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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 28.10.2024

Delivered on: 06.12.2024

CORAM
THE HONOURABLE MRS. JUSTICE J. NISHA BANU
&
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

CMA.No.2568 of 2024
and CMP.No.20424 of 2024

1.The Tamil Nadu Industrial Investment Corporation
Rep. By its Chairman
692, Anna Salai, Nandanam
Chennai-600 035

2.The Tamil Nadu Industrial Investment Corporation Limited
Rep. By its Branch Manager
Special Recovery Branch
692, Anna Salai, Nandanam
Chennai-600 035 ... Appellants/Defendants

Vs.

Integrated Digital Info Services Limited
(formerly known as ICNET Limited)
Plot No.163, Dr.Vikram Sarabhai Industrial Estate
Perungudi
Chennai-600 096
Rep. By its Director
Vijayam Padmanabhan ... Respondent/Plaintiff

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Prayer : CMA filed under Order XLIII Rule 1 of CPC 1908, as against the order and decreetal order in I.A.No.5 of 2023 in C.O.S.No.741 of 2023 dated 25.07.2024 on the file of Principal District Judge, Chengalpattu and granting ad interim injunction till 25.09.2024.

For Appellants : Mr.P.S.Raman, Advocate General
Assisted by Mr.K.Magesh

For Respondent : Mr.R.Parthasarathy
Senior counsel for
Mr.Rahul Balaji

JUDGMENT

J.NISHA BANU, J.

This Appeal suit is filed by the Tamil Nadu Industrial Investment Corporation (TIIC) as against the order passed by the learned Principal District Judge, Chengalpattu, in I.A.No.5 of 2023 in C.O.S.No.741 of 2023, whereby, ad-interim injunction is granted till 25.09.2024 with the following conditions:-

"(i) That the plaintiff do deposit a sum of Rs.1,00,00,000/- (Rupees One crore only) i.e., on or before 25.09.2024 which is the one-fourth of the loan amount according to plaintiff.

(ii) that both parties do file statement of accounts to prove the payments made by plaintiff on various dates which is received by

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the defendant and the out-standing amount.

(iii) that the parties can resort for mediation for amicable settlement."

2. The learned Advocate General appearing for the appellants-TIIC would submit that the present total outstanding of the loan dues payable by the respondent company as on 29.02.2024 is amounting to Rs.3470710,28,330/- after due appropriation by the appellant Corporation.

3. The learned Advocate General would further submit as per the terms and conditions of the loan agreement, even if simple interest is charged, it will come around Rs.20 crores.

4. The learned Advocate General would contend that the appellants-TIIC issued a notice dated 11.09.2023 demanding the loan amount with interest as per the terms and conditions of the loan, failing which the property will be auctioned. The respondent after receipt of the said notice, filed the suit in C.O.S.No.741 of 2023 on the file of Principal District Judge, Chengalpattu, for the relief of

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"(a) pass a preliminary decree of accounts to be taken of the monies due by the plaintiff company to the defendants pursuant to the mortgage by way of deposit of title deeds of the schedule mentioned property made by the plaintiffs with the defendants;

(b) pass a decree for redemption of the said mortgage upon payment of monies by the plaintiff company if so found due and directing the defendants to deliver to the plaintiff company the original title deeds of the schedule mentioned property and execute and register an acknowledgement in writing to the effect that the interest created by the mortgage has been extinguished;

© pass a decree of permanent injunction restraining the defendants, their men, servants, employees, agents or any persons claiming through or under them from bringing the suit property to sale by public auction or otherwise, until accounts are taken as prayed for.

(d) award costs of the suit in favour of the plaintiff and thus render justice."

