IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2016

CORAM

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

O.S.A.No.272 of 2015
and
M.P.No.1 of 2015

M/s.D.R.Logistics (P) Limited,
(Formerly known as Devadoss Reddy
Logistics Pvt. Ltd.),
rep. by its Managing Director R.Devadoss,
435/24, 25, Municipal Complex,
T.H.Road, Kaladipet,
Chennai-600 019. ... Appellant

Vs

1. Pridhvi Asset Reconstruction and
Securitization Company,
rep. by its Authorised Signatory
M.S.Hussain, Senior Vice President,
Registered and Corporate Office at
D.No.8-2-622/5/A/3, 3rd floor,
Indira Chambers, Road No.10,
Banjara Hills, Hyderabad-500 034.

2. The Registrar,
Debts Recovery Tribunal-III,
Anna Salai, Chennai-02.

3. The Recovery Officer,
Debts Recovery Tribunal-III,
No.770A, 5th Floor,
Anna Salai, Chennai-02. ... 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.5461 of 2015 in C.S.D.No.30912 of 2015, dated 25.11.2015.

Application praying that this Court be pleased to pass an order to grant leave to sue against the 1st Defendant in the above suit before this court.

For Appellant : Mr.R.Nagasundaram

For Respondents : Mr.K.Harishankar for R1

JUDGMENT

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

This case is an example of a dishonest and frivolous litigation, which seeks to burden this Court. Let us not pay the creditors, settle the disputes and still seek forum shopping by rushing to the Court to defeat the rights of the creditors.

2. The suit in question filed on the Original Side of this Court seeks a declaration that the order dated 19.11.2012 passed in O.A.No.21/12 before the Debts Recovery Tribunal-III should be declared as null and void and not binding on the appellant and seeking a restraint against the recovery to be made as per the recovery certificate dated 24.06.2013, which is based on the compromise decree.

3. It is not in issue that the appellant availed of loan facilities. It is also not in issue that the appellant committed default in paying its debts, resulting in the original creditor - Bank of India, instituting proceedings for recovery in the year 2012. The debts were assigned to the first respondent and settlement took place at that time, in terms whereof the appellant agreed to pay a sum of Rs.6.00 crores subject to the terms and conditions therein. The cheques issued to honour the instalment payments thereafter had also bounced and we are informed that proceedings under Section 138 of Negotiable Instruments Act have been instituted.

4. It is to circumvent the effect of the decree that the appellant, who carries the business as custom house agent in pursuance to the licence issued by the Union of India, has filed the present proceedings with the motive of somehow saving the cancellation of the licence.

5. The appellant does not dispute the signing of the joint compromise memo. What is sought to be made out now is that the joint compromise memo could not include certain past conditions and that the said joint compromise memo has become non-est. However, the joint compromise memo does not remain by itself, but has actually resulted in the compromise decree being passed.

6. The learned Single Judge at the stage when considering the issue of seeking leave to sue against the first respondent, based in Hyderabad, has rejected the plaint itself by exercising the jurisdiction under Order VII, Rule 11 of Code of Civil Procedure, 1908 as being barred by law, as the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is a self-contained Code and Section 18 of that Act contains a bar of jurisdiction. The said provision reads as under:-

> "18. Bar of jurisdiction. - On and from the appointed day, no Court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in section 17:
> (Provided that any proceedings in relation to the recovery of debts due to any multi-State co-operative bank pending before the date of commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 under the Multi-State Co-operative Societies Act, 2002 (39 of 2002) shall be continued and nothing contained in this section shall, after such commencement, apply to such proceedings.)

7. We have heard the learned counsel for parties and find no error whatsoever in the order of the learned Single Judge. It cannot be the birth right of the appellant to continue the suit, frivolous as it may be, and such suit especially when barred by law, is required to be knocked out at the threshold. The appellant not having succeeded before the learned Single Judge, now seeks to take a chance in the appellate forum.

8. We find that the endeavour made to the present proceedings is to frustrate the decree passed by the competent forum in accordance with law despite the bar contained under the Statute. It is, in fact an endeavour to go behind the decree and to avoid the consequence of not meeting the commercial obligations despite the compromise decree and the cheques being dishonoured. Thus, while affirming the impugned order, we consider it appropriate to compensate the first respondent-caveator with costs of the present proceedings quantified at Rs.20,000/-.

9. The appeal is accordingly dismissed with costs of Rs.20,000/- in favour of the first respondent. Consequently, M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

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

+1cc to Mr.R.Nagasundaram, Advocate, S.R.No.738

O.S.A.No.272 of 2015

MP(CO)
CA(20/01/2016)