

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) Nos.4357, 4358 of 2011 and C.R.P.No.1286 of 2016

&

M.P.Nos.1 + 1 of 2011 & C.M.P.Nos.5398 and 6556 of 2016

C.R.P.No.4357 of 2011

P.S.Sengottuvelu

... Petitioner

vs.

1.S.V.Sivakumar

2.N.Jayabalamurugan

3.M.Mithusamy

4.V.Palraj

5.N.Ponnusamy

... Respondents

Administrators of the Estate of

Late P.S.Shanmugam

Chamundi Super Market Complex

Omalur Main Road

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 06.07.2011 made in I.A.No.103 of 2009 in O.S.No.239 of 1998 on the file of the Principal Subordinate Judge, Salem.

For Petitioner : Mr.A.K.Mylsamy & Associates

For Respondent : Mr.T.R.Rajagopalan

Senior Counsel for R1 to R5

C.R.P.No.4358 of 2011

1.P.S.Sengottuvelu
2.S.Indira

... Petitioners

vs.

1.S.V.Sivakumar
2.M.Muthusamy
3.N.Jayabalamurugan
4.V.Palraj
5.N.Ponnusamy
Administrators of the Estate of
Late P.S.Shanmugam
Chamundi Super Market Complex
Omalur Main Road
6.P.Tamilmani
7.Mrs.M.Punitha
8.K.G.Sampath
9.D.Ramasamy
10.R.Daniel
11.Elaiyammal
12.G.P.Venkatesan
13.Hemalatha
14.K.Abirami
15.S.Balasubramanian
16.K.Viswanathan
17.S.P.Ramanathan
18.R.Kaliammal
19.N.Muruganadan
20.C.Karunakaran
21.S.Chinnannan
22.S.Palaniammal
23.Rajeswari

... Respondents

- 24.Minor Arun
- 25.Minor Sowmiya
- 26.S.M.Hemalatha
- 27.Muthukumar
- 28.Rajesekaran
- 29.K.R.S.Chandrasekaran
- 30.K.Bharathi
- 31.Sampooram
- 32.Pavayammal
- 33.Kaliannan
- 34.Neelambal
- 35.Minor Pavithra
- 36.Minor Preetheeba
- 37.N.R.Subramanian
- 38.Muthulakshmi
- 39.Kupammal
- 40.B.Selvi @ Tamilselvi
- 41.R.Amsaveni
- 42.V.Nallappan
- 43.The Depositors Association of Chamundi Group of Finance Concerns
rep. By its Authorized Representatives
- 1.S.A.Padmanaban 2.Srinivasan
- 3.Senthil, 4.Thangavelu
- 44.P.G.Mahavishnu
- 45.Lakshmi
- 46.Arul
- 47.Nirmala
- 48.Nallayammal
- 49.C.Sampath Kumar
- 50.Rajarathinam
- 51.Rajam
- 52.N.Ravishankar
- 53.P.Thirunavukarasu
- 54.R.Manivannan
- 55.C.Chitra
- 56.P.Janagan
- 57.E.Annapoorani

58.E.Malleswaran
 59.S.P.Ramachandran
 60.Tmt.Baby Yasodha
 61.Ayshwaria Credits
 62.K.Raju
 63.Tmt.M.Ambujam
 64.K.Subramanian
 65.S.Chandra
 66.S.Mohankumar
 67.K.Kathirvelu
 68.K.Palaniammal
 69.R.Malathi
 70.Minor Hema, D/o.Ravindran

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 06.07.2011 made in I.A.No.103 of 2009 in O.S.No.239 of 1998 on the file of the Principal Subordinate Judge, Salem.

For Petitioner : Mr.A.K.Mylsamy & Associates
 For Respondent : Mr.T.R.Rajagopalan
 Senior Counsel for R1 to R5

C.R.P.No.1286 of 2016

Bhavani Devi

.. Petitioner

Vs.

