

M/S. Singapore Reality Private Limited vs The Government Of Tamil Nadu on 10 January, 2020

Author: R. Subbiah

Bench: R.Subbiah, T. Krishnavalli

THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 01.11.2019

Judgment Pronounced on : 10-01-2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS. JUSTICE T. KRISHNAVALLI

Original Side Appeal No. 470 of 2018
and
C.M.P. No. 22029 of 2018

M/s. Singapore Reality Private Limited
represented by its Director
having office at No.23, 1st Floor
Kasi Arcade
No.116, Sir Thyagaraya Road
T. Nagar, Chennai - 600 017
also at
Plot K-1, Singapore IT Park
Siruseri, Navaloor Post Pin 603 103

Versus

1. The Government of Tamil Nadu
rep. by the Additional Chief Secretary to Government
Industries Department
Fort St. George
Chennai - 600 009
2. The State Industries Promotion Corporation of
Tamil Nadu Limited (SIPCOT)
represented by the Managing Director
No.19-A, Rukmani Lakshmipathi Road
Egmore, Chennai - 600 008

Appeal filed under Order XXXVI Rule 1 of Original Side Rules r
Clause 15 of Letters Patent against the Order dated 02.08.2018 passed
Application No. 6457 of 2016 in C.S. Diary No. 22017 of 2016
<http://www.judis.nic.in>

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For appellant : Mr. Ar.L. Sundaresan, Senior Advocate
for Mr. Srinath Sridevan

For respondents : Mr. J. Balagopal
Special Government Pleader for R1

Mr. P.H. Arvinth Pandiyan
Additional Advocate General - II
for Mr. Ramesh Venkatachalapathy for

JUDGMENT

R. Subbiah, J This appeal is filed as against the Order dated 02.08.2018 passed in Application No. 6457 of 2016 in C.S. Diary No. 22017 of 2016, wherein and whereunder, the learned single Judge has dismissed the application filed by the respondents herein seeking leave to sue the appellant/defendant in the suit in C.S. Diary No. 22017 of 2016 and directed the Registry to return the plaint and the application for amendment of the plaint filed by the respondents herein in Application No. 4250 of 2018 after making necessary endorsement on the plaint.

2. Now the present appeal has been filed by the appellant/defendant on the ground that in the counter affidavit filed in Application No. 6457 of 2016, they have taken a specific plea that the suit filed by the plaintiffs/respondents is nothing but a re-litigation and therefore, the plaint itself ought to have been rejected even before numbering the same, but the said plea of the appellant was rejected by the learned single Judge. On the other hand, the learned single Judge directed the Registry to return the plaint so as to enable the plaintiffs to present it before the Court having jurisdiction.

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3. The facts emanated from and out of the material records placed before us and which are necessary for disposal of this appeal are succinctly elucidated hereunder.

4. The first respondent/Government of Tamil Nadu issued G.O. Ms. No.86, Industries (M.I.G.-2) Department dated 08.10.2002 for setting up an Integrated Knowledge Industry Township at the Information Technology Park, Siruseri, Chennai. The second respondent-SIPCOT was appointed as nodal agency for implementing this project. The appellant company is held by M/s. Lee Kim Tah Enterprises Pte Limited, which is a subsidiary of M/s. Lee Kim Tah Holdings Limited, a Public Limited Company in Republic of Singapore. The appellant company evinced interest in taking up the project relating to setting up of Integrated Knowledge Industry Township as they had vast

experience and knowledge in taking up similar projects. The appellant therefore initiated dialogue with officials of the Government of Tamil Nadu as well as SIPCOT and submitted an application dated 27.03.2003 for allotment of 165 acres of land at Siruseri in their favour to set up integrated/model township with an initial investment of Rs.500 crores. The second respondent, in their letter dated 09.04.2003, has, in principle, agreed to allot land measuring 100 acres at SIPCOT IT Park, Siruseri on outright sale basis to the appellant at a cost of Rs.13.00 lakhs per acre subject to certain conditions. The Government of Tamil Nadu, thereafter, entered into a Memorandum of Understanding on 16.09.2003 with Lee Kim Teh Holding Limited, Singapore. As per the conditions of the Memorandum of Understanding, the lands would be offered for setting up township at prefixed price of Rs.15.00 lakhs per http://www.judis.nic.in osa 470 of 2018 acre, out of which, Rs.13.00 lakhs was to be paid to second respondent/SIPCOT upon allotment of the lands and the balance to be paid on completion of first phase of the project or at the end of three years from the date of allotment, whichever is earlier. One of the significant terms and conditions in the Memorandum of Understanding dated 16.09.2003 is that the first phase of 2000 housing units has to be completed within 3 years from the date of registration of the lands.

5. While so, dispute arose between the appellant and the respondents inasmuch as the appellant did not obtain environmental clearance for the project. Therefore, under Section 5 of the Environment (Protection) Act, the Ministry of Environment and Forest, Government of India directed the Government of Tamil Nadu to forthwith direct the project proponent to stop the construction work immediately and to take action for violating the provisions of the Environment (Protection) Act, 1986 and to submit a report. Therefore, the Government of Tamil Nadu issued G.O. Ms. No.17, Industries (IT) Department dated 17.02.2006, which was forwarded by an order dated 28.02.2006 passed by the second respondent- SIPCOT intimating that the Memorandum of Understanding dated 16.09.2003 stands cancelled. Challenging the aforesaid orders, the petitioner/appellant herein has filed WP Nos. 6243 and 6244 of 2006 before this Court. The writ petitions were filed mainly on the ground that the impugned orders were passed in violation of principles of natural justice as the appellant was not served with any show cause notice before passing the impugned orders. If the petitioners are served with a show cause notice, they could have very well satisfied the respondent that the project was not frustrated and all steps have been taken by the petitioner to comply http://www.judis.nic.in osa 470 of 2018 with Environmental process. Several other grounds have also been raised in the writ petitions filed by the appellant herein.

