

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.04.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE M.M.SUNDRESH

O.S.A.Nos.66 of 67 of 2016
and C.M.P.Nos.5073 and 4701 of 2016 and
5639/16

BMIC Limited
Ebenes Skies of 4th Floor,
Rue de L'Institut, Ebene Mauritius. .. Appellant in both
OSAs.

-vs-

- 1.Chinnakannansivasankaran
Rep. by Official Receiver and Manager,
Mr.Bernard Pool.
- 2.Siva Limited
in Liquidation, rep. by its Liquidators,
KPMG, Bermuda.
- 3.R.Chinnakannan @ R.C.K.Vallal
- 4.Chinnakannan Chandrammal
- 5.S.Jayalakshmi
- 6.K.V.P.Baskaran
- 7.Nityavathi Venkatesan
- 8.Srinivasa Enterprises
10th Floor, Block-1, Beliciaa Towers,
Door No.71/1, MRC Nagar Main Road,
R.A.Puram, Chennai.
- 9.Siva Compulink Limited
10th Floor, Block-1, Beliciaa Towers,
Door No.71/1, MRC Nagar Main Road,
R.A.Puram, Chennai.
- 10.Sterling Computers Limited
Mena Kampala Arcade, 3rd Floor,
A Block, B Wing, 113-114,
Sir Theyagaraya Road, T.Nagar,
Chennai-17

11. Sterling Futures & Holidays Limited,
10th Floor, Block-1, Beliciaa Towers,
Door No.71/1, MRC Nagar Main Road,
R.A.Puram, Chennai-28

12. Saravana Engineering
10th Floor, Block-1, Beliciaa Towers,
Door No.71/1, MRC Nagar Main Road,
R.A.Puram, Chennai-28

13. Senthil Products Agencies Limited
10th Floor, Block-1, Beliciaa Towers,
Door No.71/1, MRC Nagar Main Road,
R.A.Puram, Chennai-28

14. Siva Industries & Holdings Limited
10th Floor, Block-1, Beliciaa Towers,
Door No.71/1, MRC Nagar Main Road,
R.A.Puram, Chennai-28

15. Hi Tech Housing Projects Private Limited
10th Floor, Block-1, Beliciaa Towers,
Door No.71/1, MRC Nagar Main Road,
R.A.Puram, Chennai-28

16. Chennai Properties and Investments
Limited, Mena Kampala Arcade,
3rd Floor, A Block B Wing, 113-114,
Sir Theyagaraya Road, T.Nagar,
Chennai-17

17. Hemangini Finance and Leasing Pvt. Limited,
Mena Kampala Arcade,
3rd Floor, A Block B Wing, 113-114,
Sir Theyagaraya Road, T.Nagar,
Chennai-17

18. Tata Teleservices Limited
10th Floor, Tower 1, Jeevan Bharati,
124, Connaught Circus, New Delhi-110 001

.. Respondents
1 to 18 in both
OSAs.

19. M/s. Aadhi Enterprises Private Limited
Represented by its Authorized Signatory
Mr. Sunil Khetpalia
Having office at Flat No.202,
NO.40, Tambusamy Road, Kilpauk, Chennai-10..

19th Respondent
in OSA.67/16

(19th Respondent impleaded as per order
of this Court dated 21.03.2016 made in
CMP.No.5290/16)

Prayer in OSA.No.67/2016:

Appeal filed under Order 36 Rule 1 of the O.S. Rules read with Clause 15 of the Letters Patent against the order dated 09.03.2016 passed in A.No.1245 of 2016 on the file of original side of this Court.

Prayer in OSA.No.67/2016: Appeal filed Under Order 36 Rule 1 of the OS Rules read with clause 15 of the Letters patent against the order dated 03.03.2016 passed in A.616/16 in OA.50/16 in EP.D.No.1423/16.

For Appellant in
both OSAs. : Mr.H.Karthik Seshadri

For Respondents in
both OSAs : Mr.M.K.Kabir, Sr.C.
For Mr.P.T.Rakesh for RR 5 & 8
: Mr.V.Raghavachari
for Mr.A.Shamsudeen Raja
for RR 3, 4, 6 & 12
: Mr.P.Suresh for RR 9 to 11 & 13
: Mr.P.H.Aravind Pandian,
Addl. Adv. General, assisted by
Mr.H.Prosper for RR 14 to 17
: Others - No appearance

* * * * *

O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

We have heard the learned counsel for the appellant for a better part of a hour and half.

2.If we may say, the unnecessary controversy has arisen on account of a simple issue of the execution petition not being numbered, as it is an execution within the meaning of Section 44-A of the Code of Civil Procedure, 1908 and the decree holder has arrayed as parties who are not before the Court which passed the decree. This appears to be the objection on the registry.