1.P.Tamilmani
 2.Mrs.M.Punitha
 3.K.G.Sampath

- 4.D.Ramasamy
- 5.R.Daniel
- 6.Elayammal
- 7.G.P.Venkatesan
- 8.Hemalatha
- 9.K.Abirami
- 10.S.Balasubramnian
- 11.R.Viswanathan
- 12.S.P.Ramanathan
- 13.R.Kaliammal
- 14.N.Muruganandan
- 15.C.Karunakaran
- 16.S.Chinnannam
- 17.S.Palaniammal
- 18.Rajeswari
- 19.Minor Arun
- 20.Minor Sowmiya
- 21.S.M.Hemalatha
- 22.Muthukumar
- 23.Rajasekaran
- 24.K.R.S.Chandrasekaran
- 25.K.Bharathi
- 26.Sampoornam
- 27.Pavayammal
- 28.Kalilannan
- 29.Neelambal
- 30.Minor Pavithra
- 31.Minor Pratheebea

32.N.R.Subramanian

33.Muthulakshmi

34.Kuppammal

35.B.Selvi @ Tamil Selvi

36.R.Amsaveni

37.V.Nallappan

38.The Depositors Association of Chamundi
Group of Finance Concerns rep. By its Authorized
Representatives

1.S.A.Padmanaban

2.Srinivasan

3.Senthil

4.Thangaveli

39.P.G.Mahavishnu

40.Lakshmi

41.Arul

42.Nirmala

43.Nallayammal @ Pappu

44.C.Sampath Kumar

45.Rajarathinam (Died)

46.Rajam

47.N.Ravishankar

48.P.Thirunavukkarasu

49.R.Manivannan

50.C.Chitra

51.P.Janagan

52.P.S.Sengottuvelu

53.S.Indira

- 54.E.Annapoorani
- 55.S.P.Ramachandran
- 56.Tmt.Baby Yasodha
- 57.Ayshwaria Credits, rep. By its Partner Santha
having its office at
Thiruchengode Road
Namakkal
- 58.K.Raju
- 59.Tmt.M.Ambujam
- 60.K.Subramanian
- 61.S.Chandra
- 62.S.Mohankumar
- 63.K.Kathirvelu
- 64.K.Palaniammal
- 65.R.Malathi
- 66.Minor Hema
- 67.Rukmaniammal
- 68.Priyadharsini
- 69.Chamundeeswari
- 70.S.Kannan
- 71.Chinnammal
- 72.Sellammal
- 73.Sarswathi
- 74.S.Saravanan
- 75.S.Sakthivel
- 76.Chinna pappa
- 77.Agilandeswari
- 78.Senthilkumar

79.Siddarthan
80.Senthilkkumar
81.Renuka
82.M.Ravi
83.Vishnu
84.Siddan
85.S.V.Sivakumar
86.M.Muthusamy
87.N.Jayabala Murugan
88.V.Palraj
89.N.Ponnusamy

Civil Revision Petition filed under Article 227 of the Constitution of India against the preliminary decree dated 08.12.1988 passed in O.S.No.239 of 1988 by the Hon'ble Principal Sub-Judge, Salem.

For Petitioner : Mr.K.M.Vijayan
Senior Counsel
for Mr.C.M.Krishnakumar
For Respondent : Mr.V.Sekar

COMMON ORDER

In continuation of the order of this Court dated 13.04.2016, this Court heard further submissions and passes the following order:

Today, the administrators have filed a memo containing details as to the calculation of the amount payable to Bhavani Devi, the

secured creditor, who has filed C.R.P.No.1286 of 2016. The amount thus arrived at is Rs.1,68,59,096/-. A crossed cheque issued by the Administrators bearing Cheque No.006647 dated 19.04.2016 for the above said amount payable to Bhavani Devi has been handed over to the learned counsel for the said secured creditor Bhavani Devi in full discharge of her claim, being the amount payable as per the Arbitration Award minus 10% TDS on the interest portion of the claim. The administrators shall issue necessary Form 16 for the amount deducted as TDS. The said amount has been arrived at in accordance with the Arbitration Award. In view of the said payment by way of cheque, Mr.K.M.Vijayan, learned senior counsel, on instructions from the instructing counsel, submits that the secured creditor Bhavani Devi accepts the same subject to realization, in full quit of her claim and gives up her claim in respect of the security. The learned senior counsel also gives an undertaking on behalf of the secured creditor Bhavani Devi that all claims made by her, including the proceedings initiated before the criminal Courts under Section 138 of the Negotiable Instruments Act based on the dishonoured cheques against P.S.Sengottuvel, S.Indira and E.Annapurini (defendants 1 to 3 in the suit O.S.No.239 of 1998 in which the administrators were appointed) would be withdrawn. The learned senior counsel also submits that the

secured creditor shall have no other claim in respect of the transactions concerned in the suit and also the Arbitration Award. The above said undertaking is recorded and C.R.P.No.1286 of 2016 is dismissed as not pressed.