6. The writ petition was contested by the respondents by contending that the transaction in question is only a transfer of land by the Government and it cannot be construed to be a sale as defined in the Transfer of Property Act. It was also contended that the land was transferred to the writ petitioner/appellant herein for specific purpose to develop an integrated township within three years, but the said purpose has become practically impossible and frustrated in view of the action initiated by the Government of India through the order dated 30.12.2005 directing the Government of Tamil Nadu to pass orders to stop all further construction activities taken up by the petitioner. It was also contended that the order dated 30.12.2005 passed by the Government of India has not been challenged by the writ petitioner/appellant herein and therefore, the present writ petition is not maintainable.

7. By a common order dated 14.03.2012, the writ petition Nos. 6243 and 6244 of 2006 filed by the appellant were allowed by this Court.

8. Aggrieved by the common order dated 14.03.2012 passed in WP Nos. 6243 and 6244 of 2006, the second respondent-SIPCOT has filed W.A. Nos. 1546 and 1547 of 2013 and the first respondent/Government of Tamil Nadu also filed W.A. Nos. 2179 and 2180 of 2013. All the aforesaid four writ appeals were dismissed by the Division Bench of this Court on 14.03.2014 by upholding the <http://www.judis.nic.in> osa 470 of 2018 orders, which were impugned in the writ petitions. The Division Bench also given a specific finding that the orders of the appellants/respondents herein are violative of principles of natural justice and it had the effect of adverse civil consequence on the writ petitioner/respondent therein. The Division Bench further held that the time granted for completion of the first phase of the construction is available to the appellant till 17.02.2006, the date on which the first respondent/Government terminated the Memorandum of Understanding dated 16.09.2003, and to explain as to whether the construction could be completed on or before 15.12.2007, the date given for completion of first phase of the project. The Division Bench of this Court also held that the application submitted for obtaining Environmental Clearance was pending and not rejected and therefore the Doctrine of impossibility of performance cannot be pleaded as on 17.02.2006.

9. Aggrieved by the Judgment dated 14.03.2014 passed in W.A. Nos. 1456 and 1547 of 2013, the second respondent/SIPCOT has filed Special Leave to Appeal (C) Nos. 17499 to 17450 of 2014 before the Honourable Supreme Court and they were dismissed on 01.09.2014. Thereafter, SIPCOT has filed a Review Petition (C) Nos. 2817 to 2818 of 2014 before the Honourable Supreme Court and they were also dismissed on 13.01.2015. Notwithstanding the same, SIPCOT has also filed Curative Petition (C) Nos. 350 to 351 of 2015 and they were also dismissed on 13.10.2015.

10. Subsequently, the Government of Tamil Nadu/first respondent herein filed SLP (C) No. 8554 to 8555 of 2015 before the Supreme Court challenging the <http://www.judis.nic.in> osa 470 of 2018 order dated 14.03.2012 passed by Division Bench of this Court in W.A. Nos. 2179 and 2180 of 2013. However, The Special Leave Petition (C) Nos. 8554 to 8555 of 2015 filed before the Honourable Supreme Court was dismissed as withdrawn on 08.12.2015.

11. In the meantime, the appellant herein appears to have tendered the balance sale consideration to the respondents herein purportedly on the ground that the WP Nos. 6243 and 6244 of 2006 filed by them were allowed by this Court on 14.03.2012. However, the respondents refused to receive the balance sale consideration and therefore, the appellant herein has filed WP No. 28047 of 2016 before this Court for a Writ of Mandamus directing the respondent to accept the balance sale consideration of Rs.2,09,42,000/- in accordance with the sale deed dated 06.05.2004 and 16.12.2004 as directed by the order dated 14.03.2012 in WP No. 6243 of 2006 and WP No. 6244 of 2016. The said Writ Petition No. 28047 of 2016 was contested by the respondents herein. Ultimately, by an order dated 20.12.2016 passed in WP No. 28047 of 2016, this Court allowed the writ petition. The operative portion of the order dated 20.12.2016 reads as follows:-

10. As rightly pointed out by the learned Senior counsel for the petitioner, in the order dated 08.12.2015, the Honourable Supreme Court has only recorded the statement made by the petitioners to withdraw the special leave petitions and to work out their remedy before the Civil Court. The Honourable Supreme Court has not specifically given liberty to the Government to institute a Civil Suit but permitted to withdraw the Special Leave Petition on that ground only.

11. Be that as it may, as on date, neither the respondent nor the Government has filed any civil suit. According to the statement of the learned Advocate General appearing for the respondent, the Government has filed a Petition seeking leave to file a Civil Suit before the original side of this Court and it was not <http://www.judis.nic.in> even numbered. In such circumstances, as the order dated 14.03.2012 passed by this Court in WP Nos. 6243 and 6244 of 2006 has been upheld by the Honourable Supreme Court in favour of the petitioner, I am of the view that the respondent is bound to receive the balance sale consideration as per the directions issued by this Court in the order dated 14.03.2012 passed in WP Nos. 6243 and 6244 of 2006, which was also subsequently confirmed by the Division Bench of this Court as well as the Honourable Supreme Court.

12. In the result, the writ petition is allowed as prayed for. A Mandamus is issued to the respondent to receive the balance sale consideration of Rs.2,09,42,000/- from the petitioner as per the direction issued by this Court on 14.03.2012 in WP Nos. 6243 and 6244 of 2006. No costs.

