

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH

and

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Writ Appeal No.907 of 2016

and CMP No.11607 of 2016

1.M/s.AEE Castings Limited,
Factory A-1, F-11, Maraimalai Nagar,
Industrial Estate,
Kancheepuram District - 603 209
Tamilnadu.

2. Mr.S.Venkatesan

3. Mrs.V.Jayashankari ...Appellants/Respondents 1 to 3

Vs.

1. Mr.S.P.Nachiappan ... 1st Respondent/Petitioner

2. Indian Overseas Bank,
Rep. By its Authorized Officer,
Maraimalai Nagar Branch,
34, Nandanar Street, NH-2,
Maraimalai Nagar - 603 209 ...2nd Respondents/4th respondent

Writ Appeal against the order made in W.M.P.No.2361 of 2016
in W.P.No.6744 of 2015 dated 27.06.2016. on the file of this
court.

For Appellants : Mr.K.M.Valsala

For Respondents : Mr.S.Satish (for R1)

No appearance (for R2) (Notice served)

JUDGMENT

(Order of the Court was made by HULUVADI G. RAMESH, J.)

This writ appeal is filed against the order made in
W.M.P.No.2361 of 2016 in W.P.No.6744 of 2015 dated 27.06.2016,

allowing the impleading petition filed by an erstwhile Director of the Company

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

3. It appears that the documents of the property of the 1st appellant company were offered by the persons holding Directorship in the 1st appellant Company, as collateral security by way of equity mortgage to the bank, for having rendered a loan. After having discharged the loan, the petitioners/appellants 2 and 3, sought for return of the same in W.P.No.6744 of 2015. The same has been objected to by the bank on the grounds that the other Director viz., Mr.S.P.Nachiappan, the 1st respondent herein has filed an objection on the grounds that he has been illegally removed from the Directorship of the 1st appellant company, by the acts of oppression and mismanagement and still he has 50% of the shares in the 1st appellant company. Impleading application which has been filed by the 1st respondent herein has been allowed by the learned Single Judge and the same is challenged in this writ appeal.

4. The impleading petitioner/1st respondent herein is none other than one of the two Directors of the appellant company, which is registered under the Registrar of Companies. Once the amount has been remitted to the bank, on behalf of the company, so far as the return of the document is concerned, the same has to be returned in favour of the company necessarily. There is no impediment on the part of the bank to return the document to the company, but not to the individual Directors.

5. The fact remains that so far as the independent proceedings initiated before the Company Law Board by one of the Directors viz., S.P.Nachiyappan, the 1st respondent herein, he is shown to have pleaded two grounds one regarding forcibly removal and that another with regard to the share holding and his contribution to the company is concerned .

6. In this regard, the Company Law Board held that the act of oppression and mismanagement set out in the petition was not made out and the 1st respondent has resigned from the above company. So far as the right of the petitioner, if any, as upheld, it has to be worked out elsewhere, even, if he wants to withdraw the amount the same has to be worked out elsewhere.

7. Meanwhile, what has been pleaded by the 1st respondent herein as against the appellants is that there is mismanagement in the company and no balance sheet is produced, etc., and that there is no impediment for the 1st respondent to make a fresh

application before the Company Law Board or elsewhere, as is appropriate to find out the remedy to protect his interest.

8. We are of the view that there would not be any impediment for the bank, to return the documents, which has advanced money and the same is said to have been cleared by the appellant herein. Hence, in these circumstances, we make it clear that the respondent bank, as per the order of the DRT, has to return the documents which were pledged as equity mortgage, that too endorsing properly that it is being returned to the 1st appellant company, so that there will not be any grievance to the 1st respondent, as well, he can fight out his right as per law, elsewhere.

9. However, it is made clear that any act of this appellant company shall not be detrimental to the interest of the petitioner or interest, which has been shown to be recognised by the Company Law Board.

10. With the above direction, writ appeal is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

+1cc to Mr. K.S. Kumar, Advocate, S.R.No.60265

+3cc to Mr.S. Sathish, Advocate, S.R.No.59988

RV(CO)

md (10/11/2016)

W.A.No.907 of 2016

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