



2025:KER:41864

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K. NATARAJAN

TUESDAY, THE 10TH DAY OF JUNE 2025 / 20TH JYAISHTA, 1947

OP(C) NO. 800 OF 2025

AGAINST THE ORDER/JUDGMENT DATED IN OS NO.41 OF 2025 OF SUB
DIVISIONAL MAGISTRATE, ERNAKULAM

PETITIONERS:

- 1 VYSALI PHARMACEUTICALS LIMITED REREPRESENTED BY ITS
LIQUIDATOR KIZHAKKEKARA KURIAKOSE JOSE
34/754, KANNANTHODATH RAOD , EDAPPALLY, KOCHI, PIN -
682024
- 2 KIZHAKKEKARA KURIAKOSE JOSE - LIQUIDATOR VYSALI
PHARMACEUTICALS LIMITED
AGED 60 YEARS
34/754, KANNANTHODATH RAOD , EDAPPALLY, KOCHI, PIN -
682024

BY ADVS.
SMT.D.REETHA
SRI.P.V.VINOD (BENGALAM)

RESPONDENTS:

- 1 T. BEENA
AGED 63 YEARS
SEEMATTI SADANAM, K K ROAD , KOTTAYAM , NOW RESIDING AT
H NO71/1530C, EARTH, SANSKRITI GARDEN, PERANDOOR ROAD ,
OPP CHOICE PARK , EDAPPALLY SOUTH VILLAGE , ERNAKULAM,
PIN - 682026
- 2 DR A D KRISHNAN
AGED 78 YEARS
SWARAM, GOVERNMENT HIGH SCHOOL ROAD ,
EDAPPALLY , KOCHI., PIN - 682024



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**3 KERALA STATE INDUSTRIAL DEVELOPMENT CORPORATION
LIMITED REPRESENTED BY CHAIRMAN
TC 11/266, KESTON ROAD, KOWDIAR, TRIVANDRUM, PIN -
695003**

**BY ADVS.
SRI.S.SHYAM
SRI.P.A.MOHAMMED ASLAM
SHRI.ARTHUR B. GEORGE
SHRI.E.B.THAJUDDEEN
SHRI.IRSHAD V.P.
SHRI. SARATH SASI
SHRI.MUHAMMED RISWAN K.A.
SHRI.MIDHUN MOHAN
SHRI.ABDUL SAMAD P.B.
SHRI.RAMSHAD K.R.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
10.06.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**



JUDGMENT

(Dated this the 10th day of June, 2025)

This Original petition is filed by the petitioners, who are Defendant Nos.1 and 3, company and the liquidator of the company, challenging the impugned order passed by the Sub Court, Ernakulam, in I.A.No.3/2025 in O.S.NO.41/2025 by granting *ad interim* injunction against the petitioners and other respondents on the suit filed by the 1st respondent herein.

2. Heard the arguments of the learned counsel for the petitioners and the learned counsel for the respondents.

3. The case of the petitioners is that, the 1st respondent filed a suit before the Sub Court, Ernakulam, for seeking permanent injunction against the defendants and other consequential reliefs in the suit. The 1st respondent also filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure (CPC) numbered as I.A.No.3/2025, wherein the Sub Court passed *ad interim* temporary injunction against the petitioner, which is under challenge.



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4. The learned counsel for the petitioners contended that, the 1st petitioner and 3rd petitioner was already parties in the NCLT. An insolvency proceedings was also initiated before the NCLT, wherein, the NCLT passed an order in CP(IB)/29/KOB/2022, and subsequently a liquidation order also passed. Suppressing the same, the 1st respondent filed a suit against the company as well as the liquidator and obtained injunction where there is a bar for entertaining any suit as per Section 63 of the Insolvency and Bankruptcy Code, 2016 (IBC) and also as per Section 60(5)(c) of the IBC, 2016. The National Company Law Tribunal (NCLT) is having jurisdiction to dispose of any application or any claim or any question of priorities before the NCLT, and the Civil Court are totally barred from entertaining any suit even under Section 231 of the IBC, and the Civil Court is barred for adjudicating litigation. Such being the case, the Civil Court has entertained the suit and passed the injunction which is a illegal order as against the statutory as also the judgment of the Supreme Court in various cases and hence prayed setting aside



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the same.

5. Per contra, the learned counsel for the respondents/plaintiffs has objected the petition contending that though the injunction order was granted by the Civil Court, the petitioners having liberty to approach and file an application before the same court under Order 39 Rule 4 CPC for vacating the interim order, or else it can also file a Civil Miscellaneous Appeal under Order 43 CPC. Without doing so, directly filed the original petition which is not maintainable, therefore, prayed for dismissal of the original petition. The counsel for the 1st respondent as well as the 2nd respondent contended that the order is only for restraining the defendant from taking interference without due process of law. Therefore, the order may not be set aside and the parties can be permitted to approach the NCLT and put their relief for adjudication, therefore prayed for dismissal.