12. Pursuant to the order passed by the Honourable Supreme Court dismissing the Special Leave Petitions as well as the Curative Petitions filed by SIPCOT as well as the dismissal of Special Leave Petitions filed by the Government of Tamil Nadu, the instant suit in C.S. Diary No. 22017 of 2016 was filed by the respondents herein along with two applications in Application No. 6457 of 2016 and Application No. 4250 of 2017. Application No. 6457 of 2016 has been filed seeking to grant leave to the applicants/plaintiffs to sue the defendant/respondent therein in the suit in C.S. Diary No. 22017 of 2016. The application No. 6457 of 2016 in C.S. Diary No. 22017 of 2016, seeking leave to sue the defendant, has been filed purportedly on the ground that the property in question is situated outside the jurisdiction of this Court.

13. The application No. 4250 of 2017 has been filed by the respondents to amend the plaint in C.S. D No. 22017 of 2016 to the effect that the Memorandum of Understanding dated 16.09.2003 executed between the respondents and appellant herein has become void as having been hit by the principle of frustration <http://www.judis.nic.in> osa 470 of 2018 of the contract due to breach committed by the appellant herein.

14. Opposing the applications, a counter affidavit has been filed by the appellant herein by contending that the dispute between the parties has already been decided

by this Court which was also confirmed by the Honourable Supreme Court, while so, the present application seeking to grant leave and to amend the plaint need not be granted. According to the appellant, there is no cause of action for filing the present suit and that the present suit amounts to re-litigation. When the dispute between the parties has already been settled through an order passed by the Honourable Supreme Court, the Civil Suit is not maintainable and consequently, the plaint itself has to be rejected.

15. After hearing the rival submissions made by the counsel on either side, the learned single Judge, by order dated 02.08.2018, dismissed the application seeking leave by holding that the suit is for land and therefore no leave could be granted. Further, as the application to grant leave to sue the appellant herein has been dismissed, the application filed for amendment of the plaint will not lie and therefore, the amendment application was ordered to be returned. The learned single Judge also directed the Registry to return the plaint and the amendment applications so as to enable the appellants herein to present the plaint by making necessary additions before the competent Court within a period of six weeks.

Challenging the order dated 02.08.2018 dismissing the application No. 6457 of 2016 seeking leave to sue the appellant/defendant with a direction to return the plaint, the present Original Side Appeal has been filed by the appellant/defendant before this Court.

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16. Even though the learned single Judge dismissed the application filed by the respondents/plaintiffs in Application No. 6457 of 2006 seeking leave to sue the appellant herein, the grievance of the appellant in the present appeal is that the learned single Judge, ought to have rejected the plaint itself on the basis of the statement made in the counter affidavit filed by the appellant to the effect that the issue involved in the suit has already reached a finality, instead of returning the plaint to the respondents/plaintiffs with a direction to present it before the Court having jurisdiction,

17. The learned Senior counsel appearing for the appellant would contend that the learned single Judge did not consider that there is nothing for the respondents herein to agitate by filing a civil suit and the dispute surrounding the Memorandum of Understanding dated 16.09.2003 has been set at naught by the Honourable Supreme Court of India at the behest of the respondents herein. While so, the learned single Judge ought to have rejected the plaint itself instead of dismissing the application seeking grant of leave to enable the appellant to file a suit before the competent Civil Court having jurisdiction. This would only prolong the litigation further and would frustrate the appellant herein to get back his legitimate right to proceed with the transactions covered in the Memorandum of Understanding dated 16.09.2003. In effect, it is contended by the learned Senior counsel for the appellant that the present attempt on the part of the respondents in filing a civil suit even after dismissal of the Special Leave Petitions filed by them before the Honourable Supreme Court is nothing short of a re-litigation and they are <http://www.judis.nic.in> osa 470 of 2018 estopped from

filing a suit. Further, while dismissing the Special Leave Petitions filed separately by the first respondent as well as the second respondent, the Honourable Supreme Court did not grant leave, therefore, even the present application filed by the respondents seeking leave to sue is not maintainable. In support of his contention, the learned Senior counsel placed heavy reliance on the decision of the Calcutta High Court in the case of Delta International Limited vs. Smt.Nupur Mitra reported in AIR 2018 Calcutta 8 wherein it was held in para No.17 as follows:-

"17. The appellants' submission on such first aspect of the matter is exceptionable. There is, indisputably, an application of the judicial mind when assessing whether leave ought to be granted or not under Clause 12 of the Letters Patent. Even Clause 12 of the Letters Patent contains an embargo in the receipt by this court of a class of suits that has come to be known as suits for land. Clause 12 of the Letters Patent ordains that a suit for land may be entertained in this court only if the subject land is wholly or partly situate within the territorial jurisdiction of this court. That necessarily obliges a judge approached for leave under Clause 12 of the Letters Patent to assess at such time if the suit is a suit for land: and, if so, whether any part of the subject land is situated within the territorial limits of this court in exercise of its ordinary original jurisdiction. If, in course of such assessment, it transpires that the suit has to be regarded as a suit for land and no part of the subject land is within jurisdiction, the leave sought under Clause 12 of the Letters Patent has to be refused. The effect the refusal to grant leave under Clause 12 of the Letters Patent would be the pronouncement of a judicial order that the suit is not maintainable in this court. Thus, even for the purpose of ascertaining whether leave under Clause 12 of the Letters Patent ought to be granted or not, there is a consideration as to the maintainability of the action in this court. If such judicial exercise is required to be undertaken for the purpose of granting leave or not under Clause 12 of the Letters Patent, it would defy logic that the consideration should not be extended to a general assessment as to the maintainability of the suit. Indeed, it is the duty of every civil court at the time of the receipt of a plaint - or, at any rate, at the time that a plaint first receives judicial attention - to ascertain on a charitable reading thereof whether the suit is maintainable at all or maintainable in such court. At least three vital aspects fall for <http://www.judis.nic.in> immediate consideration when a suit is lodged before a civil court: whether it conforms to the pecuniary and territorial authority of the court; whether it discloses a cause of action; and, whether it is ex facie barred by any law. The right of a defendant to apply under Order VII Rule 11 of the Code of Civil Procedure, 1908 does not discharge the civil court's obligation to assess the maintainability of the action at the receiving stage of a suit: it is not a safety-net for the lapse of the court to be corrected; it only gives a defendant an opportunity to demonstrate that the arguable case that the court may have found in favour of the plaintiff on any of the three counts may be illusory. The provision also acts as a default mechanism when a plaint has been filed but it has not received any judicial attention before the service of the writ of summons on the defendant."

