

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 4.7.2016

Delivered on : 21.07.2016

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.858 of 2014
& MP No.1 of 2014

M/s.Dhanalakshmi Mills Ltd.,
130, B.S.Sundaram Road
Tirupur
Rep.by Managing Director

... Appellant/1st Dependent

Vs.

1. R.Krishnamurthy ... 1st Respondent/Plaintiff

2. S.Krishnamurthy

3. M.Murugesan .. Respondents 2&3/Defendants
2&3

Prayer:- Appeal suit filed under Section 96 r/w Order 41
Rule 1 of CPC against the judgment and decree, dated
30.6.2014, passed by the II Additional District and Sessions
Judge, Tirupur in O.S.No.881 of 2008.

For Appellant :Mr.R.Subramanian for
M/s.Guptha and Ravi

For Respondents :Mr.T.R.Rajagopalan,
Senior Counsel for
M/s.Ramalingam and Associates
for R1

Mr.D.Selvam for Mr.S.Tamilarasan
for R2 & R3

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

Challenge in this appeal suit is to the Judgment and
Decree dated 30.6.2014, passed in O.S.No.881 of 2008, by the
II Additional District Court, Tirupur

2. The first respondent herein, as plaintiff, has
<https://hcservices.ecourts.gov.in/hcservices/>

instituted O.S.No.881 of 2008 on the file of the trial court, praying to direct the defendants to execute a Sale Deed in favour of the plaintiff in pursuance of sale agreement dated 10.1.2004, wherein the present appellant and the remaining respondents have been shown as defendants.

3. The material averments made in the plaint are that the suit property is the absolute property of the first defendant. The plaintiff is doing real estate business. The company of the first defendant has become sick and has been referred to the Board of Industrial and Financial Reconstruction, New Delhi. The defendants 2 and 3, as strategic investors, have entered into a sale agreement dated 10.1.2004 with plaintiff and thereby agreed to sell the suit property in favour of the plaintiff. The total sale price of the suit property has been fixed at Rs.9,75,00,000/-. The defendants 2 and 3 have agreed to receive a sum of Rs.1 Crore by way of an advance. The plaintiff has to pay a further sum of Rs.4,75,00,000/- within one month from the date of agreement. The defendants 2 and 3 should obtain requisite consent orders from the Board of Industrial and Financial Reconstruction and also secure other documents. It is further agreed that within four months from the date of receipt of order of discharge from the Board of Industrial and Financial Reconstruction and other requisite documents, the plaintiff has to pay balance sale consideration. The defendants shall execute a sale deed in favour of the plaintiff without any encumbrance. As per the terms of the contract, the plaintiff has paid a sum of Rs.1 Crore as an advance. The plaintiff has also paid second advance amount of Rs.1,75,00,000/- In fact, the plaintiff has paid Rs.2,37,20,000/-. The plaintiff is always ready and willing to perform his part of contract. The sale agreement entered into by defendants 2 and 3 has been subsequently ratified on 30.3.2005 by the first defendant and to that effect, a letter has been sent to the plaintiff on 11.4.2005. After some time, the plaintiff has come to know that the proceeding before the Board of Industrial and Financial Reconstruction has come to an end in November/December 2005, but the defendants 2 and 3 have not intimated the same to the plaintiff and subsequently, the plaintiff has issued a legal notice to the defendants. After receipt of the same, the first defendant has not refuted the contentions of the plaintiff. The defendants 2 and 3 have chosen to send a reply notice and the same contains false and untenable contentions. Under such circumstances, present suit has been instituted for the relief sought therein.

4. In the written statement filed on the side of the first defendant, it is averred that the first defendant is not a party to the sale agreement dated 10.1.2004 and therefore, the same is not binding upon the first defendant. Since the first defendant has become sick, a proceeding has been pending

before the Board of Industrial and Financial Reconstruction and therefore, the suit sale agreement is totally in violation of Section 33 of SIC Act. Further, various legal proceedings have been instituted and disposed of in the High Court of Madras. It is false to aver in the plaint that the sale agreement in question has been ratified by virtue of resolution dated 30.3.2005. The Board of Directors of the first defendant has had no occasion to consider the sale agreement dated 10.1.2004. The documents relied upon by the plaintiff are nothing but forged documents and further, the present suit is barred by limitation. There is no merit in the suit and the same deserves to be dismissed.

