

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 28.04.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice J.A.K.SAMPATHKUMAR

Original Side Appeal No.125 of 2006
& CMP No.5818 of 2006

1.Premalatha Pappu Raja

2.N.A.P.Aswath Raja

3.N.A.P.Jayashree

... Appellants

vs.

1.M/s Shriram Transport Finance Ltd.,
Rep. by its Managing Director
G.Rajaratnam,
Angappa Naicken Street,
Chennai-600 001
Administrative Office at No.4,
Mookambika complex,
Alwarpet, Chennai-600 018.

2. N.A.P.Alagir Raja and Co.,
rep. By its partners
Office at Mills Road,
Cotton Market, Rajapalayam.

3.NA.P.Kanna Raja,
Business at NAP House,
N.T.Thiagaraja Road,
Theni Madurai District.

4.N.A.P.Pethu Raja,
Business at No.292,
Peria Kadai Street,
Opposite Pon Visha Pottal,
Rajapalayam-626 11,
Kamarajar District.

... Respondents

Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules r/w Clause 15 of the Letters patent against the order dated 21.12.2005 made in Appln.No.3847 of 2001 in C.S.No.231 of 1998.

For Appellants : Mr.V.Raghavachari
For Respondents : Mr.R.Krishnaswamy, S.C., for
Mr.C.Ramesh

JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

Aggrieved by the order of the learned single Judge dated 21.12.2005 in Application No.3847 of 2001 in C.S.No.231 of 1998, permitting the Advocate Commissioner for sale of item No.2 (Plant and machineries) in the schedule, respondents 4 to 6 therein filed the above Original Side Appeal.

2. M/s. Shriram Transport Finance Limited and M/s Shriram Investments Limited have filed C.S.No.231 of 1998 against N.A.P. Alagiri Raja and Co., and five others praying for an order directing the defendants to pay a sum of Rs. 1,31,52,250/- with interest at 21% per annum with monthly rests on Rs.19,00,000/- along with costs and in default, to sell the schedule mentioned property and settle the proceeds towards the payment of the amount of the said principal, interest and costs.

3. Pending the suit, the plaintiffs also filed Application No.3847 of 2001 for an order of sale of the properties mentioned in the Schedule to the Judge's Summons and for deposit of the amount to the credit of C.S.No.231 of 1998. In the affidavit filed in support of the above application, it is stated that the first respondent, viz., N.A.P.Alagiri Raja & Co., and five partners borrowed a sum from the applicants by hypothecating the plant and machineries of Palani Sri Murugan Textiles Limited and deposited the title deeds of the property, in which the mill at Palani is situated. The respondents could not run the mill efficiently

and there were huge arrears in respect of the principal and interest due by them. The respondents also mortgaged, by deposit of title deeds, their personal properties situated at Rajapalayam, Mettupatti since the mill at Palani was not running and was heavily indebted to various creditors and due to the respondents creating further charge to defeat the rights of the applicants, the applicants took out O.A.No.908/1998 for appointment of an Advocate Receiver to take charge of the properties. By an order dated 07.07.1999, the original side of this Court had appointed Shri. R.Sridharan, Advocate, Dindigul, as Advocate Commissioner to inspect the machineries installed in the mill and also to take steps for upkeep and maintenance of the machineries. The Advocate Commissioner, after inspection, submitted a report stating that machineries are rusting as they have not been put to any use for a long time and if they are not used and maintained further, the value of the security available to the applicants will diminish considerably. On the other hand, if the mill's properties are sold in "as is where is" condition immediately, the applicants would be able to secure a good offer and thereby reduce the liability of the respondents to that extent. It was suggested that it would be in the best interest of the applicants and the respondents to take immediate steps to sell the mill and the properties described in the schedule to the Judge's Summons. On verification, the applicants came to know that the highest offer was made for a sum of Rs.80 lakhs by one Karuppasami, Proprietor, Uma Tex, Palani. It would be in the best interest of both the parties that the said offer be accepted and the amounts realised after the sale may be deposited to the credit of the Suit. With these particulars, the applicants prayed for an order for sale of the properties mentioned in the schedule to the Judge's Summons to M. Karuppusami, Proprietor, Uma Tex, Palani for a sum of Rs.80 lakhs and deposit the said amount to the credit of the suit in C.S.No.231 of 1998.