18. By placing reliance on the aforesaid decision of the Division Bench of the Calcutta High Court, the learned Senior counsel for the appellant would contend that even at the stage of grant of leave, a plaint can be rejected, if the same is hopelessly barred by any law.

19. For the very same proposition, the learned Senior counsel also relied on the Judgment of the Division Bench of this Court in the case of (D.R. Logistics vs. Pridhvi Asset Reconstruction and Securitization Company (O.S.A. No. 272 of 2015) wherein it was held as follows:-

"7. We have heard the learned counsel for parties and find no error whatsoever in the order of the learned Single Judge. It cannot be the birth right of the appellant to continue the suit, frivolous as it may be, and such suit especially when barred by law, is required to be knocked out at the threshold. The appellant not having succeeded before the learned Single Judge, now seeks to take a chance in the appellate forum.

8. We find that the endeavour made to the present proceedings is to frustrate the decree passed by the competent forum in accordance with law despite the bar contained under the Statute. It is, in fact an endeavour to go behind the decree and to avoid the consequence of not meeting the commercial obligations despite the compromise decree and the cheques being dishonoured. Thus, while affirming the impugned order, we <http://www.judis.nic.in> consider it appropriate to compensate the first respondent-

osa 470 of 2018 caveator with costs of the present proceedings quantified at Rs.20,000/-.

9. The appeal is accordingly dismissed with costs of Rs.20,000/- in favour of the first respondent. Consequently, M.P.No.1 of 2015 is closed.

20. By citing this decision, the learned Senior counsel for the appellant would contend that the learned single Judge ought to have rejected the plaint itself on the ground of re-litigation instead of returning the plaint for the purpose of presenting it before the competent Civil Court. The Courts have recognised that the object of the principle of issue of estoppel is to prevent re-litigation. In the present case, all the issues raised by the respondents herein have already been answered and therefore, the present attempt on the part of the respondents herein to file a suit is nothing but a re-litigation. When once a particular issue has been adjudicated by a Court of law, the same cannot be permitted to be raised or need not be adjudicated once again as it would amount to abuse of the process of law. For this purpose, the learned Senior counsel also relied on the decision of the Full Bench of the Honourable Supreme Court in Hope Plantation Limited vs. Taluk Land Board, Peermade reported in 1999 (5) Supreme Court Cases 590 to contend that the respondents cannot be permitted to re-agitate the issues which have already been settled by the Honourable Supreme Court of India. Therefore, the learned Senior counsel for the appellant would submit that the present suit is an abuse of process of law. It is improper for the respondents to file the present suit to defeat the orders passed by the Honourable Supreme Court in the earlier writ petitions. The learned Senior counsel for the appellant therefore prayed this Court to set aside the order of the learned single

Judge in so far as the issue of re- <http://www.judis.nic.in> osa 470 of 2018 litigation is concerned.

21. Per contra, Mr. P.H. Arvindh Pandian, learned Additional Advocate General appearing for the respondents would, at the outset, submit that the learned single Judge had only dismissed the application seeking leave filed by the respondents and therefore, the appellant cannot have any qualm or grievance as against the order of dismissal. The contention of the appellant that the learned single Judge ought to have rejected the plaint on the ground that the averments made therein constitute re-litigation is superfluous and illusory. According to the learned Additional Advocate General, in the earlier litigation, the order terminating the Memorandum of Understanding by the Government was set aside on the ground that the time for performance of the first phase is still available to the respondents. Now, the present suit has become necessary to get a declaratory decree to declare that the defendant has grossly breached his obligations under the contract and that the sale deeds dated 06.05.2004 and 16.12.2004 executed by the second plaintiff be declared and/or treated as cancelled and for a mandatory injunction directing the defendant/appellant herein to re-convey the lands. Thus, the relief sought for in the suit filed by the respondents was not the subject matter of the writ petition, which was affirmed by the Honourable Supreme Court. While so, the appellant has filed this appeal to take into account the statement made by them in the counter affidavit in the application filed by the respondents seeking leave to sue before the learned single Judge to non-suit the plaintiffs/respondents herein. According to the learned single Judge, so long as the plaint discloses some cause of action which requires the determination of the Court, the powers under <http://www.judis.nic.in> osa 470 of 2018 Order VII Rule 11 of Code of Civil Procedure cannot be exercised. In other words, according to the learned Additional Advocate General, the plaint clearly discloses the cause of action and therefore, even an application under Order VII Rule 11 of Code of Civil Procedure is not maintainable. Even assuming that the averments in the plaint constitutes a re-litigation, it can be decided by the Civil Court only as a preliminary issue and the plaint cannot be rejected based on the statement made in the counter affidavit filed by the appellant in the application filed by the respondents seeking leave to sue the appellant before the single Judge.

