



WEB COPY

C.M.A No.2334 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A No.2334 of 2024

&

C.M.P.Nos.18544 and 18545 of 2024

in

C.M.A.No.2334 of 2024

NEPC Tea Garden
(Division of NEPC Agro Foods Ltd.,)
Having its Registered Office at
Waverly Estate, Waverly Post
Valparai- 642 105
Represented by its Vice-Chairman
Mr.Rajkumar Khemka

... Appellant

Vs.

1. M/s.Waterfall Estate Private Limited
Having its Registered Office at
2nd Floor, Trinity Tower, No.30
Conron Smith Road, Gopalapuram
Chennai - 600 086
Represented by its Director
Mr.Kothandath Gopinath



C.M.A No.2334 of 2024

WEB COPY

2. Tax Recovery Officer-1
Income Tax Department
Coimbatore Main Building, 63
Race Course Road
Coimbatore - 641 018

... Respondents

Civil Miscellaneous Appeal filed under Section 13(1A) of the Commercial Courts Act, 2015 against the order and decretal order dated 24.07.2024 passed in I.A.No.2 of 2024 in C.O.S.No.38 of 2024 on the file of the learned Court of Judge, Commercial Court (District Judge Cadre), Coimbatore.

For Appellants : Mr.B.Arvind Srevatsa
For Respondents : Mr.Sadhana V.Shankar
Mr.Vishnu Mohan
and Mr.Pranav V.Shankar for R1

Mr.Avinash Krishnan Ravi
Junior Standing Counsel for R2

JUDGMENT

[Order of the Court was made by M.SUNDAR, J.,]

Mr.B.Arvind Srevatsa, learned counsel on record for the appellant [NEPC Tea Garden (Division of NEPC Argro Foods Ltd)] is before this Court. The appellant shall hereinafter be referred to as 'NEPC Tea' for the sake of convenience and clarity.



C.M.A No.2334 of 2024

2. Short facts are that NEPC Tea owns 'Tea Estates admeasuring 1198.42 acres or thereabouts in Anamallais, Valparai Taluk, Coimbatore District' [hereinafter 'said Tea Estate' for the sake of convenience]. R1 before us ['Waterfall Estate Private Limited'] {hereinafter 'Waterfall' for the sake of convenience and clarity} is a lessee under NEPC Tea qua said Tea Estate; that the lease deed is dated 01.06.2021 and three year period vide this lease deed elapsed on 31.05.2024; that prior to the lease period elapsing, the 'Income Tax Department' {hereinafter 'IT Department' for the sake of convenience} [to be noted, Tax Recovery Officer-I, Income Tax Department, Coimbatore Main Building, 63, Race Course Road, Coimbatore - 641 018 is R2 before us] issued two notices, one dated 20.05.2024 and another dated 30.05.2024; that these two notices were issued to Waterfall (lessee) *inter alia* for attachment of lease rent under Section 226(3) of 'the Income-tax Act, 1961' ('IT Act' for the sake of brevity, convenience and clarity) and for Income Tax recovery proceedings qua alleged dues from NEPC Tea (lessor); that under such circumstances, a plaint verified on 10.06.2024 was presented by Waterfall in the 'Commercial Court (District Judge Cadre), Coimbatore' {hereinafter 'said Commercial



C.M.A No.2334 of 2024

Court' for the sake of convenience} arraying NEPC Tea and IT Department as D1 and D2 respectively; that the suit was for bare injunction seeking injunction as regards possession as against NEPC Tea qua said Tea Estate [to be noted, 'said Tea Estate' shall hereinafter be referred to as 'demised Tea Estate' for the sake of enhanced convenience and clarity]; that along with the suit, Waterfall took out an interlocutory application in I.A.No.2 of 2024 with prayer for interim injunction under Order XXXIX Rules 1 and 2 of 'the Code of Civil Procedure, 1908 (Central Act V of 1908)' [hereinafter 'CPC' for the sake of brevity] for the same injunctive relief as claimed in the main suit {to be noted, bare injunction suit refers to 20.05.2024 and 30.05.2024 proceedings of IT Department}; that said Commercial Court in and by an 'order dated 24.07.2024 in I.A.No.2 of 2024 in C.O.S.No.38 of 2024' {hereinafter 'impugned order' for the sake of brevity, convenience and clarity} after full contest, granted interim injunction as prayed for ; that to put it differently, said Commercial Court allowed the interlocutory (injunction) application; that NEPC Tea (lessor) aggrieved by the impugned order has presented the captioned appeal in this 'Commercial Appellate Division' ['CAD' for the sake of brevity] on 21.08.2024; that as already



C.M.A No.2334 of 2024

alluded to supra, Mr.B.Arvind Srevatsa, learned counsel for appellant is before us in the Admission Board.

3. Learned counsel for appellant submitted that the impugned order virtually grants the prayer in the main suit; that the appellant/lessor will in any event resort to due process of law as regards possession of demised Tea Estate; that under such circumstances, taking advantage of, Waterfall/lessee being appointed as a Receiver vide two proceedings made by IT Department, injunctive relief has been obtained; that the two notices/proceedings dated 20.05.2024 and 30.05.2024 issued by IT Department *inter alia* qua recovery of alleged arrears from NEPC Tea and attachment of lease rent have been assailed by NEPC Tea vide a writ petition being W.P.No.15369 of 2024; that both IT Department and Waterfall, which have been arrayed as co-respondents, have entered appearance through a counsel; that the writ Court (Hon'ble single Judge of this Court) is in seizin of the writ petition; that a lessee being appointed as a Receiver qua demised property by the IT Department will be a matter which will be taken up for consideration by the writ Court and that does not warrant an interim order in the nature of the impugned order.