5. In the written statement filed on the side of defendants 2 and 3, it is averred that sale agreement dated 10.1.2004 is not a completed, valid, legally or enforceable agreement. The defendants 2 and 3 have no locus standi to create such kind of sale agreement. Each and every transaction has to be made only after getting prior permission from the Board of Industrial and Financial Reconstruction. The suit sale agreement is nothing but an agreement to create an agreement in future. The suit is barred by limitation and there is no merit in the suit and the same deserves to be dismissed.

6. On the basis of the rival pleadings put forth on either side, the trial court has framed necessary issues and after contemplating both the oral and documentary evidence, has decreed the suit as prayed for. Against the judgment and decree passed by the trial court, present appeal suit has been preferred at the instance of the first defendant, as appellant.

7. The consistent case put forth on the side of the plaintiff is that the first defendant has become sick. Under the said circumstances, the defendants 2 and 3 have acted as its strategic investors and under the said capacity, they entered into a sale agreement dated 10.1.2004 with the plaintiff and thereby agreed to sell the suit property for a sum of Rs.9,75,00,000/-. As per the terms of sale agreement, the plaintiff has paid a sum of Rs.2,37,20,000/-. Even though the first defendant has been discharged during November/December 2005 from the Board of Industrial and Financial Reconstruction, the defendants 2 and 3 have failed to intimate the same to the plaintiff, which culminated in issuance of legal notice and after receipt of the same, the defendants have failed to execute a sale deed in favour of the plaintiff. Under such circumstances, present suit has been instituted for the relief sought therein.

8. The defence taken on the side of defendants 1 to 3 is

that the alleged sale agreement is not binding upon the first defendant. The alleged ratification of the said sale agreement subsequently by the first defendant is false and no such ratification has been done and further, the defendants 2 and 3 have not entered into any concluded contract with the plaintiff and further, the present suit is barred by limitation.

9. As adverted to earlier, the trial court has rejected the defence put forth on the side of defendants and ultimately decreed the suit, as prayed for.

10. The learned counsel appearing for the appellant/first defendant has vehemently argued to the effect that since the first defendant has become sick, the same is referred to the Board of Industrial and Financial Reconstruction, New Delhi and during pendency of some proceedings before the said Board, the suit sale agreement has come into existence without prior permission of the said Board and therefore, the same is void and the trial court, without considering the vital legal point raised on the side of the first defendant, has erroneously decreed the suit, mainly on the basis of subsequent ratification alleged to have been done by the Board of Directors of the first defendant and the same is also a false document and therefore, the judgment and decree passed by the trial court are liable to be interfered with.

11. Per contra, the learned senior counsel appearing for the first respondent/plaintiff has laconically contended that the defendants 2 and 3 have been appointed as strategic investors of the first defendant so as to discharge its various debts. Under the said capacity, they entered into a sale agreement dated 10.1.2004 with the plaintiff and in fact on the basis of the terms of sale agreement dated 10.1.2004, the plaintiff has advanced a sum of Rs.2,37,20,000/- to the defendants 2 and 3 and subsequently the sale agreement dated 10.1.2004 has been ratified by the Board of Directors of the first defendant on 30.3.2005 and even though the discharge has been made by the Board of Industrial and Financial Reconstruction during November/December 2005, the defendants 2 and 3 have schemingly failed to inform to the plaintiff. Under such circumstances, present suit has been instituted for the relief sought therein. The trial court, after considering the overall evidence available on the side of the plaintiff, has rightly decreed the suit and therefore, the judgment and decree passed by the trial court do not require any interference.

12. It is an admitted fact that defendants 2 and 3 entered into a sale agreement dated 10.1.2004 in favour of the plaintiff. The said sale agreement has been marked as Ex.A.1,

wherein it has been clearly stated that the defendants 2 and 3 have acted as strategic investors of the first defendant. In Ex.A.1, it is further recited the terms and conditions and also obligations imposed upon both parties.

