IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **13.03.2024**

CORAM

THE HONOURABLE Ms. JUSTICE **P.T.ASHA**

S.A.No.165 of 2024

Vinit Polytex Private Limited,
No.28, Chellappa Mudali Street,
Chennai-600 012.
Represented by its Founder Director
Mr.C.R.Mammen
S/o.Late. C.P.Rufus
No.17/57, Kamaraj Street,
Thiruvalluvar Nagar,
Ayanavaram, Chennai-600 023. ... Appellant

-Vs-

1.Trinity Packings, Proprietary Concern,
Represented by its Proprietrix,
Mrs.Stella Amritraj,
No.28, Chellappa Mudali Street,
Chennai-600 012.

2.Stella Amritraj

3.Ajit Daniel

4.Vinit Daniel

5.Supreme Flexibles

A Partnership firm,
Represented by its partner,
Mr.Saket Sinha,
No.25/2, Fourth Seaward Road,
Valmiki Nagar, Thiruvanmiyur.

6.SIPCOT
Represented by its Chairman & Managing Director,
No.19A, Rukmani Lakshmipathy Road,
Egmore, Chennai- 600 008.

7.C.Anandakumar ... Respondents

PRAYER: Second Appeal filed under the Section 100 of Code of Civil Procedure Code, 1908, to set aside the judgement and decree dated 11.11.2022 made in A.S.No.333 of 2018 on the file of the Court of the learned XX Additional District and Sessions Judge, City Civil Court, Allikulam, Chennai, by confirming the judgement and decree dated 13.04.2018 made in O.S.No.1967 of 2011 on the file of the Court of the learned XIV Assistant Judge, City Civil Court, Chennai.

For appellant : Mr.M.Ramalingam

*****

JUDGMENT

The plaintiff who has unsuccessfully contested the suit in O.S.No.1967 of 2011 before the learned XIV Assistant Judge, City

Civil Court, Chennai, and the appeal in A.S.No.333 of 2018 before the learned XX Additional District and Sessions Judge, City Civil Court, Allikulam, Chennai, is the appellant before this Court.

2. The facts of the case are narrated hereinbelow and the parties are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The suit has been filed for a declaration that the consent letter dated 25.06.2007 issued to the 6th defendant signed by the other Directors of the plaintiff company for the transfer of the schedule mentioned property in favour of the 5th defendant is a forged, fraudulently executed document and is null and void and not enforceable against the plaintiff company.

2.2. The plaintiff would submit that he is the Founder Director of the first defendant company which was incorporated with the five Directors. Apart from the plaintiff, the other Directors are *viz.,* R.Boopathy, A.D.Amritharaj, C.V.Kanniah and G.Bhaskaran. The plaintiff company was incorporated in the year 1985. The plaintiff would submit that one of the Directors who had acted as Managing Director, had started acting adverse to the interest of the company and had opened a similar unit in the name of his wife as a sole proprietary concern and he was diverting the orders that were given to the plaintiff company to his wife's concern and that apart, another Director had clandestinely transferred funds from the job works to his personal accounts. All these had led to a strained relationship among the Directors of the company. The husband of the second defendant, without the approval of the Board of Directors, had sold away the machinery of the plaintiff company and this was done despite the protest made by the Manager of the plaintiff company.

2.3. Likewise, the Managing Director was taking steps to transfer the immovable assets of the company measuring 1.3 acres at SIPCOT Industrial Complex, Gummudipoondi. It is learnt that he had agreed to transfer the assets to the 5th defendant for a sum of Rs.18,00,000/- whereas, in the open market, it would fetch not less than Rs.50,00,000/-. He had also misled the other Directors of the company into believing that 50% of the sale consideration would be adjusted towards developmental charges payable by the 5th defendant to the 6th defendant. The plaintiff would submit that if the company is permitted to transfer the immovable assets without the knowledge of the rest of the Directors of the company and the investors, it will cause grave prejudice and irreparable loss to the Directors as well as the investors. In this background, one of the Directors, G.Bhaskaran, had addressed a letter dated 08.01.2008 to the 6th defendant asking the following clarifications.

(a)The exact rate or the consideration, which has been negotiated for the due transfer of immovable assets of the company;

(b)The name and address of the prospective transferee of the assets of the company together with telephone and mobile phone numbers.

(c)The exact debts and dues to the company together with latest audited Balance Sheet.

(d)The payment of differential amount to the SIPCOT and whether it is to be borne by the transferee or transferrer or by both.

(e)The Balance Sheet for the last five years of the firm M/s.Trinity Packing.

