

IN THE HIGH COURT OF JUDICATURE OF MADRAS

JUDGMENT RESERVED ON : 19.01.2017

JUDGMENT PRONOUNCED ON : 22.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

O.S.A.No.369 of 2013

The Recovery Officer,
Employees Provident Fund Organisation,
Sub Regional Office,
SJ Plaza, Swarnapuri,
Anna Salai,
Salem - 636 004. Appellant

-vs-

1.The Official Liquidator,
High Court, Madras, as the Liquidator of
Uma Maheswari Spinning Mills Ltd.,
(in liquidation).

2.The Authorised Officer,
Indian Overseas Bank,
Regional Office, Five Roads,
Salem. Respondents

Prayer: Original Side Appeal filed under Order XXXVI, Rule 9 of
Original Side Rules read with Clause 15 of the Letters Patent,
against the fair and decretal order dated 26.03.2013 passed in
Company Application No.493 of 2011 in C.P.No.173 of 2001
respectively on the file of the Original Side of the High Court
of Madras.

For Appellant	:	Mrs.R.Meenakshi
For Respondent No.1	:	Mr.B.Dhanaraj
For Respondent No.2	:	Mr.F.D.Benjamin George

J U D G M E N T

[Judgment of the Court was delivered by N.AUTHINATHAN, J.]

M/s.Uma Maheswari Mills Ltd., is a covered
Establishment under the Employees Provident Fund and

Miscellaneous Provisions Act, 1952. The said Company was ordered to be wound up by this Court on 20.12.2006 in C.P.No.173 of 2001. The Regional Provident Fund Commissioner-II and Recovery Officer, Employees Provident Fund Organisation, Salem, passed the following order, in its proceedings in No.TN/SLM/16681/Recovery/2011 dated 18.01.2011:

"Considering all the above facts and circumstances, I, B, Andrew Prabhu, Regional Provident Fund Commissioner-II, Salem order and declare the Authorised Officer, Indian Overseas Bank, Main Branch, Salem, as 'Deemed defaulter' and the amount of Rs.8,20,91,568/- be sent within 15 days i.e. on or before 2nd February 2011, failing which, the entire amount of Rs.8,20,91,568/- (Rupees eight crores twenty lakhs ninety one thousand five hundred and sixty eight only) will be recovered from Authorised Officer, Indian Overseas Bank, Main Branch, Salem (second respondent herein), in accordance with the provisions as provided under Section 8B to 8G of the EPF & MP Act, 1952."

2. Aggrieved by the said order, the second respondent Bank approached this Court by way of W.P.No.2718 of 2011 and the said order has been stayed by the Writ Court.

3. In Company Application in C.A.No.1453 of 2010, the second respondent was permitted to go out of the liquidation proceedings and was permitted to sell the movable and immovable properties of the Company in liquidation being secured creditor under the SARFAESI Act, by associating the Official Liquidator, so as to enable him to settle the priority under Section 529-A of the Companies Act, 1956.

4. Thereafter, invoking the provisions of SARFAESI Act and properties of the Company were sold for a total consideration of Rs.12.57 crores.

5. The appellant filed Company Application in C.A.No.493 of 2011 under Order XIV Rule 8 of the Original Side Rules read with Rule 9, 11(b) and 19 of the Companies (Court) Rules, 1959, to direct the respondents to release the provident fund dues to the tune of Rs.8,20,91,568/- on priority basis in his favour.

6. The Company Court refused to entertain the Application by an order dated 26.03.2013 on the ground that the order demanding Rs.8,20,91,568/- has been stayed by the Writ

Court. Aggrieved by the said order, the present Appeal has been filed by the appellant.

7. The learned counsel appearing for the appellant would contend that the order of stay granted by the Writ Court in W.P.No.2718 of 2011 will not prevent the appellant from filing the Company Application, seeking a direction from the Company Court to release the provident fund to the tune of Rs.8,20,91,568/- on priority basis and that, therefore the Company Court was not justified in refusing to entertain their Application. He has also on the decision in EMPLOYEES PROVIDENT FUND COMMISSIONER vs. O.L. OF ESSKAY PHARMACEUTICALS LIMITED [2012-I-LLJ-1] wherein it has been held that the "Amount of dues under E.P.F. Act, 1952 would be a first charge under Section 11 (2) thereof, on assets of establishment payable in priority to dues of workmen and secured creditors under Section 529-A, of Companies Act, 1956". He has further pointed out that the Official Liquidator has admitted their claim to the tune of Rs.7,90,60,506/-.

