



WEB COPY



C.R.P.Nos.36 & 37 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.01.2024

PRONOUNCED ON: 12.02.2024

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Civil Revision Petition Nos.36 & 37 of 2024

and

Civil Miscellaneous Petition Nos.143 & 145 of 2024

1. G. Saravanan

2. T. Mahadevan ... Petitioners in both CRPs

Vs

1. NTL India Private Limited,
A company registered under the
Companies Act, 1956,
Being represented by its Director:-
 1. D. Ramesh
 2. B.DayanithiHaving Administrative Office at:
No.11/2, Muthyai Reddy Street,
Alandur, Chennai – 600 016.



C.R.P.Nos.36 & 37 of 2024

WEB COPY

2. D.Ramesh,
S/o S.Durairaj,
Director : NTL Private Limited

3. B.Dayanithi
S/o. K. Blakrishnan,
Director : NTL India Private Limited

2nd and 3rd respondents having their
Place of Office at No.11/2, Muthyal
Reddy Street, Alandur, Chennai 600 016.

4. Senthil Kumar,
Branch Manager,
ICICI Bank, Alandur Branch,
Pudupettai Street,
Alandur, Chennai 600 016.

5. Sivaraj,
Cluster Manager,
ICICI Bank, Nanganallur Branch,
Pudupettai Street,
Alandur, Chennai 600 016.

6. John Kennedy,
Branch manager,
ICICI Bank, Ayanavaram Branch,
No2, Konnur High Road,
Chinna Chembarambakkam,
Ayanavaram, Chennai 600 023

... Respondents in both CRPs



C.R.P.Nos.36 & 37 of 2024

Common Prayer: Civil Revision Petitions have been filed under Article 227 of the Constitution of India to set-aside the docket order in I.A.No.3 of 2023 & I.A.No.2 of 2023 respectively in O.S.No.641 of 2023 dated 10.11.2023 on the file of the Principal District Court, Chengalpet.

For Petitioner : Mr. V.Srimathi
in both C.R.Ps

For respondents : Mr. C. Umashankar,
in both C.R.Ps for R1 to R3

ORDER

Both the Civil Revision Petitions have been preferred against the docket order passed in I.A.No.3 of 2023 & I.A.No.2 of 2023 respectively in O.S.No.641 of 2023 dated 10.11.2023 on the file of the Principal District Court, Chengalpet.

2. Since the issues arises in both the Revisions are one and the same, both the Revisions have been heard together and disposed off by this Common Order.



C.R.P.Nos.36 & 37 of 2024

WEB COPY

3. Both the revision petitioners herein are defendants 1 and 2 and the respondents 4 to 6 herein are defendants 3 to 5 and the respondents 1 to 3 herein are plaintiffs in the suit in O.S.No.641 of 2023 on the file of the Principal District Court, Chegalpet. The suit was filed by the respondents 1 to 3/plaintiffs with the following prayer:-

a) to declare that the resignation letter as Director of the 1st plaintiff dated 30.09.2023, alleged to have been issued by the 2nd plaintiff, which is forged and fabricated at the instance of the 1st defendant as null and void and not binding on the 2nd plaintiff.

b) to declare that the resignation letter as director of the 1st plaintiff dated 30.09.2023, alleged to have been issued by the 3rd plaintiff, which is forged and fabricated at the instance of the 1st defendant as null and void and not binding on the 3rd plaintiff.

c) to declare that the fraudulent Board Resolution dated 04.10.2023 of 1st plaintiff conducted by the 1st defendant based on the acceptance of the forged resignation letters dated 30.09.2023 alleged to be that of the 2nd and 3rd plaintiffs and the consequential Form DIR 12 submitted to Registrar of Companies, Chennai as null and void.



