

Softlution Web Technologis Pvt. Ltd. Vs. Mangath Devadasan and Ada Software and Services Pvt. Ltd.

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Court : Kerala

Decided On : Mar-01-2010

Judge : S.S. Satheesachandran, J.

Appeal No. : WP(C). No. 2537 of 2009(B)

Appellant : Softlution Web Technologis Pvt. Ltd.

Respondent : Mangath Devadasan and Ada Software and Services Pvt. Ltd.

Advocate for Def. : L. Mohanan, Adv.

Advocate for Pet/Ap. : P. Ramakrishnan, Adv.

Judgement :

S.S. Satheesachandran, J.

1. The writ petition is filed seeking the following reliefs.

i) Issue an order quashing an setting aside Ext.P4 as arbitrary, illegal and unsustainable.

ii) Hold that the proceedings initiated in E.A. No. 57/09 in E.P. No. 172/08 in O.S No. 547/03 of the Principal Sub Court - I Exn, Thiruvananthapuram against the

petitioner evidenced by Ext.P4 is arbitrary, illegal and unsustainable.

iii) Hold that the petitioner's immovable properties are not liable to be attached in execution of the decree in O.S No. 547/03 of the Principal Sub Court - I Exn, Thiruvananthapuram.

iv) To issue such other writ, orders and directions as are deem fit in the facts and circumstances of the case.

2. Petitioner is a registered company. Ext.P4 order passed by the Sub Court, Thiruvananthapuram directing attachment of the movable properties belonging to the petitioner company is impeached in the writ petition contending that the petitioner was not a party to the decree executed by the court. Without giving him an opportunity, movable properties belonging to the petitioner company were ordered to be attached to satisfy the decree passed is the grievance canvassed by the petitioner company.

3. Notice given the 1st respondent has entered appearance through counsel. I heard the counsel on both sides. It is submitted by the learned Counsel for the petitioner that showing the name of the petitioner company as the care of address for the defendant in the suit, a decree had been obtained by the 1st respondent/plaintiff for realisation of money, and later, in the execution proceedings, an order of attachment had been obtained as against the property belonging to the petitioner company though there was no decree against that company. Petitioner company should be given an opportunity to impeach the attachment order so passed by the court and till then the order of attachment has to be kept in abeyance is the submission of the counsel. On the other hand, inviting my attention to the exhibits produced with the counter affidavit, the learned Counsel for the 1st respondent submitted that the case canvassed by the petitioner company that it has distinct identity from the defendant company is unworthy of any merit. The defendant company is one among the group of companies with the present petitioner company, according to the counsel. Before instituting the suit, a notice was issued to the defendant and also to the petitioner company and further in the suit as well the defendant was shown under the care of the present petitioner company. No challenge was raised in the written statement

disputing the correctness of the address of the defendant company as shown in the plaint. After the decree was passed, an attachment order passed by the court to avoid the liability the writ petition has been filed is the submission of the learned Counsel for the 1st respondent/decreed holder.

4. Having regard to the submissions made and taking note of the exhibits produced by both sides, I find, the dispute involved has to be examined not by this Court but by the execution court. Petitioner company could have very well approached the execution court and raised its objections whatever be the grounds in its favour against the attachment order. This Court in exercise of its writ jurisdiction cannot go into the disputed facts relating to the attachment ordered by the court. After admitting the writ petition, Ext.P4 order of attachment has been ordered to be kept in abeyance, which is stated to be still in force. The order so passed by the court shall continue to remain in force for a period of one month more. The petitioner company can approach the court below and raise whatever objection it has against Ext.P4 order of attachment. The court below shall pass appropriate orders after considering the objections, if any, filed by the petitioner company as expeditiously as possible. Subject to the above observations, the writ petition is closed.