22. The learned Additional Advocate General also contended that the averment of the appellant that the Honourable Supreme Court did not grant any liberty to the respondents to move the Civil Court and therefore, the present suit is not maintainable cannot be countenanced. According to the learned Additional Advocate General, for enforcement of civil remedy for breach of contract, the respondents are not required to obtain any liberty to institute a suit. Even otherwise, the Honourable Supreme Court, at the time of permitting the first respondent to withdraw the Special Leave Petition, specifically stated that the Special Leave Petitions are permitted to be withdrawn and that the respondents can work out their remedy before the Civil Court, meaning thereby, the Honourable Supreme Court has granted liberty to the respondents herein to move the Civil Court for appropriate relief. However, by way of abundant caution, the first respondent made a statement that they seek to withdraw the Special Leave Petition and to work out their remedy before the Civil Court. The Honourable Supreme Court also recorded the statement made on behalf of the first respondent <http://www.judis.nic.in> osa 470 of 2018 to withdraw the Special Leave Petition and to work out their remedy in a manner known to law and dismissed the Special Leave Petitions as withdrawn, meaning thereby, liberty was granted to the respondents herein to file a civil suit. Even

assuming without admitting that the liberty of the Honourable Supreme Court is required to file the present suit but such permission has not been obtained, the same would not preclude the respondents to institute the present suit for enforcement of legal rights. The learned Additional General also contended that now the suit has been numbered as C.O.S. No. 14 of 2018 before the Principal District Court at Chengalpattu and therefore, it is well open to the appellant herein to defend the suit in a manner known to law. The learned Additional Advocate General therefore prayed for dismissal of the appeal in so far as it relates to the prayer of the appellant to set aside the order of the learned single Judge on the issue of re-litigation is concerned.

23. We have heard the counsel for both sides and perused the materials placed. As we have dealt with the factual matrix of the case at required detail, we feel that it is not necessary for us to repeat it any further in this appeal. The fact remains that the Government of Tamil Nadu/first respondent herein entered into a Memorandum of Understanding on 16.09.2003 with the appellant company, which is held by M/s. Lee Kim Tah Enterprises Pte Limited, a subsidiary of M/s. Lee Kim Tah Holdings Limited, a Public Limited Company in Republic of Singapore. Pursuant to the execution of Memorandum of Understanding dated 16.09.2003, two sale deeds were executed on 06.05.2004 and 16.12.2004 in favour of the appellant herein. While so, alleging breach of the terms and conditions of the Memorandum <http://www.judis.nic.in> osa 470 of 2018 of Understanding dated 16.09.2003, the first respondent issued G.O. Ms. No.17, Industries (IT) Department dated 17.02.2006, which was forwarded by an order dated 28.02.2006 passed by the second respondent-SIPCOT, intimating that the Memorandum of Understanding dated 16.09.2003 stands cancelled. Challenging the orders dated 17.02.2006 and 28.02.2006 of the respondents, appellant herein filed WP Nos. 6243 and 6244 of 2006 before this Court on the ground that the time granted under the Memorandum of Understanding dated 16.09.2003 for completion of the first phase of the project has not expired and therefore, the cancellation of Memorandum of Understanding dated 16.09.2003 is in violation of principles of natural justice. By a common order dated 14.03.2012, the writ petition Nos. 6243 and 6244 of 2006 filed by the appellant was allowed by this Court. Useful reference can be made to the relevant portion of the order dated 14.03.2012 which reads as follows:-

"33. To sum up, the impugned orders are liable to be quashed on the following grounds:-

(i) Both the orders, namely the cancellation of MoU order and the revocation of land allotment orders with a direction to recover the property were passed in flagrant violation of principles of natural justice as admittedly the petitioner has not been served with any show cause notice or afforded with any opportunity to put forward its objection and explanation.

(ii) The reason for cancelling the MoU and revoking the plot allotment orders are baseless, unfounded, unreasonable, absurd and on non-existing cause. The sole basis for passing the impugned orders is the order dated 30.12.2005 passed by the Ministry of Environment and Forests, Government of India, directing the Government of Tamil Nadu to stop construction activities of the petitioner in the project site on the allegation of not obtaining environmental clearance certificate and

such an order of Government of India does not contain any direction to the respondents to cancel the very impugned orders.

(iii) The order dated 30.12.2005 passed by the Ministry of Environment and Forests, Government of India does not disclose any permanent or total ban on the project and on the <http://www.judis.nic.in> other hand, the said order was passed only on the alleged osa 470 of 2018 violation of EIA notification for not obtaining environmental clearance and such violation is a curable one

(iv) The petitioner had already applied for environment clearance certificate and made all arrangements to fulfil the obligations under the EIA notification even as per the admitted version of the respondents in their common counter.

(v) The respondents agreed to facilitate the petitioner in obtaining statutory approvals as per clauses (11) and (18) of Mou.

But on the other hand, the respondents have committed breach of the said clauses and instead of co-operating, co-ordinating and facilitating the petitioner to obtain statutory approvals and clearances, resorted to the extreme step of passing the impugned orders cancelling the MoU and revoking the plot allotment orders which is wholly unjustified and unreasonable.

(vi) It is well-settled that the validity of the impugned orders have to be tested only on the basis of the reasons and grounds assigned in the said orders and the reasons cannot be added, substituted or supplemented with fresh reason in the shape of counter affidavit or contentions through counsel

(vii) The respondents overlooked and not considered the reply of the petitioner dated 20.12.2005 to the notice sent by the TNPCB dated 14.12.2005, wherein, the petitioner assured that they do not intend to continue with construction activities prior to the obtaining of environmental clearance.