5. The learned Advocate General would further submit that the respondent

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company did not come forward to settle the loan amount when the property was brought for public auction on 25.07.2024. The suit itself is not maintainable; though interim injunction application is filed along with the suit, at the time of ordering notice, no ex-parte order granted in favour of the respondent company. The appellant-TIIC entered appearance and filed petition to reject the plaint and another application challenging the inherent jurisdiction in I.A.No.6 and 7 of 2024 and the same is pending and the written statement also filed by the appellant-TIIC. However, the trial court without considering the case of the appellant-Corporation and before considering the rejection of the plaint petition, suddenly taken up the interim injunction petition and granted ad-interim injunction till 25.09.2024 and the same is extended till 11.11.2024. The learned Advocate General would submit that the said order is unsustainable and injunction granted is liable to be vacated.

6. It is further submitted by the learned Advocate General that the appellant Corporation is not in a position to auction the property to realize the loan amount and the appellants have no other option except to approach this court to vacate the ad-interim injunction granted by the trial court by order dated 25.07.2024 to enable the appellant-TIIC to auction the property.

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7. The learned Advocate General would also submit that the respondent-company gave OTS proposal on 15.10.2024 for a sum of Rs.4.75 crores which is very low compared to the outstanding of the loan, therefore, the appellant-TIIC rejected the same vide their letter dated 25.10.2024 and requested the respondent to come up with OTS offer amount comparable to that of realizable value of Rs.27.93 crores. The learned Advocate General would also submit that the intention of the respondent company is to drag the proceedings uncertainly and thereby deny the legal right of the appellants to auction the property.

8. Mr.R.Parthasarathy, learned Senior counsel for the respondent-borrower company would submit that this CMA is preferred by the appellant-TIIC as against the ad-interim order passed in I.A.No.5 of 2023 dated 25.07.2024. The interim order under challenge is an injunction order directing the respondent company to deposit a sum of Rs.1,00,00,000/- (one-fourth of the loan amount), while directing both parties to file the respective statement of accounts to prove the list of payments made through the years. It is to be noted that the order herein is an ad-interim order and is one that is yet to attain finality.

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9. It is also submitted by the learned senior counsel for the respondent that appellant-TIIC have not filed their counters in I.A.No.5 of 2023, interim order was passed on 25.07.2024 upon hearing the arguments of both parties. Therefore, filing this CMA as against the order passed in I.A.No.5 of 2023 is not maintainable. Further, the discretion exercised by the learned Principal District Judge, Chengalpattu District, cannot be subject matter of an appeal.

10. The learned Senior counsel for the respondent also submits that the respondent company complied with the interim order of the learned PDJ, Chengalpattu, and a sum of Rs.1,00,00,000/- was deposited on 24.09.2024. It is further stated that OTS proposals as proposed by the respondent company at multiple instances are acts of good will in order to initiate settlement and put a quietus to the issue on hand. However, the latest proposal dated 15.10.2024 were merely actions to initiate settlement and the very act of proposing a settlement cannot be equated to an admission of liability.

11. The learned senior counsel for the respondent company argued that the

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interim injunction was granted by PDJ, Chengalpattu, injuncting the TIIC from executing the auction of the suit property as scheduled on 15.09.2024. Withholding of the interim relief sought by the respondent would essentially tantamount to dismissal of the suit. The ad-interim injunction granted by the learned PDJ, Chengalpattu District was merely done to maintain status quo.

12. The learned senior counsel would submit that the appellant's calculations/demands are incorrect, exorbitant and extortionate. Relying on the following case laws to state that the appellant-TIIC would not only protect its own interest, but also the interest of the mortgagor.

1. Gajraj Jain Vs. State of Bihar (2004 7 SCC 151).
2. Abdul Shukoor Sahib Vs. Umachander and others [1976 SCC on line Mad 57 : AIR 1976 Mad 350]
3. Wander Ltd., and another Vs. Antox India P.Ltd., [1990 (Supp) SCC 727]
4. Ramdev Food Products (P) Ltd., Vs. Arvindbhai Rambhai Patel and others [(2006) 8 SCC 726].
5. Gajraj Jain Vs. State of Bihar and others [(2004) 7 SCC 151]

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13. Heard both sides and perused the records carefully.

