(2014) 09 MAD CK 0044

In the Madras High Court

Case No : Crl.O.P. No. 702 of 2014 and M.P. Nos. 1 to 3 of 2014

Sunbright Fashions India Pvt. Ltd. — APPELLANT

Vs

Bodhi Organizational and People Development Consultants Private Ltd. — RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:
Penal Code, 1860 (IPC) — Section 403, 405, 406, 415, 416

Citation : (2014) 2 LW(Cri) 744

Hon'ble Judges : K.B.K. Vasuki, J

Bench : Single Bench

Advocate : L. Baskaran, Advocates for the Appellant; R.T.S. Kannan, Advocates for the Respondent

Judgement

K.B.K. Vasuki, J.—This petition is filed by the accused to quash the proceedings in CC. No. 4366/2013 pending on the file of the 9th Metropolitan Magistrate, Saidapet, Chennai, arising out of the private complaint filed by the respondent herein for the offences under sections 403, 405 r/w 406, 415 r/w 417 and 416 r/w 419 IPC. The allegations raised in the private complaint are that the respondent was originally tenant under the first petitioner company for the total monthly rent of Rs. 1,50,337/- (Rs. 1,44,625/- towards monthly rent + Rs. 5,712/- towards common area rent). The respondent has also paid Rs. 14,46,250/- as interest free security deposit by way of cheques and the property was sold by the accused to one Dr. Janakiraman vide sale deed dated 25.4.2011 without informing the respondent/complainant about the same and the accused remained silent about the sale of the rented premises and did not return the interest free security deposit and other expenses incurred by the complainant to the tune of Rs. 21,58,085/- and the rent received by the accused for the subsequent period. The failure to inform about the sale and the failure to return the security deposit and other expenses and receipt of rent after sale, on the part of the accused, would amount to malafide act, causing wrongful loss to the complainant and wrongful gain to the accused. In short, the accused are charged for the offences as stated above only for their failure to inform the tenant about the sale of the rented premises to third party.

2. According to the complainant, there was an intention to deceive the complainant, on the part of the accused by non disclosure of the facts as stated above and by non-return of the security deposit and that, by such non-disclosure, the accused induced the complainant to part with the rent amount, even after the sale of the property.

3. Whereas, the petitioners/accused, in support of their contention that there is no such deliberate non-disclosure and non-payment of security deposit amount and the issue arises for consideration herein is the issue involved in O.S. Nos.6848/2011 and 2183/2014 and the same is more of civil in nature and no criminal liability can be fastened on the petitioners herein, produced the following documents: (i) copy of the exchange of letters between the parties during June 2011; (ii) copy of the affidavit filed in I.A. No. 14487/2011 in O.S. No. 6848 of 2011 dated 5.9.2011; (iii) copy of the judgment and decree made in O.S. No. 6848/2011 dated 6.3.2013 and (iv)copy of the plaint in O.S. No. 2183/2014 dated 14.4.2014, by way of additional typed set of papers dated 9.9.2014.

4. Insofar as the exchange of correspondence between the parties is concerned, the first accused has by letter dated 29.6.2011 intimated the respondent/ complainant about the sale of the property to Dr. T.N. Janakiraman and about handing over the security deposit of Rs. 20 lakhs by way of cheque bearing No. 769188 dated 2 8.4.2011 drawn on ICICI Bank, K.K. Nagar Branch, Chennai to the present owner who will repay the advance deposit amount of Rs. 14,46,250/- to the tenant after the tenant vacates the premises. The tenant was further informed to pay the monthly rent to the present owner by name Dr. Janakiraman and the contact number of Dr. Janakiraman and his bank details were also furnished in the same letter. The letter is filed along with postal receipt dated 1.7.2011. Next letter dated 20.7.2011 of the first petitioner addressed to the Post Master, Guindy Industrial Estate, Chennai-32 is regarding non delivery of letter dated 29.6.2011 till date to the respondent/complainant. The same is followed by another two letters dated 22.7.2011 and 28.7.2011 of the first petitioner herein addressed to one Rajmohan, Managing Director of the respondent/complainant company, requesting to issue monthly rent cheque to Dr. T.N. Janakiraman. The relevant particulars regarding account details of Dr. T.N. Janakiraman and contact numbers are also furnished in the same letter.

