IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

WA.No. 110 of 2013 () IN WP(C).21974/2011
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AGAINST THE ORDER/JUDGMENT IN WP(C) 21974/2011 of HIGH COURT OF KERALA DATED 06-12-2011

APPELLANT(S)/APPELLANT:
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M/S. EN YES KAY ENTERPRISES
OLD NO 67 NEW NO 72, AMBEDKAR SALAI, VALASARAVAKKOM
CHENNAI-600087, TAMIL NADU, REP.BY ITS PROPRIETOR
S.ABDUL HAKKIM

BY ADV. SRI.S.R.DAYANANDA PRABHU

RESPONDENT(S):
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1. PALAKKAD DISTRICT TEXTILE LABOUR UNION (AITUC)
LABOUR UNION (AITUC)REG NO 23/73
MADRAS SPINNERS UNIT, REP.BY ITS SECRETARY
S.KALADHARAN, PAMPAMPALLAM P.O, PALAKKAD-678625

2. THE REGIONAL PROVIDENT FUND COMMISSIONER
EMPLOYEES PROVIDENT FUND ORGANISATION, KOCHI-682017

3. ASST.COMMISSIONER AND RECOVERY OFFICER,
EMPLOYEES PROVIDENT FUND ORGANISATION
ERANHIPALAM P .O, CALICUT-673006

4. M/S.MADRAS SPINNERS LIMITED
REP.BY ITS MANAGING DIRECTOR, RACE COURSE MANSION
8/1 M RACE COURSE, COMBATURE-641018

5. THE REGIONAL PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION, P B NO-1806
ERANHIPALAM P.O, CALICUT-673006

6. DISTRICT NATIONAL TEXTILE
WORKERS UNION (INTUC), PETTAKKAD, PAMPANPALLAM P.O
PALAKKAD , REP.BY ITS SECRETARY M MANI, PIN-678625

7. DISTRICT TEXTILE MILL WORKERS UNION(CITU)
PALAKKAD, REP.BY ITS SECRETARY, T SANKARAN
PIN-678625

8. PALAKKAD DISTRICT TEXTILE
MOZTHURSANG(BMS)MANGCATHANCHALLA, PAMPAMPALLAM P.O.
PALAKKAD, REP.BY ITS SECRETARY, UNNIKRISHNAN
PIN-678625

9. PALAKKAD DISTRICT NATIONAL TEXTILE WORKERS UNION(HMS)
EAST ATTAPPALAM , PAMPAMPALLAM P.O., PALAKKAD
REP.BY ITS SECRETARY M. CHELLIAN, PIN-678625

10. THE INDUSTRICAL INVESTENT BANK OF INDIA,
REP.BY ITS CHAIRMAN & MANAGING DIRECTOR, 19
NETHAJI SUBHASH RAOD, KOLKATA, 700 001

11. THE STATE BANK OF HYDERABAD,
REP.BY ITS MANAGING DIRECTOR, PRAJA SAKTHI BUILDING
II FLOOR, P O BOX NO 43, AZAMABAD
NEAR RTC KALYANA MANDAPAM, HYDERABAD-500027

12. THE STATE BANK OF INDIA
REP.BY ITS ZONAL MANAGER, SHANMUGHAM ROAD
ERNAKULAM-682011

13. THE ORIENTAL BANK OF COMMERCE
REP.BY ITS CHAIRMAN AND MANAGING DIRECTOR
HARSHA BHAVAN
E-BLOCK CONNAUGHT PALACE NEW DELHI-110001

R1 BY ADV. SRI.A.JAYASANKAR
R1 BY ADV. SRI.MANU GOVIND
RR-R3 & 5 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL,SC, P.F.
R4 BY ADV. SRI.K.ANAND (SR.)
R4 BY ADV. SMT.LATHA KRISHNAN
R3,R5 BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
R3,R5 BY ADV. SMT.T.N.GIRIJA, SC,EPF ORGANISATION
R0 BY ADV. SRI.PAULOSE C. ABRAHAM(ADVOCATE COMMISSIONER)
R0 BY ADV. BABU CHERUKARA(3RDPARTY)
R BY SRI.MANUEL KACHIRAMATTAM
R BY SRI.A.RAJASIMHAN,SC,EPF ORGANISATION

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 09-12-2015, ALONG WITH WA. 200/2013, WA. 370/2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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**K.SURENDRA MOHAN &**
**SHAJI P. CHALY, JJ.**

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**W.A. Nos.110, 200 & 370 of 2013**

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**Dated this the 9th day of December, 2015**

**J U D G M E N T**

Surendra Mohan, J.