WEB COPY



C.R.P.Nos.36 & 37 of 2024

d) to pass an order of Mandatory Injunction to restore the power to operate the Bank Account in all modes including the online banking of the 1st plaintiff with the 2nd plaintiff in current account No.240805000423 with the 3rd defendant.

e) to pass an order of Permanent Injunction restraining the 1st defendant from any manner meddling or interfering with the banking operation in all modes of the current account no.240805000423 of the 1st plaintiff with the 3rd defendant bank.

f) to direct the defendants to effect payment of Rs.10,00,000/- jointly and severally as damages for the loss inflicted on the 1st plaintiff company by indulging in forgery and fraudulent removal of Directors of the 1st plaintiff company and fraudulently hampering the operations of the 1st plaintiff company, and enabling the 1st defendant to operate the Bank account of the 1st plaintiff with the 3rd defendant by the collusive and fraudulent act of the defendants 3,4 and 5.

g) for the cost of the suit.

h) for such other as it may deem fit and proper in the circumstance of the case and thus render justice.



C.R.P.Nos.36 & 37 of 2024

4. Along with the said suit, the respondents 1 to 3/plaintiffs had filed

I.A.No.3 of 2023 and I.A.No.2 of 2023 with the following prayers:

I.A.No.3 of 2023

Petition filed under Order XXXIX Rule 1 and 2 of CPC to grant an order of interim injunction restraining the respondents 1 and 2 from acting based upon the alleged Board Resoution dated 04.10.2023 in respect of the affairs of the 1st petitioner during the pendency of the suit and pass such further or other orders as it may deem fit and proper in the circumstance of the case and thus render justice.

I.A.No.3 of 2023

Petition filed under Order XXXIX Rule 1 and 2 of CPC to grant an order of interim mandatory injunction to restore the mobile number of the 2nd petitioner being 9884200116 linked with the current account no.240805000423 of the 1st petitioner with the 3rd respondent bank thereby enabling the 2nd petitioner to operate the entire bank account of the 1st petitioner during the pendency of the suit and pass such further or other orders as it may deem fit and proper in the circumstance of the case and thus render justice.



C.R.P.Nos.36 & 37 of 2024

5. The learned Trial Judge by an order dated 10.11.2023 passed the impugned order in the above said petitions, which runs as under:

" The suit is filed when High decree of misunderstanding between the plaintiffs and D-1 developed.

1st plaintiff is the company, 2nd and 3rd plaintiffs and D1 are the directors. The allegation against D1 that he forged the signature of 2nd plaintiff as though he resigned from the Company, thereby altered all relevant documents by a forged signature and started using Company's account with the collusion of Bank Official R3 to R5.

The main contentions of D1 & D2 that this Court lacks jurisdiction as Company Law Board Tribunal is the proper forum to agitate any grievance of this nature.

The plaintiff's counsel and counsel for D1 & D2 argued extensively regarding the maintainability of the suit with reported judgements.

The suit is already numbered. The defendants contents that the suit is not maintainable and injunction cannot be granted.

The defendants D1 & D2 filed petition under Order VII Rule 11 questioning the maintainability of the suit, which is yet to be numbered.

But from the arguments of both sides, High decree



WEB COPY



C.R.P.Nos.36 & 37 of 2024

misunderstanding developed between plaintiffs and D1 during the course of business.

Therefore, until this Court properly decides the maintainability, by numbering Order VII Rule 11, this Court inclined to grant direction that the directors, who are empowered to handle the accounts can handle the accounts as per Board Resolution.

Thereby plaintiffs and D1 can operate the Company account for urgent expenses of the company like salary and day to day expenditure for the subsistence of the company.

The plaintiffs and D1 directed to submit the accounts of expenditure before the Court if incurred any from the Company account byway of memo once in 15 days till the disposal of this appication and application under Order VII Rule 11. The alleged board resolution dated 4.10.2023 shall not be acted till then.

The 3rd defendant ICICI Bank directed to restore the mobile number of 2nd plaintiff and attach with the company account till then.

Office is directed to number Order VII Rule 11 if otherwise in order. Counter by 1.12.2023."

Challenging the same, the present revision has been filed.



C.R.P.Nos.36 & 37 of 2024

WEB COPY

6. The learned counsel for the petitioner submitted that the Trial Court has no jurisdiction to entertain the suit and pass the impugned order. The revision petitioners had filed a petition under Order VII Rule 11 CPC to reject the plaint as the Court is not having jurisdiction over the subject matter, which is numbered as I.A.No.4 of 2023 and the same is pending. Pending that petition, the learned Judge passed the impugned order. The respondents 2 and 3 have been ousted from the 1st respondent Company based on the resignation letter issued by them. The 1st respondent Company followed the due procedure of law established under Section 168 of the Companies Act for removal of Directors. The Form No.DIR-12 have also been filed and approved by ROC, the same is reflected in the website of the ministry of Corporate Affairs.