(viii) The respondents also overlooked and failed to consider the reply of the petitioner dated 30.01.2006, to the show cause notice dated 17.01.2006 issued by the TNPCB pursuant to the orders of the Government of India dated 30.12.2005, wherein the petitioner denied the alleged violation of environmental rules and stated that they have engaged M/s. Richardson and Cruddus Limited, and they have not commenced any construction of township, they have only put up show flat for showing to the prospective buyers which has to be pulled down subsequently, and they have also stated that they shall commence construction of no part unless and until all legal requirements are complied with.

(ix) In view of the admission made in the common counter of the respondents to the effect of land allotment orders dated 13.02.2006 and 10.12.2004 have been passed pursuant to the execution of MoU and the delivery of possession of the lands have been given to the petitioner pursuant to the execution of the absolute sale deeds dated 06.05.2004 and 16.12.2004 coupled with admission that the petitioner had already applied for environmental clearances and other statutory approvals and the order of the Government of India dated 30.12.2005 not disclosing any permanent or total ban

on the project, by no stretch of imagination it could be stated that the purpose of issuing the land allotment orders and the terms of MoU have become frustrated <http://www.judis.nic.in> and practically impossible. osa 470 of 2018

(x) There is no specific clause, condition or covenant either in the MoU and the allotment of plot orders or in the registered absolute sale deeds executed by the second respondent for reconveyance of the property and under the allotment order dated 16.12.2004, option was given only to the petitioner to surrender the land and to get the refund of all sum paid by the petitioner with forfeiture of initial deposit and processing fee and as such, the question of reconveyance does not arise.

(xi) In the allotment orders dated 13.02.2004 and 10.12.2004, it is specifically stated that the plots have been allotted on an outright sale basis and pursuant to the said plot allotment orders, absolute sale deeds dated 06.05.2004 and 16.12.2004 have been executed and as such, the ownership and title of the property have already been transferred in favour of the petitioner and such being the position, the respondents have no control, right or interest over the properties and as such, the question of cancellation of MoU or revocation of plot allotment orders with a direction to recover the property does not arise.

(xii) The respondents have given assurance to facilitate the petitioner to obtain statutory approvals and induced the petitioner to start construction immediately after submitting the necessary application for building plan approval to the appropriate authorities as per the land allotment order dated 13.02.2004 and thereby the petitioner had invested huge amount by making preparatory arrangements for the commencement and completion of the project with the hope of successful completion of the project and as such, the action of the respondents in issuing the impugned order attract the doctrine of 'legitimate expectation' and the action of the respondents would amount to violation of principles of natural justice and constitutes arbitrary exercise of power.

34. In view of the aforesaid reasons, this Court has come to the irresistible conclusion that the impugned orders are unsustainable in law. Accordingly, the writ petitions are allowed and the order of the first respondent in G.O. Ms. No.17, Industries (IT) Department dated 17.02.2006 and the order of the second respondent in Ref.No.D-II/SITP/SRPL/2005 dated 28.02.2006 are hereby set aside."

24. Assailing the order passed in WP Nos. 6243 and 6244 of 2006 on 14.03.2012, the respondents herein filed W.A. Nos. 1546, 1547, 2179 and 2180 of 2003 and they were dismissed by the Division Bench of this Court on 14.03.2014, <http://www.judis.nic.in> osa 470 of 2018 which reads as follows:-

"59. In fine, we answer the issues framed by us in the following manner:-

(a) Learned single Judge was right in entertaining the writ petitions, inspite of having arbitration clause in the MoU, as facts are not in dispute.

(b) Respondents have no jurisdiction to cancel the MoU and allotment orders before expiry of the period to complete the first phase of the project that was up to 15.12.2007.

(c) Respondents have violated the principles of natural justice as the petitioner's civil right is affected and there is a chance to explain as on 17.02.2006 whether the petitioner was in a position to complete the first phase of the project before

15.12.2007 as the application for environmental clearance was pending and not rejected.

(d) Doctrine of impossibility of performance can not be pleaded as on 17.02.2006 on the facts and circumstances of the case as there was every possibility to complete the 1st phase of the project by 15.12.2007."

25. As against the Judgment dated 14.03.2014 passed in W.A. Nos. 1456 and 1547 of 2013, the second respondent/SIPCOT has filed Special Leave to Appeal (C) Nos. 17499 to 17450 of 2014 before the Honourable Supreme Court and they were dismissed on 01.09.2014. Thereafter, SIPCOT has filed a Review Petition (C) Nos. 2817 to 2818 of 2014 before the Honourable Supreme Court and they were also dismissed on 13.01.2015. Notwithstanding the same, SIPCOT has also filed Curative Petition (C) Nos. 350 to 351 of 2015 and they were also dismissed on 13.10.2015.

26. Subsequently, the Government of Tamil Nadu/first respondent herein has filed SLP (C) No. 8554 to 8555 of 2015 before the Honourable Supreme Court challenging the order dated 14.03.2012 passed by the Division Bench of this Court in W.A. <http://www.judis.nic.in> Nos. 2179 and 2180 of 2013. The SLP (C) Nos. 8554 to 8555 of 2015 was osa 470 of 2018 dismissed as withdrawn on 08.12.2015. The relevant portion of the order passed by the Honourable Supreme Court on 08.12.2015 in the Special Leave Petition filed by the first respondent reads as follows:-

"Mr. Mukul Rohatgi, learned Attorney General appearing on behalf of the petitioners makes a fair statement that the petitioners seek to withdraw the special leave petitions and work out their remedy before the Civil Court.

