

**IN THE COURT OF THE LXXXIII ADDITIONAL CITY CIVIL
AND SESSIONS JUDGE AT BENGALURU CITY [CCH-84]**

:Present:

Ravindra Hegde,
M.A., LL.M.,
LXXXIII Addl. City Civil & Sessions Judge,
Bengaluru

Dated on this 18th day of January 2023

COM.OS.No.1432/2022

- PLAINTIFFS:**
- 1.** Mrs. Sreelakshmi Kottu
W/o Mr.jagadeesh Sreenivas Kottu,
aged about 37 years,
R/at No.K-1902,
Rainbow Vistas at Rock Garden,
Opp IDL, Moosapet,
Hyderabad-500018.
 - 2.** Mr.Jagadeesh Sreenivas Kottu,
S/o Venkatarama Rao,
aged about 44 years,
R/at No.K-1902,
Rainbow Vistas at Rock Garden,
Opp IDL, Moosapet,
Hyderabad-500018.
 - 3.** Ms. Jai Vaishanavi Kottu,
represented by Legal Guardian
Mr. Jagadeesh Sreenivas Kottu,
aged about 9 years,
R/at No.K-1902,
Rainbow Vistas at Rock Garden,
Opp IDL, Moosapet,
Hyderabad-500018.

[By Sri. L.M, Advocate]

/v e r s u s/

- DEFENDANTS:**
- 1.** M/s.Elena Geo Systems Private Ltd
A company incorporated under the
Companies Act, 1956/2013
CIN U72200KA2012PTC139939
having its Registered office at
62/1, 1st Cross, 2nd Main,
Ganganagar,
Bengaluru-560032.
 - 2.** Shanmugavelan Venkatachalam,
Director
M/s. Elena Geo Systems Pvt. Ltd.,
62/1, 1st Cross, 2nd Main,
Ganganagar,
Bengaluru-560032.
 - 3.** Ms. Rajendran Naveena @
Ms.Naveena R Velan @
Ms.Naveen R,
Director
M/s. Elena Geo Systems Pvt. Ltd.,
62/1, 1st Cross, 2nd Main,
Ganganagar,
Bengaluru-560032.
 - 4.** Mr. Pradeep Kumar Juneja,
Major,
Father's name unknown,
Shareholder of
M/s. Elena Geo Systems Pvt. Ltd.,
62/1, 1st Cross, 2nd Main,
Ganganagar,
Bengaluru-560032.
 - 5.** Mr.Jayawant Shivaji Patil,
Major,
father's name unknown,

shareholder of
M/s. Elena Geo Systems Pvt. Ltd.,
62/1, 1st Cross, 2nd Main,
Ganganagar,
Bengaluru-560032.

[By Sri. G.V, Advocate]

ORDER ON I.A. No.1

This application under Order XXXVIII Rule 5 of CPC is filed by Plaintiff No.1 seeking attachment before judgment of Bank account of defendant No.1 to the extent of investment made by Plaintiff No.1.

2. In the Statement of truth, it is stated that defendants No.2 and 3 approached Plaintiffs with proposal seeking investment into the defendant No.1 company and plaintiff No.2 entered into Share purchase agreement by agreeing to invest Rs.2 crore for 30% shareholding in the company and has advanced Rs.66 lakhs. It is stated that the defendant No.1 company has also approached the plaintiff No.1 seeking investment and on assurance of the defendants No.2 and 3 and by considering that her husband, plaintiff No.2 is director of 1st defendant, plaintiff No.1 agreed to invest in 1st defendant and offered to purchase OFCDs and OFCDs subscription agreement was entered and the plaintiff No.1 has invested Rs.1 crore. It is stated that the plaintiff came to know from the financial statement of defendant No.1 that the defendants No.2 and 3 have withdrawn amount of Rs.30 lakhs and Rs.18 lakhs respectively as remuneration from the

coffers of defendant No.1 company and they have fraudulently and in complete derogation of the OFCD subscription agreement, siphoned the funds invested by plaintiff No.1 for their personal use and enjoyment. It is also stated that after coming to know about this misutilization of the funds by defendants No.2 and 3, plaintiff No.1 insisted for return of amount and defendants No.2 and 3 have refused to return the amount and thereafter police complaint was also given. It is stated that to preserve the amount of Plaintiff No.1, it is necessary to pass an order of attachment before judgment of Bank account to the extent of investment of Rs.1 crore made by plaintiff No.1, till disposal of the suit and thereby, ensuring that the plaintiffs right over the same until the return of monies is secured. It is stated that if the order is not passed, the defendants will withdraw the whole amount and it will make the plaintiff remediless and plaintiffs will suffer irreparable injury.

3. Objection is filed stating that there is no money due by the defendant No.1 company to the plaintiff No.1. It is stated that the amount in OFCDs are not due as on date as it is having maturity period of 5 years and repayment is not due until the February 2027. It is stated that the plaintiff No.1 can at the most can be aggrieved only if default in payment occurs in the year 2027. It is also stated that the amount taken by the directors as remuneration is otherwise lawful and same as that of the earlier year. It is stated that plaintiff has not raised any grievance on utilization of funds and it is

not stated that they have diverted funds unlawfully. It is stated that attaching of bank account would bring the defendant No.1 company's business to grinding halt and prejudice the business and its prospects and consequently put all the shareholders to hardship. Hence the application is prayed to be dismissed.