7. The learned counsel further submittd that the respondents 2 and 3 are neither Directors nor employees of the 1st respondent Company, granting them the cheque signing power is wholly arbitrary and would severely prejudice the rights of the 1st respondent company. Further, the learned Trial Judge failed



C.R.P.Nos.36 & 37 of 2024

WEB COPY

to appreciate the fact that when an application is filed under Order VII Rule 11 of the Civil Procedure Code, 1908, the same must be taken at the threshold and must be decided on merits at the earliest. The reason being, when the court decides an application under Order VII Rule 11, it is cast with the primary duty to decide whether the Court possess the requisite jurisdiction to decide the matter in the first place, if the Court does not possess the adequate jurisdiction to decide the matter on merits it could have not decided the applications under Order 39 Rule 1 and 2. Furthermore, the Trial Judge ought to have rejected the plaint on the threshold since the same is bad in law for a variety of reasons including mis-joinder and non-joinder of parties, ouster of jurisdiction, barred by law, etc. However, the Trial Judge, at the court of first instance has turned a Nelson's eye to the same which has severely affected the administration of business in the 1st respondent company, which could have been rectified if the application for reject the plaint was heard on merits.

8. The leaned counsel also submitted that the respondents have spent about 8 Crores of the funds of the 1st respondent company just within 3 days of



C.R.P.Nos.36 & 37 of 2024

WEB COPY

obtaining the order of injunction from the Trial Court and the conduct of the respondents reeks of malice and warrants judicial interference. The Trial Judge has also passed an order of mandatory injunction without any cogent reasoning as to how the rights of the respondents have been prejudiced prior to the filing of the suit. The impugned order has to be set aside as it is illegal, arbitrary and without jurisdiction and seeks to allow the revision.

9. In support of his argument, the learned counsel relied upon the following judgments

1. **2018 (14) SCC 1 (Madiraju Venkata Ramana Raju /vs/ Peddireddigari Ramachandra Reddy)**
2. **1995 MPLJ 575 (Vindhya Telelinks Ltd., /vs/ State Bank of India)**
3. **Civil Appeal No.9695 of 20213 (Asma Lateef & anr /vs/ Shabbir Ahmad & ors)**
4. **Volumate XXXVIII Bombay Series 381 Appellate Civil (Rasul Karim & anr /vs/ Pirubhai Amirbhai)**
5. **1956 SCC Online Calcutta 36 (Nandan Pictures Ltd /vs/ Art Pictures Ltd., & otrs)**



C.R.P.Nos.36 & 37 of 2024

WEB COPY

10. The learned counsel for the respondents 1 to 3/plaintiffs submitted that based on the fabricated and forged resignation letter, which was falsely prepared by the first petitioner/1st defendant, as if it was issued by the respondents 2 and 3, they were removed from the post of Director of the 1st respondent Company. There is a specific averments in the plaint that those fraud works were done only on the basis of the forged and fabricated documents. The relief sought by the respondents 1 to 3 are beyond the provisions of the Companies Act and the same can be granted by the Civil Court alone and hence, the Trial Court has jurisdiction to entertain the suit filed by them. Further, the petition filed by the petitioners/defendants 1 to 3 under Order VII Rule 11 CPC to reject the plaint is pending and enquiry is yet to be conducted by the Trial Court. Only as a temporary arrangement, in order to save the workers, and for a payment to the workers, the interim direction has been granted by the Trial Court. The jurisdiction of a Civil Court should not easily held to be barred by law unless the special statute expressly or impliedly bars the same. The grievance made and the reliefs sought by the respondents 1 to 3 in the present case are of such a nature, which relate to



C.R.P.Nos.36 & 37 of 2024

WEB COPY

general law of the land and serious fraud has been made in preparing the resignation later. Therefore, it could not be said that the jurisdiction of the Civil Court is expressly or impliedly barred.