14. The background of the present case is that when the respondent company was in need of immediate funds, by instruments of mortgage execution, the appellant-TIIC extended loan and the details of the mortgage amounts are as follows:-

Date	*Description of Loan*	*Amount in Rs.*
02.08.1981	Term Loan-I	12,00,000/-
17.03.1993	Term Loan-II	73,00,000/-
29.03.1996	Short term loan	85,00,000/-
29.04.1996	Hire Purchase	2,50,00,000/-
	Total	4,20,00,000/-

The respondent company could not cope up with the financial recession, resulting in the winding up proceedings. The appellant-TIIC proposed a Refinance Scheme for Rehabilitation (RSR Package) in 2003. The respondent company re-commenced operations in 2008, but TIIC refused to give effect to the RSR Package. Due to increasing demands from TIIC, respondent company sold 251 acres in ECR for a consideration of Rs.1,25,00,000/-. Consequent to the sale of the land, an advance sum of Rs,25,00,000/- was paid directly to TIIC on 27.02.2006.

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Some OTS proposals were received by the TIIC from the respondent company. Since the realisable value of the suit property does not match the OTS proposed by the respondent company, the appellant – TIIC could not accept the same.

15. The respondent company received a letter dated 18.01.2012 from appellant TIIC stating that total dues from the respondent was Rs.48,33,00,000/- and by letter dated 31.1.2012 it was informed that the suit property would be brought to auction sale.

16. Aggrieved by the said action, the respondent company filed W.P.No.4970 of 2012. The said writ petition was finally disposed on 28.11.2022. The learned Single Judge, pointed out that in view of the order of interim injunction restraining the respondents from bringing the property in question for sale by auction until further orders passed on 01.03.2012, the TIIC has not proceeded further in the matter till date. It is further pointed out that TIIC has filed statement of accounts on 28.11.2022 showing the calculation for the amount claimed as due under the mortgage from the company, however, when the factual disputes relating to calculation of amount due under mortgage cannot be

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conveniently determined in a writ petition following summary procedure under Article 226 of constitution and would have to be only agitated in a properly framed suit for account and or redemption of mortgage before the jurisdictional civil court.

17. The learned Single Judge, further referring to authoritative pronouncement in ***Haryana Financial Corporation Vs. Jagadamba Oil Mills [(2002) 3 SCC 496]*** held that there is nothing reflected in the affidavit filed in support of this writ petition by which this court could interfere with the impugned notice, which merely calls upon the petitioner to pay the dues, as otherwise it would necessitate action for recovery by auction sale of the mortgaged property that has been conferred under Section 29 of the State Financial Corporation Act. 1951; in such circumstances, it is not possible to grant any of the reliefs as sought in the writ petition, though it would not preclude the petitioner from seeking redemption of the mortgage on making full payment of the debt due claimed by the third respondent before auction sale of the mortgaged property takes place. The learned Single Judge, by holding so, dismissed the writ petition filed by the borrower company.

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18. Thereafter, by letter dated 11.09.2023, the appellant-TIIC informed the borrower company that the total overdues is Rs.2913635.34. The TIIC stated that they proposed to auction the factory under Section 29 of the SFC Act 1951. Then the respondent company filed a suit under Commercial court category before the Principal District Judge, Chengalpattu in C.O.S.No.741 of 2023 seeking the prayer which is narrated in the preceding paragraph.

19. In the present case, when the respondent borrower company already approached this court by filing Writ Petition No.4970 of 2012, the learned Single Judge, by order dated 28.11.2022, dismissed the writ petition directing the respondent company to make full payment of the debt due claimed by the appellant-TIIC before auction sale of the mortgaged property takes place and to seek redemption of the mortgage. The said order has not been challenged by the respondent company. However, the respondent company filed suit. In the said suit, the appellant-TIIC filed written statement and also filed IA for rejection of plaint. In such circumstances, the learned Principal District Judge, Chengalpattu, ought to have taken the IA filed for rejection of plaint for enquiry. But without considering

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the stand of the appellant-TIIC who is not in a position to realize the loan amount and auction the property and even without looking into the directions of the learned Single Judge passed in W.P.No.4970 of 2012 dated 28.11.2022, granted interim injunction on condition to deposit Rs.1,00,00,000/- ; to file statement of accounts to prove the payments made by the plaintiff on various dates which is received by the defendant and the out-standing amount and further referred the matter for amicable settlement.