4. In the counter affidavit filed by the respondents, it is stated that even before the suit had concluded or any decree was passed in their favour, the plaintiffs had sought to sell the property and there is no material in the application. Hence, they prayed for dismissal of the same.

5. Before the said application was taken up, the Advocate Commissioner submitted a report on the condition of the machineries. According to him, since the machineries have not been put into operation for more than 10 years, they have become rusty and old and it will be highly uneconomical to put them into use and run it now. He has also opined that the machineries were valued and sold as scraps.

6. The learned single Judge, after finding that the first defendant and five partners having borrowed sums from the applicant/plaintiffs by hypothecating the plant and machineries of Sri Palani Murugan Textiles Limited and depositing the title deeds of the property, in which the mill is situated, the plaintiffs have the primary right to safeguard its interest over the hypothecated plant and machineries and based on the

report of the Advocate Commissioner relating to the condition of the machineries, allowed the said application and directed the Advocate Commissioner to sell the said machineries, i.e., Item No.2, by public auction. Questioning the same, respondents 4 to 6 in the Application No.3847 of 2001 have filed the above appeal.

7. Even at the time of admission, Mr. R. Krishnaswamy, learned Senior counsel appeared for the respondents.

8. Heard the learned counsel for the appellants as well as the learned Senior counsel for the respondents.

9. The only objection raised by Mr. V. Raghavachari, learned counsel appearing for the appellants regarding the order of the learned Judge for sale of plant and machineries is that the Court has permitted the Advocate Commissioner to fix the upset value of the machineries, whereas it is the essential duty of the Court to fix the upset value and hence, the impugned order of the Court is liable to be set aside. Mr.R.Krishnaswamy, learned Senior counsel appearing for the respondents submitted that even in the year 2000, the Advocate Commissioner was appointed and he has submitted a report, which shows the condition of the machineries and stating that by keeping the same any longer, the applicant/plaintiffs would not get anything from it, which warranted the Court to pass an order for sale of the machineries through the Advocate Commissioner. He further submitted that the subject matter of the property being movables viz., machineries, there was nothing wrong in the procedure adopted by the learned Judge and the ultimate order passed.

10. It is not in dispute that the first defendant and its partners borrowed sums from the applicant/plaintiffs and hypothecated the plant and machineries of Palani Sri Murugan Textiles Limited. It is also not in dispute that they also deposited the title deeds of the property in which the mill is situated. Though the applicant has filed two applications for sale of machineries as well as the immovable properties, the learned Judge has rightly turned down the request in so far as the immovable properties is concerned and considered the application filed for sale of immovables viz., machineries. In this regard, it is relevant to note paragraph 6 of the report submitted by the Advocate Commissioner regarding the condition of the hypothecated machineries, after he visited the main building and the plant and machineries on 4.3.2000. The Advocate Commissioner, in the same paragraph, has also stated as follows :

"... I was informed that the mill had not been running for the past 10 years prior to my inspection and some of the machineries have become rusted and the motors attached to the machineries have been removed and kept separately...."

In paragraph 13, the Commissioner has stated as follows:

"I am of the opinion that under the present state of things and that the machineries have not been put into operation for more than 10 years and they have become rusty and old it will be highly uneconomical to put them into state and run it. Under such circumstances, the machines have to be valued and sold as scraps."

11. Though Mr. V. Raghavachari, learned counsel appearing for the appellant, by drawing our attention to para 15, has stated that all the machineries found in the first inspection of the Commissioner were not put into operation for more than 10 years and they have become rusty and old, according to the Commissioner, the machineries cannot be repaired and used. According to the Commissioner, the only course left open is to sell them as scraps.