11. The learned counsel further submitted that the jurisdiction of the Civil Court is not a bar where allegations made in the plaint by the plaintiff relates to misrepresentation, fraud, failure to furnish the details, dishonest or malafide intention. If there is allegations of misrepresentation, fraud, failure to furnish the details, dishonest or malafide intention, suppression of material facts, removing of the plaintiff from the post of Director by a resolution , which are disputed questions of facts, which have to be necessarily determined and adjudicated only by a Civil Court after letting in oral and documentary evidence. Therefore, there is no merit in the revision and prays to dismiss the revision.

12. To support his argument, he had relied upon the following judgments :-

1. 2020 (8) SCC 79 (Aruna Oswal /vs/ Pankaj Oswal & otrs)



C.R.P.Nos.36 & 37 of 2024

WEB COPY

- 2. *National Company Law Appellate Tribunal Principal Bench, New Delhi in Company Appeal (At) No. 379 of 2018 (Satori Global Ltd, & another /vs/ Ms.Shailja Krishna & others)***
- 3. *2013(3) RLW 2763 (Om PrakashChoudhary /vs/ Dr.Kailash Garg & ors)***
- 4. *2009 SCC Online Madras 506 (Shanita Holding SDN & anr /vs/ Shanita Hotel Tricy Pvt. Limited & anr)***
- 5. *2014 SCC Online Madras 12856 (Gemini Communications ltd /vs/ Merrill Lynch International)***

13. This Court considered the matter in the light of the submissions made by the learned counsel on either side and also perused the materials available on record carefully.

14. On perusal of material facts, it reveals that the plaintiff had filed the



C.R.P.Nos.36 & 37 of 2024

WEB COPY

suit in O.S.No.641 of 2023 along with the two petitions in I.A.Nos.3 and 2 of 2023 seeking for interim mandatory injunction to restore the mobile number of 2nd plaintiff being 9884200116 linked with the current account No.240805000423 of the 1st plaintiff Company and seeking for interim restraining the 1st defendant and the 2nd defendant from acting based upon the alleged Board Resolution dated 04.10.2023 in respect of the affairs of the 1st plaintiff Company during the pendency of the suit. The petitioners/defendants 1 to 3 have appeared before the Trial Court 30.10.2023 and filed vakalath. Thereafter, the petitioners/defendants 1 to 3 had filed an application in I.A.No.4 of 2023 under Order VII Rule 11 of CPC for rejection of the plaint, in which counter was also filed and ripe for enquiry.

15. On perusal of plaint averments, it is noticed that there is allegation of fraud, failure to furnish the details of resignation letter, suppression of material facts and based on the resignation letter alleged to have been given by the respondents 2 and 3/plaintiffs 2 and 3, they were removed from the Post of Director of the 1st respondent/1st plaintiff Company. Accepting the resignation



C.R.P.Nos.36 & 37 of 2024

WEB COPY

letter and the appointment of main Directors, are Company matters under the Companies Act. Whether the relief sought by the plaintiffs under the light of the Provisions of the Companies Act are beyond the jurisdiction of a Civil Court and the same can be granted by a Company Law Board only, has to be decided by the Trial Court in the Application filed by the revision petitioners under Order VII Rule 11 CPC in I.A.4 of 2023, which is pending for enquiry. Therefore, this Court is not expressing any opinion about the subject matter of the jurisdiction of the Court over the Subject matter.

16. Without expressing any opinion about the jurisdiction over the Subject matter, this Court is of the view that in the interest of the workers, directions for payment to the workers may be continued. At the same time, the Trial Court is hereby directed to dispose the application filed by the petitioner under Order VII Rule 11 CPC within a period of four weeks from the date of receipt of a copy of this order.



C.R.P.Nos.36 & 37 of 2024

WEB COPY

17. With the above observation and direction, both the revision petitions are closed. Consequently, connected miscellaneous petitions are closed.

12.02.2024

Index: yes/no
Internet:yes/no
mrp

To

Principal District Court,
Chengalpet.



WEB COPY



C.R.P.Nos.36 & 37 of 2024

V. SIVAGNANAM, J.

mrp

C.R.P.Nos.36 & 37 of 2024

12.02.2024