These three Writ Appeals are filed against the judgment dated 06.12.2011 of the learned Single Judge in WP(C) No.21974 of 2011. The Writ Petition was filed by a Trade Union representing 146 employees who were working in M/s Madras Spinners Ltd, the third respondent in the Writ Petition. The Spinning Unit had a total number of 526 workers. The factory had stopped functioning from 7.11.2010. The legality of the closure was the subject matter of I.D.No.39 of 2009 of the Industrial Tribunal, Palakkad. The said ID has been allowed and the workers have been directed to be paid compensation, finding that the closure was illegal.

2. The present controversy has arisen in the context of proceedings initiated by the Employees Provident Fund

Organisation for recovery of amounts due to them from the Industrial Unit. The machinery of the factory was attached and was subjected to a private sale. The sale was permitted by the Director of the Employees Provident Fund Organisation. Pursuant to such permission, bids were invited, a sale was conducted and the machinery was sold in two lots, the first comprising of the machinery in running condition and the second described as scrap. The scrap was sold for a total amount of Rupees one crore seventeen lakhs and the machinery in running condition was sold for a total amount of one crore thirty nine lakhs. Thus, the total sale price of the machinery that was sold comes to Rupees two crores fifty six lakhs.

3. The sale was challenged by the Union of Employees alleging that, the machinery was worth much more than the amount for which it was sold and that there were other purchasers available to purchase the machinery for a higher price. Therefore, they sought for the conduct of a public auction for selling the machinery. According to

the Union, the machinery was worth at least Rupees five crores. It was further contended that, the machinery was immovable property under Section 3 of the Transfer of Property Act for the reason that they were attached to the soil. Therefore, it was contended that, they could not be sold through a private sale.

4. After considering the contentions of the respective parties, the learned Single Judge has found that the machinery in the present case were simply fixed by using nuts and bolts on proper foundations so as to ensure wobble-free operation. It was also found that they were not fixed to the earth with the intention of permanently fixing them. For the above reason, the contention that machinery constitute immovable property under Section 3 of the Transfer of Property Act has not been accepted.

5. It is further found by the learned Single Judge that, huge amounts were due from the manufacturer who was the third respondent in the Writ Petition, which at that time was in the region of Rupees Four Crores. The amount

offered as price of the machinery was only Rupees two crores fifty six lakhs. The said amount would ensure that at least a sizable portion of the liabilities were liquidated. In the absence of any material to show that the price offered was deficient in any manner, the learned Single Judge has found that the private sale was proper and that there were no grounds to interfere with the same. Accordingly, the Writ Petition was dismissed. However, the learned Single Judge has stipulated a condition that, the machinery shall be removed only after the entire price thereof was paid by the purchaser. Writ Appeal Nos.110 of 2013 and 200 of 2013 are filed by the purchasers at the private sale, aggrieved by the condition stipulated by the learned Single Judge that the machinery shall be removed only after payment of the entire sale price. The Labour Union has filed W.A.No.370 of 2013 against the dismissal of the Writ Petition.

6. According to the Labour Union, there are other third parties available, willing to purchase the machinery for a higher amount. Therefore, according to them, the

private sale was liable to be set aside. In Writ Appeal No.200 of 2013, I.A.No.213 of 2013 was filed by a third party by name Somasundaram offering to purchase the machinery for a total amount of Rupees three crores. He expressed his willingness to deposit 10% of the bid amount which amounts to Rupees thirty lakhs immediately and to pay the balance amount within forty five days. The said interlocutory application was filed on 12.03.2013. Considering the said offer of an amount that was much higher than the price for which the machinery had been sold in private sale, this Court had by order dated 21.03.2013 directed the machinery to be sold in public auction. For the purpose, an Advocate Commissioner was also appointed. The Advocate Commissioner was permitted to value the machinery with the assistance of experts, for the purpose of ascertaining the market value thereof before conducting the public auction. A time limit of three months was also stipulated by the said order. However, due to various reasons, the time limit has not been adhered to and we are now in December, 2015.