4. Now the points that arise for my consideration are:

1. Whether the bank account of defendant No.1 is to be attached before judgment as prayed in I.A.No.I?

2. What order?

5. Heard both counsels. Perused records.

6. My answer to the above points are :

Point No.1 : In the negative.

Point No.2 : As per final order for the following:

REASONS

7. Point No.1: Plaintiffs have filed this suit seeking different reliefs including relief to declare that the defendants are in breach of OFCD subscription agreement and seeking direction to the defendants to return the investment in the form of debentures made by plaintiff No.1. The plaintiffs have filed the present application seeking attachment before judgment of the Bank account of the 1st defendant company to the extent of investment made by plaintiff No.1. According to plaintiffs, husband of the plaintiff No.1 i.e. plaintiff No.2 has invested amount and has become shareholder and also director of the 1st defendant company. According to the plaintiffs, the defendants No.2 and 3 who are also the

directors of defendant No.1 and the founders have requested plaintiff No.1 to invest in the 1st defendant company and as her husband was also director of the 1st defendant company, plaintiff No.1 has invested Rs.1 crore and OFCD subscription agreement dated 18/11/2021 was executed. According to the plaintiffs as per the OFCD agreement the investment made by the plaintiff No.1 is to be utilized for the benefit of the company. As against the terms of the OFCD agreement, defendants No.2 and 3 are stated to have withdrawn Rs.48 lakhs as director's remuneration. According to plaintiffs, amount invested by plaintiff No.1 is for the development of the company and as per the agreement the investment amount is to be utilized for furtherance of the business as decided by the board from time to time in accordance with law. Plaintiffs contend that withdrawal of the amount of Rs.48 lakhs by the defendants No.2 and 3 is not for furtherance of the business and therefore the defendants No.2 and 3 are misutilizing the investment made by the plaintiff No.1 and therefore the plaintiff No.1 has sought return of her investment and in the present suit also, plaintiff has prayed such relief. Since defendants are likely to misutilize the remaining funds and as OFCD are not secured as required by law, plaintiff is seeking attachment of the account of the defendant No.1 company to the extent of her investment.

8. As stated by the plaintiffs, plaintiff No.1 has invested Rs.1 crore and OFCD subscription agreement was executed on 18/11/2021. According to defendants No.1 and

2, this OFCD are allotted on 11/2/2022 and carry maturity period of 5 years and the repayment is due in February 2027. According to the defendants, as per the OFCD subscription agreement, amount become due only after 5 years in 2027 and therefore, defendants are not liable to return the amount of OFCD deposit made by plaintiff No.1. On looking to OFCD subscription agreement entered between the parties, amount given by plaintiff No.1 is as investment for the benefit of 1st defendant company and it matures after 5 years. Since the amount is given as investment, no purpose would be served if amount in the bank account of the defendant No.1 is attached. As OFCD's are having maturity of 5 years, the amount become due after 5 years. Though there are several communications and emails in which the defendant No.1 also appears to have agreed to return the amount earlier subject to certain conditions and the resolution is also stated to have been passed, that will not be a ground to attach the bank account of defendant No.1. For violation of the terms of OFCD and misutilizing the funds invested by the plaintiff No.1, by the defendants as alleged by plaintiff No.1, attachment of the bank account to the extent of the plaintiff No.1 investment would not be appropriate remedy. As investment is made by the plaintiff in defendant No.1 company and company requires money for running, investment made by plaintiff No.1 cannot be attached as now prayed in the present application.

9. Order of attachment before judgment is an exceptional order given in exceptional cases. In the present case, plaintiff has sought for return of the amount. However, as per the OFCD agreement the maturity of OFCD is 5 years, which date has not yet arrived. If the defendants are misutilizing the funds as contended by the plaintiffs, like defendant No.2 and 3 withdrawing Rs.38 lakhs towards director's remuneration without giving any remuneration to plaintiff No.2, the relief that can be sought by the plaintiffs is different than attachment before judgment. If the bank account of defendant No.1 are attached, then it may become difficult to run the company. Learned counsel for the plaintiff has argued that the defendant No.1 company is having two accounts and the account which the plaintiffs are seeking attachment is not the bank account in which day today transactions of the 1st defendant company is being done. According to the plaintiffs, bank account sought to be attached contains the investment amount. However, as the amount given by the plaintiff No.1 to the 1st defendant company is itself as an investment, such amount lying in the bank account cannot be attached as prayed.

10. On looking to the contention of the parties and considering nature of the reliefs prayed by the plaintiffs and also clauses of OFCD subscription agreement, attachment before judgment of the bank account of the defendant No.1 as prayed in the application cannot be granted. If such an order is passed it would cause irreparable injury to the 1st

defendant and thereby, interest of both the parties and even other investors and shareholders would be affected. Accordingly, **point No.1 is answered in the negative.**

11. POINT No.2 : For the discussion made on above point, following order is passed:

ORDER

**I.A.No.I filed under Order XXXVIII rule 5
of CPC by the plaintiffs is dismissed.**

[Dictated to the Judgment Writer; transcript thereof corrected, signed and then pronounced by me, in the Open Court on this the 18th day of January 2023]

**[Ravindra Hegde]
LXXXIII Additional City Civil Judge.
BENGALURU.**