8. The Company Court has pointed out that without getting the stay vacated, the Application of the appellant cannot be entertained. It is an admitted fact that the order demanding payment of Rs.8,20,91,568/- has been stayed by the Writ Court and the stay is in force. Therefore, as of now, the appellant cannot seek an order from the Company Court which would result in a conflict with the order of stay already granted in the Writ Petition. In view of the stay granted by the Writ Court, the appellant was prevented from taking action on the basis of their order dated 18.01.2011 against the second respondent. It is true that the Official Liquidator has admitted the claim of the appellant to the tune of Rs.7,90,60,506/-. However, the appellant cannot seek an order, which would turn out to be in conflict with the stay granted by the Writ Court. Such a situation is to be avoided. Therefore, we are of the considered view that the order of the Company Court refusing to entertain the Application could not be faulted and it deserves to be upheld.

9. For the reasons stated above, the Original Side Appeal is dismissed. No costs.

sd/
Assistant Registrar(CS V)

/true copy/

Sub Assistant Registrar

sri

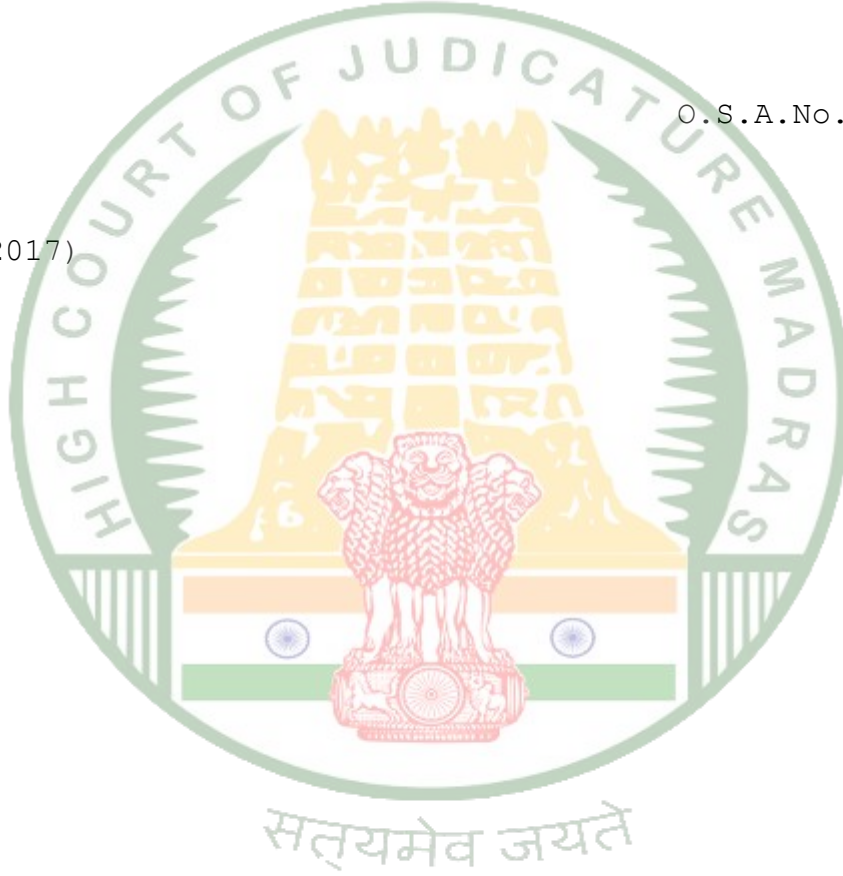
To

- 1.The Official Liquidator,
High Court, Madras.
- 2.The Sub Assistant Registrar,
Original side, High Court,
Madras.

+lcc to Mr.B.Dhanaraj, Advocate SR.No.11590
+lcc to Mr.R.Meenakshi, Advocate SR.No.11641
+lcc to Mr.F.B.Benjamin George Advocate sR.No.11680

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