

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2015

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and

THE HON'BLE MRS. JUSTICE PUSHPA SATHYANARAYANA

O.S.A.No.135 of 2015

Bhaskar Properties Private Ltd.,
A Company Incorporated under the
Provisions of the Companies Act, 1956
Having its Registered Office at 1/1,
Camac Street, Kolkata-700 016
Also known as 8/1, Middleton Row,
Kolkata-700 071. ... Appellant

vs

1.DSQ Holdings Limited,
rep. by its Director Shiv Kumar Agarwal,
Having its Registered Office at
11/1A, Chowringhee Terrace, 'Shah Niketan',
Kolkata-700 020.
2.M/s.Global Software Limited,
9/12, Lall Bazar Street,
Room No.11, III Floor,
Block F, Kolkata-700 001. ... Respondents

Appeal filed under Clause 15 of the Letters Patent read
with Order XXXVI, Rule 9 of Original Side Rules against the
order made in Application No.4576 of 2014 in E.P.No.18 of 2012
dated 06.02.2015 on the file of this Court.

For Appellant .. Mr.R.Murari
Senior Counsel
for
M/s.Thriyambak Kannan

For Respondents .. Mr.A.J.Jawad for R2

JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

On 15.07.2015 while issuing notice, we had recorded the controversy in question as under:-

"The learned counsel for the appellant submits that the first respondent failed to avail of the opportunity to file a counter-affidavit which right was closed on 04.09.2013. The second respondent filed a counter-affidavit and also wanted to lead the oral evidence, but failed to produce any witnesses on three occasions on 09.10.2013, 30.10.2013 and 13.11.2013 and on the fourth occasion on 27.11.2013 their right to lead the oral evidence was closed, which order remained unassailed.

2. It is thereafter that the first respondent once again sought to raise the issue of leading oral evidence and sought recall of the order dated 27.11.2013, which request was declined on 05.03.2014 by the Master on the ground that if no pleadings had been filed in the form of a counter-affidavit, there could be no occasion to lead the evidence in the absence of pleadings. It is this order which was assailed before the learned Single Judge who vide the impugned order dated 02.04.2014 has permitted the first respondent to adopt the counter-affidavit of the second respondent, even though no such prayer was made and the right to file the counter-affidavit of the first respondent was closed as far back on 04.09.2013, which order was never challenged."

2. The learned counsel for the second respondent/M/s.DSQ Holdings Limited (wrongly mentioned as the first respondent in the earlier order) does not dispute the aforesaid factual position, but submits that as per the second respondent, the decree stands satisfied. He submits that certain documents were filed and exhibited in the suit proceedings/execution proceedings in Kolkata High Court prior to the transfer of the decree here. He has also been instructed to state that possibly some documents have been filed in the execution proceedings after transfer.

3. The learned Senior Counsel for the appellant states that if the aforesaid is the position, he has no objection if the second respondent relies on those documents subject to their relevancy for the controversy in question and its legal stand as to what is the effect of those documents i.e., he will object to the leading of the documents, as also the letter and the balance sheet marked as Annexure 'A' and 'B' respectively in the rejoinder filed in Application No.4576 of 2014 in E.P.No.18 of 2012 in evidence.

4. The aforesaid being the only concern and the statement of the learned Senior Counsel for the appellant having been taken on record, the learned counsel for the second respondent states that he is satisfied with the same. There is, thus, no question of further oral testimony to be recorded.

5. We are informed that the arguments were concluded qua the execution proceedings. Any supplementary arguments arising from the aforesaid may also be made on the next date to be fixed before the Master so that the execution proceedings can conclude.

6. The impugned order of the learned Single Judge is accordingly set aside and the appeal is allowed in the aforesaid terms, leaving the parties to bear their own costs.

7. List before the Master on 06.01.2016 when whatever further submissions limited to the aforesaid context can be made by the learned counsel for parties.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

bbr

Copy to:

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

+1 cc to Mr.A.J.Jawad, Advocate, sr.67012

+1 cc to Mr.R.Murali, Advocate, sr.66507

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