13. The only legal point that arises for consideration in the present lis is as to whether Ex.A.1 alleged to have been executed by defendants 2 and 3 on behalf of the first defendant is binding upon the first defendant?

14. The entire argument put forth on the side of the appellant/first defendant is based upon the proceedings pending before the Board of Industrial and Financial Reconstruction, New Delhi. It is an admitted fact that since the first defendant has become sick, the same has been referred to the said Board. The learned counsel appearing for the appellant/first defendant has advanced his entire argument on the ground that the said Board (BIFR) has had control over the properties of the first defendant and without permission of the said Board, no transaction could be entered into.

15. The contentions put forth on the side of the first respondent/plaintiff is that defendants 2 and 3 in the capacity of strategic investors of the first defendant are empowered to execute Ex.A.1, sale agreement in favour of the plaintiff and subsequently the same has been ratified by the first defendant by virtue of resolution dated 30.3.2005.

16. It is seen from the records that an agreement has come into existence on 5.11.2011 between C.R.Sethuramalingam and three others with the defendants 2 and 3 and thereby authorized them to deal with properties of the first defendant. The said agreement has been marked as Ex.A.19. Therefore, as per Ex.A.19, the defendants 2 and 3 are empowered to deal with the properties of the first defendant. Under the said capacity, they entered into Ex.A.1 with the plaintiff.

17. Further, it is seen from the records that during the relevant periods, the first defendant has executed various sale deeds and copies of the same have been marked as Exs.A.31 to A.45.

18. It has already been decided that defendants 2 and 3 by virtue of Ex.A.19 have been authorized by the first defendant to deal its properties with third parties and accordingly Ex.A.1 has come into existence. As stated earlier, the main legal point involves in the present lis is as to whether Ex.A.1 is binding upon the first defendant?

19. The sheet anchor of the case of the plaintiff is Ex.A.48. Ex.A.48 is nothing but minutes of the first defendant dated 30.3.2005, wherein it is stated like thus:

"To confirm the minutes of the previous meeting held on 28th March, 2005.

The Chairman informed the Board the strategic investors have entered into an agreement of sale dated 10.1.2004 with one R.Krishnamurthy to discharge the debts and has sought for ratification - so ratified."

20. The main defence taken on the side of the first defendant with regard to Ex.A.48 is that the same is nothing but a forged document. At this juncture, it would be apposite to look into the evidence adduced by D.W.1. One C.R.Sethuramalingam has been examined as D.W.1. During the course of cross-examination, he candidly admitted to the effect that resolutions found page Nos.87 to 90 in Ex.A.46 are correct. Further, he has admitted that the resolution dated 30.3.2005 has been marked as Ex.A.48. Further, he admitted to the effect that Ex.A.48 is a genuine document.

21. It has already been pointed out that by virtue of Ex.A.48, the agreement dated 10.1.2004 has been clearly ratified by the Board of Directors of the first defendant. Since on 30.3.2005, Ex.A.1 has been clearly ratified by the Board of Directors of the first defendant, there is no incertitude in coming to a conclusion that the defendants 2 and 3 have been clearly authorized to execute any document in respect of property of the first defendant and in pursuance of the same, Ex.A.1 has come into existence and the acts of the defendants 2 and 3 have been clearly ratified by the Directors of the first defendant and further after ratifying the sale agreement dated 10.1.2004, Ex.A.4, letter has been sent to the plaintiff, wherein it has been clearly mentioned to the effect that sale agreement dated 10.1.2004 has been clearly ratified by the first defendant. Therefore, it is quite clear that the main defence taken on the side of the first defendant with regard to Ex.A.1 is sans merit and Ex.A.1 executed by the defendants 2 and 3 in favour of the plaintiff is binding upon the first defendant.

22. Further, it is seen from the records that in W.P.No.34935 of 2004, the said C.R.Sethuramalingam has filed an affidavit, wherein at paragraph No.18, he candidly admitted to the effect that since unnecessary delay has occurred before the BIFR to meet some financial contingencies, some negotiations have been done with strategic investors and the strategic investors are authorized to settle the dues of the first defendant. Even from the admission made by D.W.1 in

some other proceeding, the Court can easily infer that the main defence taken on the side of the first defendant is of no use.