5. The suit in O.S. No. 6848 of 2011 was filed by the respondent/complainant against the first accused company represented by its Managing Director R. Ganesan, second accused and Dr. Janakiraman/purchaser. In the plaint filed in the suit, the respondent/complainant admitted that they received the letter dated 28.7.2011 from the first accused company to pay the future rent to Dr. Janakiraman. However, it was replied by the respondent/complainant by letter dated 18.8.2011, seeking clarification regarding relationship between the defendants 1 and 2 i.e., first accused company and the purchaser. It is also

further stated in the letter that they will continue to pay future rent only to the original owner. The suit was filed for permanent injunction and for ex parte ad interim injunction restraining the defendants from in any way interfering with the plaintiff to carry on day today business affair in the suit schedule property. The plaint proceeds to say that the defendants are forcing the plaintiff to vacate the suit premises without returning the advance amount of Rs. 14,46,250/-. However, the suit was allowed to be dismissed for default on 6.3.2013 and subsequently not restored on file. Thereafter, the complainant filed another suit in O.S. No. 2183/2014 against the petitioners 1 and 2 herein and Janakiraman for recovery of Rs. 21,58,085/- with future interest at 12% p.a. It is stated in the plaint filed in O.S. No. 2183/2014 that there was understanding reached between the tenant and subsequent purchaser and the subsequent purchaser informed the tenant in respect of return of the security deposit amount etc. Pending the same, the complainant has come forward with the private complaint against the petitioners herein for the alleged act of cheating. On receipt of the summons, the accused has come with the present quash petition.

6. Heard the rival submissions made on both sides.

7. It is sought to be argued on the side of the petitioners that the ingredients of criminal offences as mentioned in the complaint are not made out against the petitioners herein. There is no dishonest intention and deceive means are not used on the part of the accused. It is further contended by the learned counsel for the petitioners that the criminal courts are resorted to only for settling scores or pressurise the parties to settle the civil dispute and the complaint is hence tainted with mala fide. The learned counsel for the petitioners also cited the judgment of the Hon''ble Supreme Court reported in Md. Ibrahim and Others Vs. State of Bihar and Another, in support of his contention that the complainant has only attempted to give the cloak of a criminal offence to matters, which are essentially and purely civil in nature, either to apply pressure on the accused or out of enmity towards the accused or to subject the accused to harassment and the same cannot be entertained.

8. On the other hand, the learned counsel for the respondent relied on the judgment of the Hon''ble Supreme Court reported in Arun Bhandari Vs. State of U.P. and Others, in support of his contention that the conduct of the parties in not mentioning about so many aspects cannot be brushed aside at this stage and the same would disclose the intention to cheat from the very beginning, inducing the complainant to hand over a huge sum of money. This court is not inclined to accept the contention so raised on the side of the respondent.

9. The documents made available herein would not disclose any malafide intention on the part of the accused to deceive the complainant or induce them to part with huge money. The sale was completed in the year 2011 and the same was intimated to the respondent in June 2011. The first communication dated 29.6.2011 clearly informed about the sale of the property to Dr. Janakiraman and handing over the security amount to the same person and the mode of payment

and cheque particulars etc. the complainant was also in the said letter requested to issue monthly rent to Dr. Janakiraman. Unfortunately, the said letter was not received by the complainant. However, there were two more letters dated 22.7.2011 and 28.7.2011 to the complainant to issue monthly rent to Dr. Janakiraman. But, by reply dated 18.8.2011, the complainant, who had been insisting to pay the future rent to the original owner has sought for clarification regarding the relationship between the parties. Thus, the respondent complainant has come forward with two different theories in the original plaint in O.S. No. 6848/2011 and the subsequent plaint in O.S. No. 2183/2014. Thus, the fact involved herein would also show that the issues in between the parties are as to whether the original owner handed over the security deposit amount to the purchaser and as to whether the petitioner or the subsequent purchaser is liable to hand over the amount to the respondent/complainant and the same are to be decided by the civil court on the basis of the evidence adduced by the parties in the suit filed by the respondent herein. The allegations raised in the complaint do not disclose any dishonest or fraudulent intention or any inducement on the part of the accused to the complainant to part with any amount, as such ingredients for the offences of cheating, inducement and criminal breach of trust are not attracted in the present case. That being so, there is no justification for this court to allow the proceedings to go on, so as to subject the accused to face the ordeal of trial and this Court has no hesitation to quash the proceedings, in order to serve the ends of justice and clear abuse of process of law. In the result, the petition is allowed by quashing the proceedings in CC No. 4366 of 2013 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai. Consequently, connected miscellaneous petitions are closed.