(f)The properties acquired by A.D.Amrithraj and his family members and its source of income during the past ten years.

2.4. He has also stated that till the particulars were furnished, the transfer of assets should not go through. The 6th defendant had sent a reply dated 15.02.2008 enclosing a letter dated 25.06.2007 as if the querist G.Baskaran and another Director had consented for transfer to the 5th defendant. The said Baskaran was shocked since his signature has been forged. The forgery was evident, since G.Baskaran was not in town since the second fortnight of July 2007 when the letter is alleged to have been given. Thereafter, the other director Amirthraj withdrew his consent for transfer. The withdrawal was in apprehension of any criminal action at the instance of the said

G.Baskaran for willfully and deliberately forging his signature. Thereafter, the said G.Baskaran had visited the 5th defendant company in person. He came to learn that the actual sale consideration which was agreed by Amirthraj is not Rs.18,00,000/- as stated by him. Therefore, in the backdrop of this fact and the fraudently executed consent letter, the plaintiff as the Founder Director, has come forward with the suit, simpliciter for a declaration.

2.5. The said suit was resisted by the second defendant by filing a written statement for herself and on behalf of the first defendant and the same was adopted by the defendants 3 to 5. They would submit that the suit is barred by *res judicata* and limitation. The second defendant was neither a Director nor a shareholder in the plaintiff company. The allegation that the first defendant company had started to destroy the business of the plaintiff company was denied. Further, the consent letter dated 25.06.2007 issued to the 6th defendant was signed by the husband of the second defendant, G.Bhaskaran and Bhoopathy. The defendants would submit that the consent letter may be subjected to handwriting expert's opinion. The plaintiff had also filed an application under Sections 397 and 398 of the Companies Act, 1956, in C.P.No.20 of 2008 alleging the oppression and mismanagement. The said petition was dismissed for default on 14.02.2011 and the same was not restored. The defendants would submit that the instant suit was also filed for the same set of allegations and therefore, the same is barred by *res judicata* and limitation.

2.6. The defendants would further submit that the letters on the plaintiff company's letterhead, board resolution and letter dated 05.08.2006 would clearly show that the plaintiff company had acknowledged the receipt of Rs.4,89,000/- from the 5th defendant. That apart, the letter dated 25.06.2007 acknowledging the receipt of Rs.18,50,000/- from the 5th defendant which is addressed to the 6th defendant would clearly show that the plaintiff company had given consent for transfer of the leasehold rights in favour of the 5th

defendant. The defendants pleaded that there was no cause of action for filing the suit in question.

2.7. The 6th defendant had filed a written statement stating that there is no cause of action and the suit is liable to be dismissed for the misjoinder of party since the 6th defendant is not a necessary or proper party to the proceeding.

2.8. The 7th defendant had filed a written statement stating that he had audited the accounts submitted to him after verifying the books of accounts given to him. The certification of the Balance Sheet was always made every year only after its authentication by two Directors of the company as per the provisions of the Indian Companies Act, 1956. He would submit that he has not illegally prepared the Balance Sheet so as to show that the company is surviving and the allegations to the contra are false. The transactions with the 5th defendant relating to the suit property and the entries in the Balance Sheet are certified by him as per the established procedures. The 7th defendant had no interest in the first defendant company so as to create fabricated Balance Sheet and hence sought for the dismissal of the suit.

TRIAL COURT:

3. The Trial Court had framed the following issues.

"*(1)Whether the plaintiff is entitled to the relief of declaration as prayed for?*

(2)To what other relief?"

3.1. The following additional issue was also framed.

(1)Whether the suit is bad for misjoinder of parties?

4. The plaintiff company had examined one C.R.Mammen, authorised signatory, as P.W.1 and marked Exs.A1 to A15 through him and examined one G.Bhaskaran as P.W.2. On the side of the defendants, three witnesses were examined and Exs.B1 to B13 were marked.

5. The suit was dismissed on the ground that the same was barred by limitation as P.W.1 had admitted knowledge of this forged consent letter dated 25.06.2007 in the year 2007 itself, but, has filed the suit only in the year 2011. The Court also observed that the burden of proving that the letter – Exs.A6 and B10 is forged and the signature does not belong to G.Bhaskaran (P.W.2) is on the plaintiff company, however, the plaintiff company had failed to prove the same.