23. Now the Court has to look into the other contentions put forth on the side of the defendants. In the written statement filed on the side of the defendants, it is averred that present suit is barred by limitation. In fact, in the plaint, it has been specifically mentioned as to how, the present suit is not barred by limitation and further in Ex.A.1, it is stated that the defendants 2 and 3 have to perform so many obligations before the plaintiff paying the entire sale consideration, but as taunted earlier, the defendants 2 and 3 have completely failed to perform their part of contract. Under such circumstances, defendants 1 to 3 are not having right to say that the present suit is barred by limitation. Therefore, the said contentions put forth on the side of the defendants cannot be accepted.

24. Further, it is seen from the records that at the time of creating Ex.A.1, BIFR has had control over the first defendant, but even in the year 2005, the first defendant has been discharged. Further, Ex.A.1 has been clearly ratified by the first defendant on 30.3.2005. Therefore, viewing from any angle, the argument advanced by the learned counsel appearing for the appellant/first defendant is not having substance at all, whereas the argument advanced by the learned senior counsel appearing for the first Respondant/plaintiff is really having subsisting force and altogether, present appeal suit deserves to be dismissed.

In fine, this appeal suit is dismissed with cost. The judgment and decree dated 30.6.2014 passed in O.S.No.881 of 2008 by II Additional District Court, Tirupur are confirmed. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ajr

To

1. II Additional District and Sessions Court, Tirupur

2. The Section Officer, VR Section,
High Court, Madras.

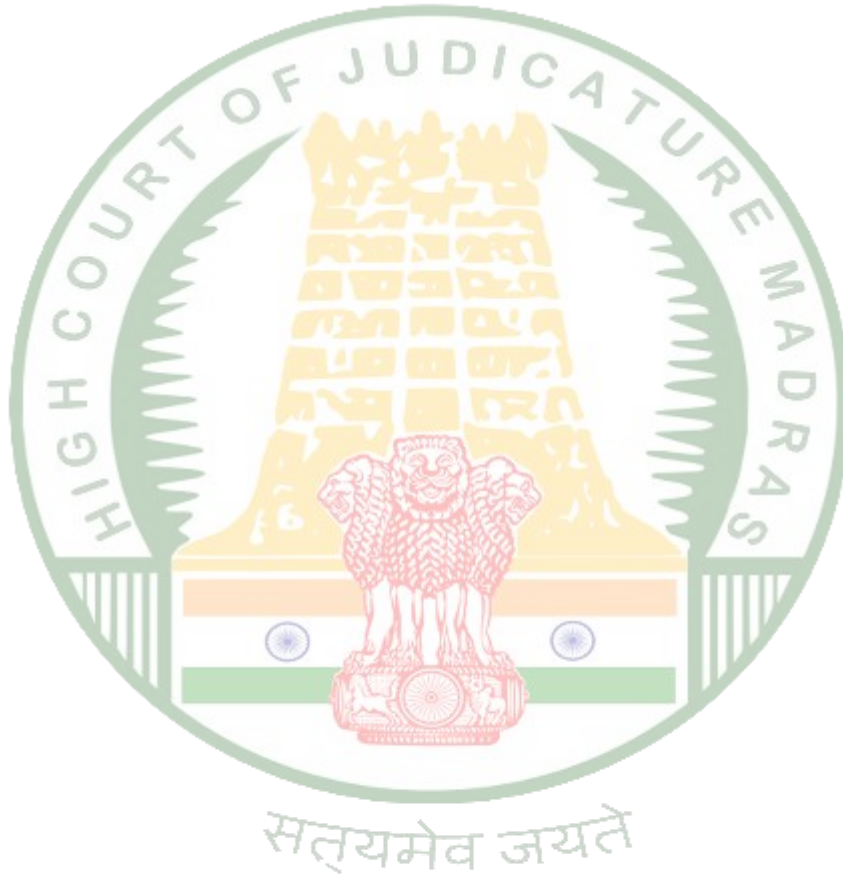
1 cc to M/s.Gupta & Ravi, Advocate, sr.41159

4 ccs to M/s.Ramalingam & Associates, Advocate, sr.41189,&
41347

1 cc to Mr.S.Tamilarasan, Advocate, sr.41783

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