The special leave petitions are dismissed as withdrawn."

27. After dismissal of the Special Leave Petition filed by the respondents, they have filed the suit in C.S. Diary No. 22017 of 2016 for the following reliefs:-

"(i) Declaring that the defendant is in gross breach of its obligations under the contract and under the sale deeds.

(ii) Declaring that the sale deeds dated 06.05.2004 and 16.12.2004 executed by the second plaintiff pursuant to the MoU entered into by the first plaintiff registered as document No. 1689 of 2004 and 5898 of 2004 respectively be cancelled and the defendant ordered to reconvey the lands by a registered deed.

(iii) For mandatory injunction directing defendant to reconvey the lands morefully described in the schedule and return all the original title deeds of the schedule mentioned property to the plaintiffs and the second plaintiff to return the sale consideration received from the defendant under the sale deeds

(iv) Grant injunction on the defendant from alienating, encumbering or otherwise dealing with the properties morefully described in the schedule

(v) for the cost of the suit

(vi) pass such further or orders as this Honourable Court deems fit and proper under the circumstances of this case."

28. Pending suit, the respondents herein filed two applications being Application No. 6457 of 2016 and Application No. 4250 of 2018 and they were taken up for hearing by the learned single Judge. Application No. 6457 of 2016 has been filed praying to grant leave to sue the defendant/appellant herein before this <http://www.judis.nic.in> osa 470 of 2018 Court. Application No. 4250 of 2018 has been filed seeking to permit the respondents/plaintiffs to amend the plaint in C.S.D. No. 22017 of 2016. The learned single Judge refused to grant leave to the respondents to sue the appellant before this Court, but however, directed the Registry to return the plaint so as to enable the respondents to institute a suit before the Court having territorial jurisdiction. Even though the learned single Judge dismissed the application seeking leave, the appellant/defendant has filed this Original Side appeal on the only ground that on the basis of the statement made in the counter affidavit filed before the learned single Judge in the application filed by the respondents seeking leave to sue, as well as the judgment delivered by this Court in the earlier writ proceedings, the plaint itself ought to have been rejected, as it amounts to re-litigation.

29. Therefore, it has to be examined as to whether a plaint could be rejected at the threshold, even before it is being numbered and/or entertained, by rendering a finding as regards the merits of the plaint, especially when the plaintiff has filed an application seeking leave to sue the defendants.

30. The learned Senior counsel for the appellant placed heavy reliance on the decision of the Calcutta High Court in Delta International Limited vs. Smt.Nupur Mitra reported in AIR 2018 Calcutta 8 mentioned supra to fortify his submissions that the learned single Judge ought to have taken note of the decision of the Honourable Supreme Court of India rendered in the earlier litigation between the parties to conclude that the dispute involved between the parties had reached a finality before the Honourable Supreme Court and thus rejected the plaint filed by <http://www.judis.nic.in> osa 470 of 2018 the respondents herein. It is noteworthy to mention that the facts which gave rise to the deliverance of the Judgment by the Calcutta High Court are distinguishable with that of the facts involved in the present case. In that case before the Calcutta High Court, the trial court rejected the plaint on the ground that when once a notice is issued under Section 13 (2) of the SARFAESI Act, the Civil Court is denuded of his jurisdiction and therefore rejected the plaint. On appeal, the Division Bench of the Calcutta High Court held that the relief sought for in the suit is for specific performance of the settlement agreement entered into between

the borrower and the lender and therefore, the trial court ought not to have rejected the plaint at the time when leave under Clause 12 of the Letters Patent was sought. It was also stated that the suit was filed prior to issuance of notice under Section 13 (4) of the SARFAESI Act and therefore, there is no bar for filing the suit. In the said Judgment, in para-17, during the course of discussion, the Division Bench made a passing reference to the effect that it is the duty of the Civil Court, at the time of receipt of plaint, or at any rate, at the time that a plaint first receives judicial attention - to ascertain on a charitable reading thereof whether the suit is maintainable at all or maintainable in such court. Hence, according to the appellant, the prayer sought for in the present suit would indicate that it is nothing short of re-litigation and therefore, the learned single Judge ought to have rejected the plaint itself as not maintainable. On the contrary, the respondents would contend that the earlier writ petitions and the appeals thereof were adjudicated only on the ground that time was available for the appellant to complete the first phase of the project, however, even before the expiry of the period, the Memorandum of Understanding was terminated, and not otherwise. Therefore, according to the <http://www.judis.nic.in> osa 470 of 2018 respondents, necessarily, certain other issues, which were not considered, have to be adjudicated, between the parties. In such view of the matter, we are of the opinion that the decision relied on by the learned Senior counsel for the appellant is clearly distinguishable on facts and it cannot be made applicable to this case.

31. Similarly, the other decision relied on by the learned Senior counsel for the appellant which was delivered by the First Division Bench of this Court in O.S.A. No. 272. In that case also, the appellant, who admittedly borrowed amount from the respondent/financial institution and committed default in repayment, Ultimately, a compromise decree was passed on 19.11.2012 in O.A. No. 21 of 2012 before the Debts Recovery Tribunal, Chennai. The appellant was a party to the Compromise Decree. However, he turned around and sought for a declaratory decree to declare that the compromise decree is null and void. When the application seeking leave came up for hearing, the learned single Judge dismissed the same which was affirmed by the Division Bench of this Court. Therefore, this decision relied on by the learned Senior counsel for the appellant also cannot be of any use to buttress his submissions in this appeal.