20. The learned Advocate General would strenuously contended that counsel appearing for defendant-TIIC before the trial court has not consented for mediation and they argued before the PDJ to take up the IA filed for rejection of plaint, however, the learned PDJ, passed ex-parte injunction, thereby the appellant-TIIC is unable to recover their dues.

21. On a consideration of the entire matter, it is transpired that the respondent company has not settled the loan dues as directed by the learned Single Judge in the order passed in W.P.No.4970 of 2012 dated 28.11.2022 which writ

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petition has been filed by the respondent company itself. It is a matter of record that no appeal is filed as against the said order. Thereby the order has reached its finality. The respondent company without complying with the directions of this court filed suit in C.O.S.No.741 of 2023 and in I.A.5 of 2023, sought for ad-interim injunction restraining the TIIC from bringing the suit property for sale through public action. The learned PDJ, Chengalpattu, after ordering notice, passed interim injunction order directing the plaintiff-respondent company to deposit Rs.1,00,00,000/- ; to file statement of accounts; that the parties can resort for mediation for amicable settlement.

22. It will be necessary to note that the respondent company has mortgaged the suit property and obtained loan in the years 1991, 1993 and in 1996 totalling Rs.4,20,00,000/-. However, the respondent company could not pay off the debt obligations and taken steps for rehabilitation. The respondent company filed Company Petitions for rehabilitation scheme and not commenced operations. The respondent company also filed Writ Petitions and obtained interim injunction restraining the appellant-TIIC from bringing the suit property for sale by auction. Thus, it is seen that from the year 1993, the respondent company is trying to

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prolong the issue without making due payments to their loan account and filed petitions one after the other and successfully dragged on the matter for the last 20 years before various forums. The attitude of the respondent company is nothing but an abuse of process of the Court.

23. It is the specific case of the appellant-TIIC that in the suit filed by the respondent-company, appellant-TIIC filed IA for rejection of plaint. In such circumstances, the learned PDJ, Chengalpattu, ought to have taken the said IA for rejection of plaint first for enquiry and thereafter, ought to have taken the injunction petition.

24. As stated earlier, there is a specific direction by this court in W.P.No.4970 of 2012 by order dated 28.11.2022 which was filed by the respondent company wherein, the learned Single Judge directed the respondent borrower company to settle the entire loan amount and thereafter seek for redemption of the property. But the respondent company, without settling outstanding dues, approached the trial court by filing suit and sought interim injunction as against the letter dated 11.09.2023 of the appellant-TIIC's proposal

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to bring the property in question for sale by auction. In such circumstances, the Court should be extremely careful and circumspect in exercising its discretion to grant injunction in such matters particularly in the prevalent situation where the amounts of dues are huge and hope of early recovery is less.

25. It is a matter of serious concern and in our considered view, the injunction order passed in I.A.No.5 of 2023 would cause adverse impact on the right of appellant-TIIC to recover their dues. Hence, the order dated 25.07.2024 is not sustainable. Therefore, the injunction order dated 25.07.2024 stands vacated. The directions given by the learned Single Judge in W.P.No.4970 of 2012 dated 28.11.2022, holds good. The respondent borrower company is directed to comply with the order dated 28.11.2022 in letter and spirit and make full payment of debt and thereafter pursue the suit for the reliefs stated therein.

26. In the result, this CMA is allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

[J.N.B.,J.] **[R.K.M.,J.]**

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To

The learned Principal District Judge, Chengalpattu.

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J. NISHA BANU, J.
and
R.KALAIMATHI, J.

nvsri

Judgment in

CMA.No.2568 of 2024

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