6. In fact, the authorised signatory of the plaintiff company, as P.W.1, has categorically admitted that he has no direct knowledge about the execution of the documents. On the other hand, the defendants, through D.W.1 and D.W.2, had established that the consent letter was signed by G.Bhaskaran in their presence. The handwriting expert's opinion would also show that the signature in the disputed letter is that of G.Bhaskaran. Further, the Court has also observed that the suit is filed for mere declaration and no consequential relief has not been asked for. Therefore, the learned Judge dismissed the suit.

LOWER APPELLATE COURT:

7. Challenging the same, the plaintiff company has filed an appeal in A.S.No.333 of 2018 before the learned XX Additional District and Sessions Judge, City Civil Court, Allikulam, Chennai.

8. The Lower Appellate Court also confirmed the judgment and decree of the Trial Court and dismissed the appeal.

9. Challenging the same, the plaintiff company is before this Court.

DISCUSSION:

10. The main defense raised by the defendants is that the suit is barred by limitation and *res judicata* and that the suit for a mere declaration is not maintainable. With reference to the issue of limitation, P.W.1, in his cross-examination, has admitted his knowledge of execution of the said document even in the year 2007,

but, the plaintiff company had filed the suit only on 28.02.2011. His evidence in this regard is as follows:

> "மேற்படி பாஸ்கர் மற்றும் பூபதி தங்களுடைய கையெழுத்து மோசடி என்ற சொல்லி வழக்கு எதுவும் தாக்கல் செய்யவில்லை. மேற்படி பாஸ்கர் மற்றும் பூபதியை வழக்கில் தரப்பினராக சேர்க்கவில்லை. மோசடி செய்யப்பட்ட விபரம் பற்றி 2007லே மேற்படி பாஸ்கர் மற்றும் பூபதி சொல்லி தெரிந்து கொண்டேன்."

11. Further, the plaintiff company has not explained as to why C.P.No.20 of 2008 is not restored to file, when the plaintiff company's petition relates to oppression and mismanagement. It is also seen that G.Bhaskaran, one of the Directors whose signature is alleged to be a forged one, has not taken any steps to have his signatures verified. He has also not taken steps legally to challenge his signature. On the contrary, the handwriting expert who has compared the disputed signature with the admitted signature of him reported that both the signatures are of the same person. Further, the suit is one for a declaration only with no consequential relief. The declaratory relief, if granted, would have an impact on the actions

taken pursuant to said letter and therefore, a suit simpliciter for declaration is not maintainable.

12. The Hon'ble Supreme Court in the judgment reported in ***(1996) 1 SCC 90 [Muni Lal vs. Oriental Fire & General Insurance Co. Ltd. And Another]*** was considering the correctness of the judgment of the Trial Court which dismissed the suit as not maintainable as the appellant prayed for mere declaration from the insurance company and the appellant has not asked for any consequential relief for payment of compensation for the loss of truck. Relying upon Section 34 of the Specific Relief Act the learned Judge held that any person entitled to a legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny his title to such character or right and the Court may in its discretion make such declaration and the plaintiff need not ask for further relief. However, proviso to the said section puts the controversy beyond a pale of doubt that no Court shall make any such declaration where the plaintiff, being able to

ask for other relief than a mere declaration of title, omits to do so. Ultimately, the Court proceeded to dismiss the appeal contending that the alternative relief as available must be asked at the time of filing the suit.

13. In a recent judgment of Hon'ble Supreme Court reported in ***2024 SCC Online SC 132 [Vasantha (dead) through Lrs vs. Rajalakshmi @ Rajam (Dead) through Lrs.]*** a suit was filed for declaration without seeking relief of possession. The Hon'ble Supreme Court after considering the earlier judgments of the Supreme Court has stated as follows in paragraph 55:-

> *"55. The section provides that the Courts have discretion as to declaration of status or right, however, it carves out an exception that a Court shall not make any such declaration of status or right where the complainant, being able to seek further relief than a mere declaration of title, omits to do so."*

14. The aforesaid pronouncements have a direct bearing on the case at hand and therefore, the filing of the suit only for a declaration without a consequential relief is not maintainable and both the Courts below have rightly held so. The plaintiff has not been able to prove how the concurrent judgment are erroneous and gives rise to a substantial question of law.

Accordingly, this second appeal stands dismissed since the appellant has not made out any case warranting the interference of this Court and not made out any substantial question of law. No costs.

13.03.2024

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
ssa

To

1.The XX Additional District and Sessions Judge, City Civil Court, Allikulam, Chennai.

2.The XIV Assistant City Civil Judge, Chennai.

3.The Section Officer, V.R.Section, High Court, Madras.

P.T.ASHA, J.,

ssa

S.A.No.165 of 2024

13.03.2024