6. The counsel appearing for 3rd respondent, who is not a party in the Civil Court has contended that the civil suit is barred and NCLT is taking cognizance and therefore, the very



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order is illegal and to be set aside.

7. Having heard the arguments perused the records. The points that arise for consideration are:

- I. whether the Civil Court is having jurisdiction to entertain the suit, when the matter is pending before the NCLT?
- II. whether order under challenge is called for interference?

8. On perusal of the records, admittedly, the suit is filed by the 1st respondent, where the petitioner is made as 1st defendant, 2nd respondent as the 2nd defendant and 2nd petitioner as the 3rd defendant, showing it liquidated but nothing is stated about the proceedings pending before the NCLT and liquidation proceeding has already been initiated and pending before the NCLT. However, the trial court passed an order, even an *ad interim* injunction has been granted, without issuing any notice to the respondents holding that there is possibility of dispossession by the respondents/defendants without due process of law. Of



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course, any action is taken within the purview of the law /with due process of law, for eviction or any action taken by the persons in the petition.

9. However, the trial court, while entertaining any suit required to *suo moto* verify whether the suit is maintainable before the said court or whether suit is barred by any law or limitation or court fee has been paid which was required under Order 7 Rule 11 (a)(b)(c)(d) of CPC. Even without any application, the court should verify, whether suit is maintainable before the said court or not. But, on a perusal of the very cause title, the name of the 3rd defendant is shown as company liquidator, that clearly shows that the 1st defendant is under liquidation and liquidation proceedings is pending before the NCLT. But, the trial court ignored and passed the order by granting *ad interim* temporary injunction against the defendant. It is also brought to the notice of this Court by the learned counsel for the petitioners that the NCLT is having jurisdiction under the IBC and as per Section 63, wherein it barred the civil court jurisdiction to



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entertain any suit. That apart, as per the NCLT, Section 60(5), if any claims made by any persons either party to the petition or other than party to the petition, they have to approach the NCLT for their grievance in respect of either the insolvency or any other grievance. Therefore, the Jurisdictional Civil Court is barred for entertaining the very suit itself, when the suit itself is not maintainable, the question of granting *ad interim* injunction is illegal. Thereby, this Court get jurisdiction under Article 227 of the Constitution of India to interfere with the order.

10. Of course, the petitioner having a remedy under Order 39 Rule 4 as well as an appeal under Order 43 CPC, but when the order is illegal without jurisdiction, then this Court can entertain the petition under Article 227 of the Constitution of India. Even, Section 231 of IBC also bars the Civil Court for entertaining any suit when the matter is pending before the adjudicating authority or the Board. Such being the case, the order under challenge call for interference which is illegal and without any authority of law. When there is no jurisdiction to



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entertain the very suit itself, then the question of granting *ad interm* injunction is illegal and erroneous which call for interference. Therefore, the order under challenge is liable to be set aside.

Accordingly, this petition is allowed, and the order under challenge in I.A.No.3/2025 in O.S.No.41/2025 is hereby set aside and the I.A. is dismissed. The trial court is directed to hear the maintainability of the suit and dispose of the matter. The respondent is at liberty to approach the NCLT for necessary relief.

Sd/-
K. NATARAJAN,
JUDGE

vnk/-



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APPENDIX OF OP(C) 800/2025

PETITIONER EXHIBITS

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| EXHIBIT P-1 | A COPY OF THE ORDER PASSED BY THE HON'BLE NCLT VIDE ORDER DATED 13.10.2023 IN CP(IB) 29/KOB/2022. |
| EXHIBIT P-2 | A COPY OF THE ORDER OF HON'BLE NCLT DATED 03.12.2024 IN IA (IBC) /LIQ/6/KOB/2024 |
| EXHIBIT P-3 | A COPY OF THE PAPER PUBLICATION BY THE LIQUIDATOR DATED 07.12.2024 |
| EXHIBIT P-4 | A COPY OF THE LIST OF CLAIMS ADMITTED BY THE LIQUIDATOR |
| EXHIBIT P-5 | A COPY OF THE LOAN AGREEMENTS DATED 13.06.2007 AND 04.09.2019 |
| EXHIBIT P-6 | A COPY OF THE MORTGAGE DOCUMENTS DATED 25.10.2007 AND 05.09.2019 |
| EXHIBIT P-7 | A COPY OF THE PLAINT OS.NO.41/2025 BEFORE THE HON'BLE SUB COURT, ERNAKULAM. |
| EXHIBIT P-8 | A CERTIFIED COPY OF THE ORDER DATED 22.02.2025 PASSED BY THE HON'BLE ADDITIONAL SUB JUDGE -II IN IA NO 3/205 IN OS NO 41/2025 |