2. Chamundi Finance and Investments Groups Financial Depositors, Creditors' Protection of Interest Welfare Association, with Registration No.7 of 2012, has come forward with C.M.P.No.5398 of 2016 to get it impleaded as a party respondent in C.R.P (PD) No.4358 of 2011. Mr.V.Srikanth, learned counsel for the petitioner in the impleading petition submits that the members of the said association want to get impleaded as they are prepared to accept the payment of the principal amount alone. Mr.T.R.Rajagopalan, learned senior counsel appearing for the respondents 1 to 4 in C.R.P (PD) No.4358 of 2011, namely S.V.Sivakumar, M.Muthusamy, N.Jayabalamurugan and V.Palraj, submits that the Association need not be made a party and the creditors, who are members of the Association, may make their claim before the Administrators either through the Association or individually and that when such claims are made, they will be taken into consideration for the disbursement of the amount available with the administrators. In view of the above said submission made on

behalf of the respondents 1 to 4 in C.R.P.No.4358 of 2011, C.M.P.No.5398 of 2016 is dismissed as unnecessary.

3. So far as the disbursement of the balance amount available with the administrators is concerned, the list of creditors already supplied by the administrators shall be discussed by the administrators co-opting the revision petitioners in C.R.P.No.4358 of 2011, namely P.S.Sengottuvelu and S.Indira and after such discussion, two lists one containing names of the undisputed list of creditors and the second list containing the names of the creditors regarding which there may be a dispute. So far as the second list containing the names of the disputed creditors and the amounts noted against them, specific orders of the Sub-Court shall be obtained and the Administrators shall act accordingly. Notice in appropriate form to the creditors shall be given and in case some of the creditors come forward to receive the principal amount in full quit, they shall be paid the principal amount at the first instance after getting necessary undertaking from them giving up their claim regarding the interest and the same should be done after getting necessary orders from the Sub-Court. Thereafter the other creditors, who do not come forward to get the principal amount alone in full quit of their claims shall be paid and doing so, endeavor should

be made to pay the principal to all the creditors at the first instance and if any amount is left in the hands of the administrators after paying the principal amount to the creditors, the same shall be utilized for payment of interest pro rata to the creditors who do not give up their claim for interest. The same should also be done after obtaining permission from the Court below. Sufficient time for making such claims shall be given to the creditors. If at all the Administrators face any claim for Capital Gains Tax, it can be contested or funds can be raised by the sale of the other properties. C.R.P.No.4358 of 2011 is disposed of accordingly.

4. Respondents 1 to 4 in C.R.P.No.4357 of 2011 through their senior counsel, submit that the residential portion regarding which C.R.P.No.4357 of 2011 has been filed by P.Sengottuvelu will not be brought for sale till the disbursement of the amount in the hands of the Administrators. In view of the said submission made on behalf of respondents 1 to 4, this Court is of the view that no order except recording the undertaking is necessary in C.R.P.No.4357 of 2011.

In the result, C.R.P.No.1286 of 2016 is dismissed as not pressed. C.R.P.No.4357 of 2011 and C.R.P.No.4358 of 2011 are disposed of

with the directions issued in paragraph 3 of this order and the undertaking recorded in paragraph 4 of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

20.04.2016

Index: Yes/No
Internet: yes/No

gpa

Note: Issue order copy on 25.04.2016

To

The Principal Subordinate Judge

Salem

P.R.SHIVAKUMAR.J.,

gpa

C.R.P (PD) Nos.4357, 4358 of 2011 and
C.R.P.No.1286 of 2016 &
M.P.Nos.1 + 1 of 2011 &
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20.04.2016