C.M.A No.2334 of 2024

WEB COPY 4. Issue notice.

5. Mr.Vishnu Mohan, learned counsel, who is on caveat for Waterfall and who is before us on the 'VC' ['Videoconferencing'] platform as well as Ms.Sadhana V.Shankar, who is also before us on the VC and Mr.Pranav V.Shankar, learned counsel, who is before us in the physical Court accepts notice for R1-Waterfall and Mr.Avinash Krishnan Ravi, learned Junior Standing Counsel who is before us in the physical Court accepts notice for R2. To be noted, this is a hybrid hearing which is a regular/routine/daily feature in this Court.

6. Heard learned counsel for R1 (to be noted, post issue of notice, Waterfall, who was counsel for Caveator, has now become counsel for R1 in the captioned appeal).

7. Learned counsel submitted that demised Tea Estate is well over 800 acres (to be noted, based on the plaint description, we have already



C.M.A No.2334 of 2024

written that it admeasures 1198.42 acres or thereabouts) and there is possibility of labour unrest. Learned counsel also pointed out that vide the two notices of the IT Department i.e., notices dated 20.05.2024 and 30.05.2024, the lessee Waterfall has been appointed as a Receiver qua said Tea Estate i.e., demised Tea Estate.

8. Learned Senior counsel for IT Department submitted that the notices issued by IT Department have been assailed in the writ Court by the noticee/lessor, the lessee/waterfall is a co-respondent and that the IT Department would defend its notices in the writ Court.

9. In the light of the submission supra, it emerged clearly that the entire matter turns on a very narrow compass and that is dispossession of Waterfall/ lessee qua demised Tea Estate, if at all and if that be so, can only be by NEPC Tea/lessor by resorting to due process of law. Both sides agree that this is the short point and as regards appointment of lessee as receiver the same has to be thrashed out in the legal drill before the writ Court. This means that a quietus can be given to the captioned appeal.



C.M.A No.2334 of 2024

WEB COPY

10. In the light of the narrative thus far, all the three learned counsel before us agreed that the captioned appeal can be disposed of by a consent judgment and decree even without waiting for the records from said Commercial Court as the entire matter hinges on /pivoted on one short point, which has been alluded to and articulated supra i.e., as to, if Waterfall/lessee is to be dispossessed by NEPC Tea, it will be by resorting to due process of law as Waterfall is now lessee holding over {post 31.05.2024}.

11. In the light of the consensus arrived at, the following consent judgment /order and consent decree is made:

a) Captioned main appeal is disposed of in terms of a consent decree to the effect that the possession of Waterfall qua demised Tea Estate in its capacity as lessee will be protected to the extent that it will not be disturbed by NEPC Tea *de hors* due process of law;



C.M.A No.2334 of 2024

b) If NEPC Tea in its capacity as lessor qua said Tea

WEB COPY

Estate resorts to due process of law, the same will take its course on its own merits and in accordance with law untrammelled by this consent judgment and decree;

c) The proceedings assailing the notices of the IT Department in the writ Court will proceed on its own merits and in accordance with law untrammelled by this consent decree (to be noted, the writ petition is now in seizin of by a Hon'ble single Judge of this Court);

d) Though obvious, we make it clear that all questions including the challenge to the IT Department notices dated 20.05.2024 and 30.05.2024 and appointment of lessee Waterfall as a Receiver will now be within the remit of the legal drill before the writ Court and all questions are left open for this purpose;



WEB COPY

e) This CAD is setting out infra the description of demised Tea Estate (said Tea Estate) as in plaint but if there is any disputation in this regard that question is also left open to be legally thrashed out in legal drill that will ensue when NEPC Tea kick starts due process of law for recovery of possession. The description in plaint is as follows:

S.NO.	PARTICULARS	UNIT I- MOUNT STUART ESTATE	UNIT II- WAVERLY ESTATE	TOTAL IN ACRES
1	Tea	452.98	428.34	881.32
2	Swamps/Rocks	47.07	99.13	146.20
3	Roads	4.82	4.57	9.39
4	Buildings	20.36	10.58	30.94
5	Jungle/Vacant lands	6.83	123.74	130.57

f) The impugned order is now effaced as the same has merged with the consent decree which has been made and the consent decree is to the effect that dispossession of waterfall if at all and if that be so will not be *de hors* due process of law qua NEPC Tea;



C.M.A No.2334 of 2024

WEB COPY

g) The possession of Waterfall which is protected to the limited extent set out supra {not to be dispossessed *de hors* due process of law} qua this decree is only in its capacity as a lessee and not in its capacity as a Receiver and as it is the matter which has to be thrashed out in the writ Court;

h) Learned counsel, who were before us have consented to pass the above consent judgment/order, they have made an endorsement in the case file and a scanned reproduction of the same is as follows:

we therefore pray that
the consent decree may be
passed on the above terms,
dictated in open court today.

[Signature]
21/08/24
(MS/1907/2014)
Counsel for
Appellant

[Signature]
21/08/24
REKHA V. V. SURESH, SC
FOR VISWANATHAN
Counsel for R1

Captioned Civil Miscellaneous Appeal and captioned Civil Miscellaneous Petitions thereat are disposed of in terms of the aforementioned consent judgment, decree and order. In view of this



C.M.A No.2334 of 2024

consent judgment and decree, the suit in C.O.S.No.38 of 2024 on the file of said Commercial Court, is also given a closure now and the same will be governed by this consent judgment / decree. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
29.08.2024

Index : Yes
Neutral Citation : Yes
gpa



WEB COPY



C.M.A No.2334 of 2024

M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

gpa

C.M.A No.2334 of 2024

29.08.2024