical Distributors / Vendors. While so, it came to light on 02.09.2020 that the first respondent by misusing his official position, had



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plotted a huge scam with other respondents and defendants therein, swindled money and defrauded the appellant thereby causing huge monetary loss. Hence, the appellant preferred a suit in CS No. 286 of 2021 for recovery of money for a sum of Rs.2,64,00,930/- with interest at the rate of 18% per annum, against the respondents herein and defendants therein. In the suit, the appellant filed an Original Application in OA No. 596 of 2021 seeking an order of interim injunction restraining the respondents, their men, agents, servants and any person claiming through them from alienating, encumbering or otherwise dealing with the schedule property, pending disposal of the suit. By order dated 29.09.2021, an order of interim injunction was granted, which was extended subsequently, on two occasions. However, by order dated 09.03.2022, the said original application came to be dismissed by the learned Judge. Aggrieved by the same, the appellant is before this court with the present appeal.

3. The learned counsel for the appellant submitted that the respondents along with the 4th defendant had colluded together and siphoned off hospital funds by manipulating the invoices and gained huge



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sums out of it and used the same for purchase of the schedule property. It is also submitted that by order dated 29.09.2021, the learned Judge, after hearing both sides, had initially granted an order of interim injunction in O.A.No.596 of 2021 observing that *prima facie* case had been made out. Subsequently, when the application was taken up for final hearing on 09.03.2022, it was observed by the learned Judge that no *prima facie* case had been made out for granting interim injunction, on the premise that the appellant has not proved his case by means of affidavit or otherwise, the respondents are trying to alienate the properties or encumber the properties in order to defeat the claim of the appellant, in case, he gets a decree in the suit. It is also submitted that no other reason has been adduced by the learned Judge for denial of interim injunction, which was originally granted to the appellant. Therefore, the learned counsel sought to set aside the order of the learned Judge and allow this appeal.

4. On the other hand, the learned counsel for the respondents submitted that the respondents are not inclined to sell / alienate the property mentioned in the original application, pending disposal of the main suit.



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5. Therefore, taking note of the facts and circumstances of the case and as agreed by both sides, this court is inclined to dispose of this appeal, on the basis of the above undertaking given by the learned counsel for the respondents and by requesting the learned Judge to dispose of the suit in CS No. 286 of 2021 on merits and in accordance with law, as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of this judgment.

6. Accordingly, the order of the learned Judge is modified and this original side appeal is disposed of. No costs. Connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]
02.02.2024

Index: Yes / No
Speaking order/ Non-speaking order
Neutral Citation: Yes / No
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AND
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