

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2015

CORAM:

THE HONOURABLE MR. SANJAY KISHAN KAUL, THE CHIEF JUSTICE
AND
THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

Original Side Appeal No. 188 of 2015

Canara Bank
Asset Recovery Management Branch
Spencers Towers-II, 3rd Floor
No.770-A, Anna Salai, Chennai 600002.

... Appellant

Vs.

Southern Petrochemical Industries
Corporation Limited
Registered Office at No.73
Armenian Street, Chennai-600001.

... Respondent

Prayer: Original Side Appeal filed under Order 36, Rule 11 of Original Side Rules read with Clause 15 of the Letters Patent, to set aside the order and decree dated 15.02.2013 passed by the learned Single Judge, in Company Application No.942 of 2012 in Company Petition No.89 of 2012 on the file of this Court.

For Appellant	:	Mr. T.V. Ramanujam, Sr. Counsel for M/s. Sampathkumar & Associates
For Respondent	:	Mr. AR. L. Sundaresan, Sr. Counsel for Ms. A.L. Ganthimathi.

सत्यमेव जयते
J U D G M E N T

(Delivered by The Hon'ble The Chief Justice)

The respondent Company went into difficult financial times, with the result it was unable to settle the dues of its creditors. In the proceedings initiated pursuant thereto, the question of revival of the Company was debated and finally, the creditors in the meeting held on 24.02.2012, approved the Scheme. Company Application No.931 of 2011 was filed as a prelude to this, which resulted in the meeting

of the creditors. The proposed Scheme envisaged payment of 15% of the amount which was increased to 18.15% in the meeting and 36 creditors representing 94.74% in numbers and 89.77% in value voted in favour of the Scheme.

2. At the stage when the Scheme was presented to the Court and notices were issued to all concerned, including the Official Liquidator and the Regional Director of Company Affairs, it was found that the Scheme was just, fair and reasonable and likely to pave the way for revival of the Company. It is in these circumstances that sanction for implementation of the Scheme was granted on 16.08.2012 by the Company Court.

3. Since there were options available, the appellant before us, viz. Canara Bank filed an application seeking extension of time for exercising either one of the two options given in the Scheme of Arrangement and despite resistance from the Company, the same was ordered and the appellant exercised the first option on 10.12.2012 for receiving payment.

4. The matter did not end at this qua the appellant, as thereafter Company Application No. 942 of 2012 was filed, seeking modification of the Scheme with a plea that the Scheme should include the right to recompense in order to recoup the sacrifices made by the banks and financial institutions upon successful revival of the Company and not to exonerate the guarantors to the banks and financial institutions for the debt due by the Company from its liabilities.

5. The learned Company Judge, in terms of the impugned order dated 15.02.2013, has rejected the request of the appellant, which has resulted in the present appeal.

6. We have heard the learned counsel for the parties and perused the impugned order, which succinctly sets forth the controversy and gives reasons for rejection of the application.

7. What weighed with the learned Single Judge is that the Scheme went through various stages with the salient features of the proposed Scheme being discussed among the creditors with emphasis on the reconstructing process. We are informed by the learned Senior Counsel for the appellant that all the creditors except the appellant assigned their debts to M/s. Asset Reconstruction Company (India) Limited (ARCIL), which convened the meetings and the appellant bank was represented. M/s. ARCIL picked the call to accept the Scheme and the appellant did not raise any objection. There were certain

modifications at the stage of approval of the Scheme by the creditors and the percentage of the amount was increased to what was envisaged in the draft Scheme.

8. An argument which was sought to be advanced before the learned Single Judge and also advanced before us is that an application for modification of the Scheme, after sanctioning it, is also maintainable. In this behalf, learned Senior Counsel for the appellant has referred to the judgment of the Honourable Supreme Court in S.K.Gupta and another vs. K.P.Jain and another (AIR 1979 734). However, in our view, the aspect is one of authority of the Court as to whether the Court was to exercise jurisdiction in the given facts of the case. It is in this context that the argument advanced on behalf of the appellant before the learned Single Judge has been analysed, i.e. whether any class of creditors or members were endeavouring to coerce the minority in order to promote any interest adverse to that of the latter comprising the same class. Tested on this touchstone, the appellant could not find a favourable opinion from the learned Single Judge, in our view, rightly so.