32. Be that as it may. A plaint can be rejected under Order VII Rule 11 of the Code of Civil Procedure only (i) if it does not disclose a cause of action (ii) the plaintiff has not properly valued the suit or undervalued it (iii) the plaint has not been presented before the court having jurisdiction or (iv) the plaint is barred by any law for the time being in force. These are the circumstances under which a plaint can be rejected. However, a plaint can also be rejected, before it is being numbered, if it does not disclose a cause of action or if the suit is filed beyond the <http://www.judis.nic.in> osa 470 of 2018 statutory period of limitation or if the court before which it was filed lacks jurisdiction. But when once a plaint is numbered, it could be rejected or struck off only after notice was ordered thereof to the defendants. In other words, after a plaint has been numbered, only at the instance of the defendants, by resorting to the provisions contained under Order VII Rule 11 of CPC, a plaint can be rejected. Whenever a plaint is presented and numbered by the Registry, the Presiding Officer, in order to seek a response from the other side, direct service of notice to the defendants. The reason being, once a plaint is numbered and taken up for hearing, principles of natural justice demands that the persons, against whom such plaint has been filed, have to be heard and their response is sought by way of a Written Statement as contemplated under Order VIII Rule 1 of The Code of Civil

Procedure. Therefore, the only procedure contemplated under The Code of Civil Procedure for rejection of a plaint after it has been numbered is at the instance of the defendant who has to invoke the procedures contemplated under Order VII Rule 1 of the Code of Civil Procedure by raising the grounds mentioned therein for rejecting the plaint. In the present case, before the learned single Judge, the plaint has not been numbered and the respondents herein only sought leave to sue the defendants before this Court. However, the learned single Judge dismissed the application seeking leave with a direction to present it before the competent Court having jurisdiction. This direction of the learned single Judge is assailed in this appeal by the appellant/defendant by contending that the learned single Judge ought to have rejected the plaint itself on the basis of the averments made by the appellant in the counter affidavit filed in the application filed by the respondents seeking leave to sue to the effect that the dispute has reached a finality by virtue of <http://www.judis.nic.in> osa 470 of 2018 the dismissal of the Special Leave Petitions filed by the respondents before the Honourable Supreme Court and by holding that there is nothing remains for adjudication. Thus, it is contended that the present plaint would amount to an abuse of process of law and the respondents are only attempting to re-litigate the dispute. But we find that whether the present plaint amounts to re-litigation or not can also be gone into by the Civil Court in the suit filed by the respondent at the time of trial. The issue as to whether the plaint is liable to be dismissed on the ground of re-litigation has to be considered by the trial court on a case to case basis. In the present case, we find that the order terminating the contract in favour of the appellant was interfered with in the writ proceedings only on the ground that time was available for the appellant herein to complete the first phase of the contract and not on any other ground. Now, by efflux of time the period fixed for completion of the first phase of the contract expired and other issues have cropped up between the parties and they have to be adjudicated by the Civil Court at the time of trial. Furthermore, we wish to observe that in the writ proceedings initiated by the appellant, certain issues could not be taken and they can be adjudicated only by the Civil Court. Therefore, we are of the view that prima facie the plaint filed by the respondent cannot be rejected on the ground of re-litigation.

33. It is pertinent to mention that as the suit has not been numbered before this Court and pending suit only an application seeking leave has been filed by the respondents herein, the appellant could not file an application under Order VII Rule 1 of CPC for rejection of the plaint, but they have only filed a counter affidavit opposing the grant of leave to sue. In fact, the learned single Judge has <http://www.judis.nic.in> osa 470 of 2018 only dismissed the application seeking leave on the ground that the suit is for land and directed the respondents herein to present the plaint before the Court having jurisdiction. At the same time, we have to observe that a litigant cannot be prevented from instituting a suit. Even assuming that a suit is frivolous and it does not disclose a cause of action or the disputes involved in the suit has already been adjudicated between the same parties, when once it is numbered, it can be brought to the notice of the Court the above defences only by way of an application under Order VII Rule 11 of Code of Civil Procedure to reject the plaint. The defendant, in such a situation, is not remediless. Thus, the principles of estoppel, resjudicata or re-litigation will emerge for consideration of the Court only after filing of a written statement by the defendant (s) or on the basis of an application filed under Order VII Rule 11 of CPC for rejection of the plaint. Therefore, the contention of the appellant that the learned single Judge ought to have rejected the plaint itself on the ground that it amounts to re-litigation by taking note of the statement made in the counter affidavit filed to the application filed by the respondents seeking leave to sue, cannot be

countenanced. The averments made in the counter affidavit before the learned single Judge can at the best be treated as a reply to the statements made in the application filed by the respondents seeking leave to sue and it cannot partake the character of an application filed under Order VII Rule 11 of CPC, for being considered, for rejecting the plaint filed by the respondents herein. Therefore, we find no error in the order passed by the learned single Judge warranting interference.

34. In the light of what is stated above, we confirm the Order dated <http://www.judis.nic.in> osa 470 of 2018 02.08.2018 passed in Application No. 6457 of 2018 in C.S. Diary No. 22017 of 2016 by the learned single Judge and consequently, the Original Side Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed. It is open to the appellant/defendant to defend the suit filed by the plaintiff/respondent herein in C.O.S. No. 14 of 2018 pending before the Principal District Court at Chengalpattu in a manner known to law, including filing an application as contemplated under Order VII Rule 11 of Code of Civil Procedure for rejecting the plaint.

(R.P.S.J)

Index : Yes
Speaking Order : Yes

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<http://www.judis.nic.in>

osa 470 of 2018

R. SUBBIAH, J
and
T. KRISHNAVALI, J

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Pre-delivery Judgment in

10-01-2020

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