12. In view of the fact that the subject matter of the machineries are ordered to be sold in public auction hypothecated to the applicants for discharge of the money borrowed, Order 38, Rule 6, C.P.C. enables the Court to order interim sale of movable property, which is subject to speedy and natural decay, or for any other just and sufficient cause being shown, the Court may order sale of movable properties. As stated earlier, the first defendant and its partners have obtained loan from the plaintiff for purchase of Palani Sri Murugan Textiles Limited and having executed the deed of hypothecation for the plant and machineries of the mill, they cannot object for sale of machineries. As rightly pointed out, the report of the Advocate Commissioner amply shows that there is just and sufficient cause to order sale of the machineries. In such circumstances, we do not find any flaw or error in the course adopted by the learned single Judge in entrusting the work to the Advocate Commissioner, who is acting as an Officer of the Court.

13. Mr. Krishnaswamy, learned Senior counsel for the respondents has also submitted that pursuant to the order of the learned Judge, the auction was conducted on 25.02.2006, wherein the machineries fetched Rs.31,10,000/- and the same was deposited in to the credit of the suit in C.S.No.231 of 1998. In the light of the factual details as stated in earlier paras, though the learned counsel for the appellants relied on the decision of the Apex Court reported in (1997) 4 Supreme Court Cases 153 (M.L.Mubarak Basha and others Vs. Muni Naidu and the decision of this Court reported in AIR 1930 Madras 224 (Kristamneni Kristnayya Vs. Karnedhan Kothari), we are of the view that the same are not helpful to the case on hand and there is no need to refer to the details stated therein.

14. In these circumstances, we do not find any error or infirmity or valid ground for interference with the order of the learned single Judge. Consequently the appeal fails and the same is dismissed. No costs. Consequently, C.M.P.No.5818 of 2006 is also dismissed.

raa

Sd/
Asst.Registrar

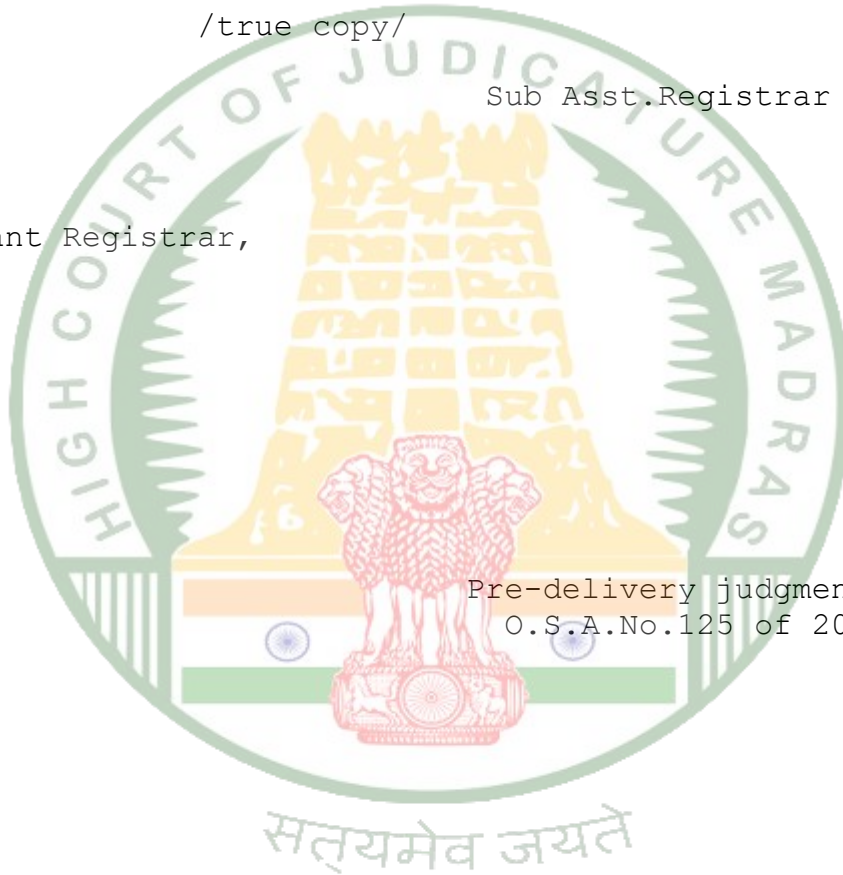
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Sub Asst.Registrar

To

The Sub Assistant Registrar,
Original Side,
High Court,
Madras.

PV (CO)
CGS/24.5.06



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