9. A catena of judgments in fact have been considered while coming to the conclusion that the Court plays a greater role at the time of sanctioning the Scheme than at the time when the same is being implemented, and the role of the Court in supervising proper working of the Scheme is very limited. The Scheme having been approved by $\frac{3}{4}$ th majority of the creditors, learned Single Judge found no reason to interfere for modifying the Scheme, especially as the appellant having raised this very issue earlier and having accepted the majority view, failed to even appear and agitate before the Company Court at the time of sanctioning the Scheme by the Company Court. The appellant, in fact, sought extension of time to exercise the option and it is after the application was ordered that subsequently the endeavour has been made seeking a right to recompense.

10. The learned Single Judge has also rightly noted that the revival of the Company was depending on very many uncertain factors with the possibility of payments being postponed without certainty, and it is in those circumstances that a particular amount in full and final satisfaction of the claim had been accepted.

11. The last and most important aspect which troubles us is that this appeal being filed in time, has been kept in SR stage for more than 2½ years, watching the Company's management, which seeks revival of the Company. It is admitted before us that all obligations under the Scheme qua the appellant Canara Bank have been met.

12. We are, thus, of the view that the impugned order does not call for any interference. The Original Side Appeal accordingly stands dismissed, leaving the parties to bear their own costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ATR

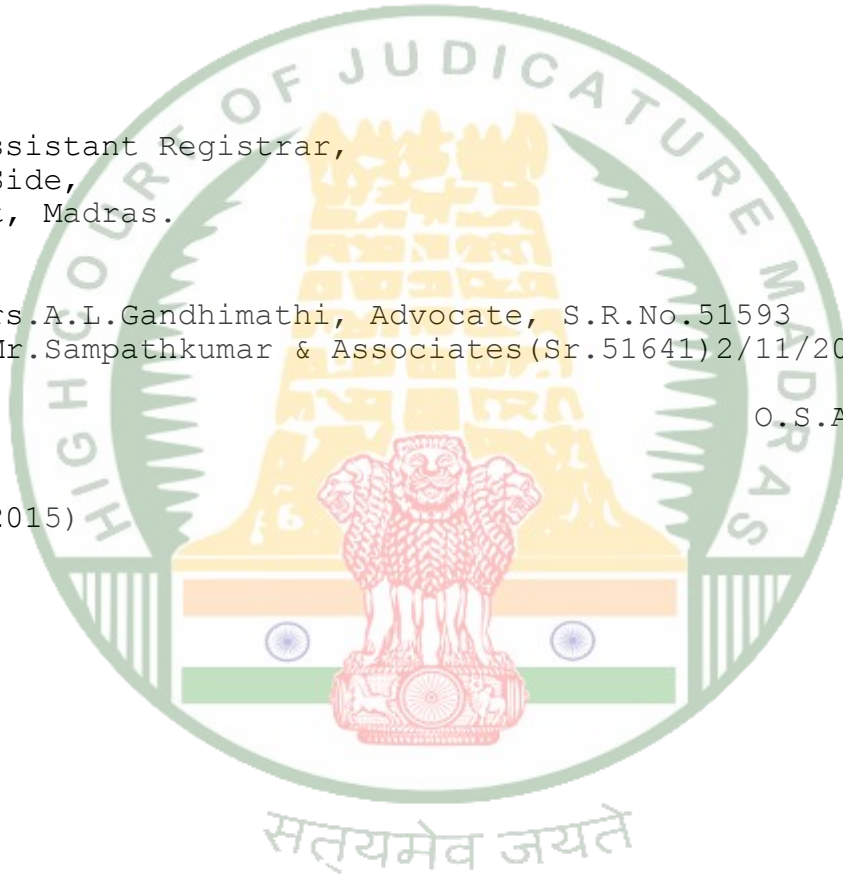
To

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

+1cc to Mrs.A.L.Gandhimathi, Advocate, S.R.No.51593
+1 cc to Mr.Sampathkumar & Associates(Sr.51641)2/11/2015

O.S.A. No.188 of 2015

JSV(CO)
CA(05/10/2015)



WEB COPY