7. In the meantime, the Advocate Commissioner has got the machinery valued with the assistance of two valuers. According to the Report Nos.5&6 of the Advocate Commissioner, the valuation of the machinery according to one valuer is Rupees one crore ninety four lakhs and according to other is Rupees one crore eighty eight lakhs. The reports show that, the present valuation of the machinery is much less than the price for which they have been sold at the private sale. Obviously, the various items of machinery have undergone deterioration during the interregnum. We are conscious of the fact that, the entire machinery have been remaining in disuse from the year 2002 and are going to rack and ruin, with every passing day. The person who had filed I.A.No.213 of 2013 in W.A.No.200 of 2013 has backed out of his offer, in the face of the valuation reported by the valuers. However, the appellants in W.A.Nos.110 of 2013 and 200 of 2013 who are the purchasers at the private sale, are willing to purchase

the machinery in its present condition, for the total amount of Rupees two crores fifty six lakhs for which they had bid at the private sale conducted by the Employees Provident Fund Organisation. The Senior Counsel Sri. N.N.Sugunapalan who appears for the Employees Provident Fund Organisation submits that the Unit has a total liability of about Rupees ten crores, that requires to be liquidated. The interest commitment is mounting, with every passing day.

8. In the above circumstances, according to the respective counsel appearing for the parties, further delay in finalising these proceedings would benefit none of the parties. However, the counsel for the Labour Union maintains that, a public auction is necessary to be conducted afresh, after giving proper publicity. Only such a course would ensure that the machinery is sold for its actual market value. It is also contended by Advocate Manu Govind who appears for the Labour Union that the telling circumstance of the appellants in W.A.Nos.110 of 2013 and

200 of 2013 expressing their willingness to purchase the machinery for the price they had offered in 2011 is a pointer to the fact that the machinery is worth much more. It is also contended by the counsel that, the valuation of the machinery by the valuers in the present case is palpably wrong.

9. Having heard the respective counsel appearing in these cases, we are of the view that, it is necessary to liquidate the liabilities of the Industrial Unit without any further delay. We are concious of the fact that the interest commitment on the subsisting liabilities is mounting day by day. It is pointed out by the counsel that, consequent to the delay in finalising the proceedings from 2011, an added liability of more than ₹1.5 crores by way of interest has accrued. On the other hand, the various items of machinery remaining in disuse from the year 2002 onwards have been only deteriorating. Though a buyer had filed an interlocutory application, as stated above, offering a higher amount, he is not willing to abide by his offer, at present. It

is stated that he has become wiser by the valuation of the valuers.

10. The net result in the above situation is that, there is absolutely no material or evidence before us to warrant a conclusion that the price for which the machinery has been sold at the private sale conducted by the Employees Provident Fund Organisation was deficient in any manner. The market value of the machinery is not to be arrived at on the basis of surmises. It is true that, the purchaser at the private sale is still willing to honour his bid at the amount of Rupees two crores fifty six lakhs. Though the counsel for the Labour Union has tried to build an argument on the basis of the stand adopted by the purchaser contending that his willingness is an indication that the machinery was worth much more, we are not prepared to accept the same, in the absence of any material to support the said contention. The possibility of the machinery fetching a lesser value even if a public auction is conducted cannot also be ruled out. For the present, the appellants in

W.A.No.110 of 2013 and 200 of 2013 are willing to purchase the machinery for the price offered by them in 2011. It would not be in the interests of anyone to delay matters any longer. Though this Court had ordered the conduct of a public auction within a period of three months of the date of the said order, no such public auction could be conducted. Therefore, we are not satisfied that any useful purpose would be served by having such a sale conducted at this length of time.

11. Advocate S.R.Dayananda Prabhu who appears for the appellants in W.A.No.110 of 2013 and 200 of 2013 assures us that, entire machinery would be removed within an outer limit of six months, after paying the entire amount for which the appellants have purchased the same. They have already paid an amount of Rupees five lakhs as advance, as evidenced from exhibit P1 in WP(C) No.21974 of 2011. Exhibit P1 had permitted him to remove each item of machinery after making payment of the sale price thereof. Since it is submitted by the counsel that, it would

not be practicable to deposit the entire sale price before removing the machinery, we accept the submission of the learned counsel that the machinery could be permitted to be removed, after making payment of the price of each machinery and that all the items of machinery would be removed within an outer limit of six months.

In the result, the following orders are issued:

1. W.A.No.370 of 2013 is dismissed.
2. W.A.Nos.110 of 2013 and 200 of 2013 are allowed to the extent of modifying the judgment dated 06.12.2011 in WP(C) No.21974 of 2011 that the appellants herein shall be entitled to remove each item of machinery sold, after making payment of the sale price thereof. The entire machinery sold at the private sale shall be removed within a period of six months of the date of receipt of a copy of this judgment.
3. The remuneration ordered to be paid by this Court as per order dated 21.03.2013 to the

Advocate Commissioner as well as the professional charges payable to the valuers shall be paid by the Employees Provident Fund Organisation, to be realised from the sale proceedings of the machinery.

Sd/-
**K.SURENDRA MOHAN**
**JUDGE**

Sd/-
**SHAJI P.CHALY**
**JUDGE**

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