3.The matter got further complicated as the appellant / decree holder was insistent on having the applications for interim reliefs heard first without the execution petition being numbered, obviously in his anxiety to somehow secure some amount for satisfaction of the decree. The case of the appellant is that the corporate veil should be pierced in respect of respondent company and even the relatives of the judgment debtor are actually holding the moneys on behalf of the judgment debtor. This is something for the decree holder to establish

and we are only noting the allegation.

4.If the execution petition is numbered, gain say there would be no difficulty in hearing both the issue of executability of the decree against non-parties and along with that, consider whether any interim relief is necessary or not against such of these parties. This simple issue has seen multiple proceedings.

5.We are, thus, unequivocally of the view and not something objected to by any of the parties, that the appeals can be disposed of on the following terms:

- a) The execution petition be numbered and it is open to the non-parties to the decree to raise any objection as may be permissible in accordance with law to their being arrayed as a respondent judgment debtor;
- b) The consideration of interim relief prayed for by the decree holder can be simultaneously considered with the aforesaid issue;
- c) Though the aforesaid issue would normally be considered by the Master of the Court, looking into the complexity of the issue and the stakes involved, the matter be examined by the learned Single Judge holding the roster;
- d) The question whether respondent no.19 ought to be impleaded as a party in view of the allegations made of being a bona fide purchaser would be re-examined by the learned Single Judge.

6.The Original Side Appeals are disposed of in the aforesaid terms. No costs. The interim order stands vacated. Consequently, C.M.Ps. stand disposed of.

7.List the execution petition, after numbering the same, along with interim applications, before the learned Single Judge for directions on 18.04.2016.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

sra

To

The Sub Assistant Registrar
Original Side, High Court,
Madras-104.

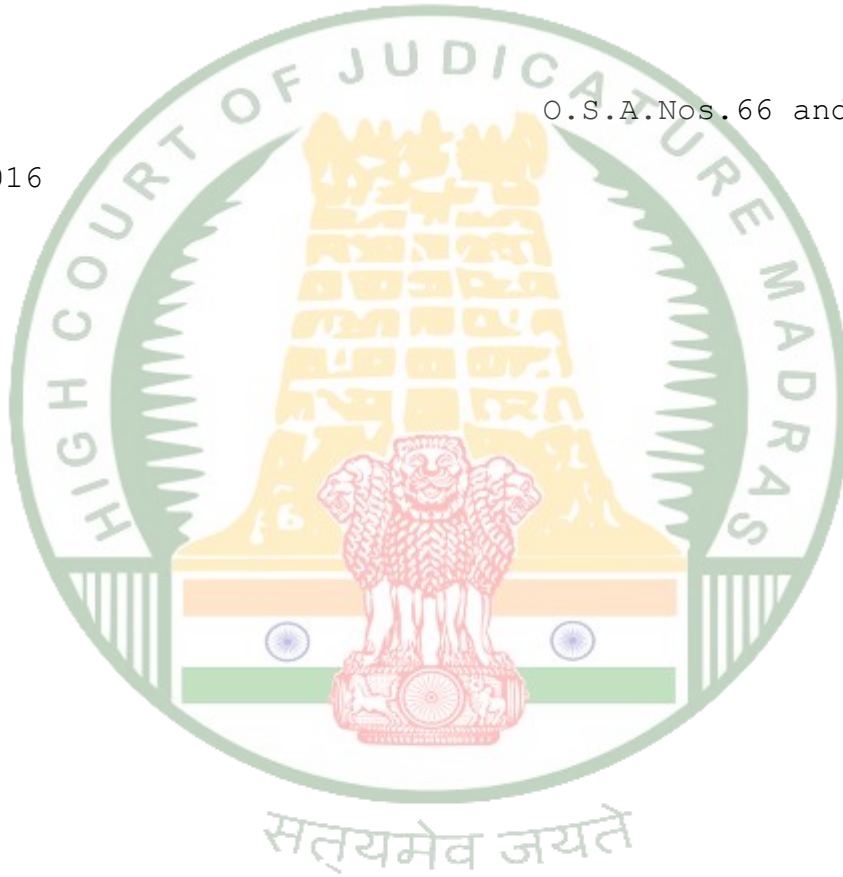
+ 2 ccs to Mr.H.Karthik Seshadri, Advocate Sr 23402 (15/4/16)

+ 1 cc to Mr.A.Shamsudeen Raja, Advocate Sr 23564 (22/4/16)

+1cc to Mr.H.Prosper, Advocate Sr.23918 [21/06/2016]

O.S.A.Nos.66 and 67 of 2016

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