

Comp.A.No.160 of 2013 in C.P.No.23 of 2003

T.S.SIVAGNANAM,J

Heard the learned Official Liquidator and the learned counsel for the secured creditor.

2. This application had been filed by the learned Official Liquidator praying for a direction to transfer the two appeals, which were pending before the Debts Recovery Tribunal-III (hereinafter called the DRT-III) to this Court, to declare the agreements dated 23.2.2005 and 22.1.2007 as fraudulent and to determine the occupation charges to be paid by respondents 1 and 2 from the date of their occupation of the premises till the date of handing over.

3. This Court passed orders on this application on various dates. This Court initially directed the cases pending before the DRT-III to be transferred to this Court. Permission was granted to the learned Official Liquidator to issue advertisements for the sale of the property. As against the order passed transferring the appeals from the DRT-III to this Court, appeals were preferred by respondents 1 and 2 in O.S.A.Nos.389 to 391 of 2013 challenging the order dated 05.11.2013 in Comp.A.No.160 of 2013 and Transfer Comp.A.Nos.1108 and 1109 of 2013 in C.P.No.23 of 2003.

4. The said original side appeals were allowed and the order transferring the appeals from the file of the DRT-III to the file of this Court, was set aside. However, the other directions issued in the order dated

05.11.2013 were not interfered. Consequently, this Court, by order dated 03.2.2014, issued certain directions to the learned Official Liquidator and the operative portion of the order dated 03.2.2014 reads as follows :

".....

8. By the order of the Division Bench dated 28.1.2014, two things have happened viz. (i) that the transfer of appeal Nos.1 and 2 of 2013 from DRT-III, which was not under challenge, has been set aside; and (ii) that the direction of the Official Liquidator to sell the property has been set aside.

9. The Division Bench did not say that this Court has no jurisdiction to deal with the remaining prayers in Company Application No.160 of 2013. Therefore, there is no impediment for taking up at least two prayers viz. (i) to declare the agreement dated 23.2.2005 and 22.1.2007 to be a fraudulent preference; and (ii) to determine the occupation charges to be paid by the respondents 1 and 2 from the date of their occupation.

10. In so far as the prayer for fixing the occupation charges is concerned, some evidence is required. Therefore, the learned Official Liquidator is directed to file a report, after ascertaining on a scientific basis, the fair rent that should be fixed for the applicant, which was in occupation of the property, to pay. In the meantime, the learned Official Liquidator is permitted to hand over possession to the bank, which is prepared either to stand outside the winding up and bring the

property to sale or even to allow the Official Liquidator to bring the property to sale. But, since there is an impediment now for the Official Liquidator to sell the property, the property shall be handed over to the bank and the bank is free to exercise their rights. The bank shall also file a report regarding the fair market value of the rent."

5. In terms of the above direction/order, the learned Official Liquidator was directed to file a report, after ascertaining on a scientific basis, on the fair rent to be fixed for the applicant, who was in occupation of the property. In the meantime, the learned Official Liquidator was permitted to hand over possession to the bank. It appears that the said directions have not been carried out till date.

5. In the light of the fact that this application is pending from 2013, this Court is of the view that no useful purpose will be served in keeping this application pending any longer and it would suffice to issue certain directions.

6. Accordingly, the above application stands disposed of by directing the learned Official Liquidator to proceed further as directed in the order dated 03.2.2014 to engage the services of an appropriate valuer, who shall calculate the fair rent on a scientific basis after carrying out the inspection of the property with prior intimation to the bank. After ascertaining the fair rent, the learned Official Liquidator is granted liberty to file an appropriate application clearly setting out as to what is the total amount of fair rent, which shall be considered as and when such application is filed. It is

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made clear that respondents 1 and 2 are not entitled to plead any limitation when such an application is filed by the learned Official Liquidator, as the orders dated 05.11.2013 as well as 03.2.2014 have become final with regard to the occupation charges.

16.2.2017

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