

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

ORIGINAL SIDE APPEAL Nos. 6 & 7 OF 2016

COMMON JUDGMENT: (Per the Hon'ble Smt. Justice Anis)

These Original Side Appeals are filed under Clause 15 of the Letters Patent Appeal read with Section 483 of the Companies Act, 1956 against the common order, dated 29.04.2016, passed by the learned single Judge of this Court in Company Application Nos.1674 & 1675 of 2008 in Company Petition No.128 of 2005.

2. Appellant herein is the applicant in the aforesaid Company Applications, whereas the respondent herein is the respondent.

3. For the sake of convenience, the parties are referred to as arrayed in the aforesaid Company Applications.

4. The applicant is the resident of Pallamalli Village, Cheemakurthi Mandal, Prakasam District, filed the Company Application No.1674 of 2008 praying the Court to declare and hold that the agricultural lands admeasuring Ac.11.28 cents in Survey No.179, Ac.5.92 cents in Survey No.180/2 and Ac.6.30 cents in Survey No.400/2 totally admeasuring Ac.23.47 cents situated in Kalujuvvalapadu Village, Tarlupadu Mandal, Prakasam District as his personal

property and consequently direct the Official Liquidator to lift the attachment.

5. The applicant also filed the Company Application No.1675 of 2008 praying the Court to stay the auction notice dated 04.12.2008 published in 'Eenadu' Telugu newspaper on 07.12.2008 and 'Saakshi' Telugu newspaper on 08.12.2008 and all consequential auction proceedings in so far as they affect the applicant's lands admeasuring Ac.11.28 cents in Survey No.179, Ac.5.92 cents in Survey No.180/2 and Ac.6.30 cents in Survey No.400/2 totally admeasuring Ac.23.47 cents situated in Kalujuvvalapadu Village, Tarlupadu Mandal, Prakasam District.

6. The brief averments made in the applications filed before the learned single Judge of this Court are as follows:

The appellant is claiming right and title to the aforesaid agricultural lands totally admeasuring Ac.23.47 cents situated in Survey Nos.179, 180/2 and 400/2 of Kalujuvvalapadu Village, Tarlupadu Mandal, Prakasam District. According to the applicant, he entered into an agreement with Vijetha Agro Farms (India) Limited, the Company in liquidation (for short, 'the Company'), whereunder the Company had undertaken to repay a sum of Rs.6,24,700/- to the applicant. The sum covered by the agreement is allegedly paid by the applicant to depositors of the Company. The application schedule property was offered

as security for discharge of the amount paid by the applicant. The agreement binds the Company to execute a regular Sale Deed in favour of the applicant, in case of default of repayment of Rs.6,24,700/-. As the Company did not pay the amounts, the applicant filed C.D.No.224 of 2002 on the file of the District Consumer Forum, Ongole, Prakasam District, seeking a direction to the opposite party to pay the complainant a sum of Rs.6,24,700/- with interest @ 18% per annum from 08.08.2002 till realization and also sought for a direction to pay Rs.50,000/- towards damages caused to the complainant. On 08.01.2003, the said C.D. was allowed. The applicant filed P.P.No.11 of 2003 in the said C.D. seeking a direction to the Managing Director of the Company to execute a Sale Deed in favour of the applicant. On 18.02.2003, the President, District Consumer Forum, executed the Sale Deed in favour of the applicant and the same was registered as document No.211 of 2003 with the Sub-Registrar, Markapuram, Prakasam District. In pursuance of the Sale Deed dated 18.02.2003, the applicant got mutated his name in the revenue records and obtained Pattadar Passbook and entered his name in Adangal. On 07.05.2007, the representatives of the Official Liquidator sealed the gate of the application schedule property. On 10.05.2007, the applicant made a representation to the Official Liquidator to delete the application schedule property from the list of the Company's properties under attachment. The applicant came to know

that C.P.No.128 of 2005 was filed in this Court for winding up of the Company and on 04.12.2006, the Company was ordered to be wound up and the Official Liquidator was appointed. According to the applicant, the application schedule property could not have been attached by the Official Liquidator treating the same as property of the company. The Sale Deed in favour of the applicant is genuine and *bona fide*. The sale transaction took place much earlier to filing of the Company Petition and the winding up proceedings. On account of completion of the sale transaction, the application schedule property cannot be treated as property of the company. According to the applicant, the agreement dated 08.07.2002 was executed by the Company in his favour and the Managing Director of the Company committed default in complying with the terms of the agreement.

7. On 26.06.2009, the Official Liquidator filed a common report and opposed the prayer for deletion of the application schedule property and contended that there are serious allegations against the ex-management of diversion and misutilization of depositors' funds to its sister concerns. The properties of the Company were attached by the Government of Andhra Pradesh. CC1/FD/2006 is pending on the file of the Principal District & Sessions Judge, Guntur, and also alleged that there is diversion of amount from the accounts of

the company to individuals and sister concerns and mismanagement of funds and assets of the company.

8. After hearing both sides, the learned single Judge of this Court dismissed the Company Application Nos.1674 & 1675 of 2008 and held that the application schedule property shall continue to be under winding up process of the Company and the proceeds of the Company are realized to discharge the liabilities of the company.

9. Aggrieved by the said common order, the applicant filed the present appeals.

10. Learned counsel for the appellant argued that the learned single Judge of this Court ought to have seen under the powers vested under Section 25 of the Consumers Protection Act, 1986, to the District Consumer Forum, and cannot declare that the properties are Company properties. He further argued that the single Judge of this Court ignored that the orders passed by the District Consumer Forum attained finality, since no appeal has been preferred and finally argued that the applicant is the owner of the application schedule property having valid title, and therefore, prayed the Court to set aside the orders passed by the learned single Judge and allow the appeals.

11. On the other hand, the learned Official Liquidator argued that there is diversion of amount from the accounts of the Company to individuals and sister concerns and mismanagement of funds and assets of the Company and prayed the Court to dismiss the appeals.

12. A perusal of the record shows that the applicant is claiming the total extent of Ac.23.47 cents in Survey Nos.179, 180/2 and 400/2 situated in Kalujuvvalapadu Village, Tarlupadu Mandal, Prakasam District, as his personal property. The applicant also admits that originally the application schedule property belongs to the respondent Company, but claims his title to the application schedule property as per the orders of the District Consumer Forum in C.D.No.224 of 2002, and the said District Consumer Forum executed the Sale Deed in favour of the applicant. The learned single Judge after perusing the entire record clearly held that the applicant filed C.D.No.224 of 2002 against one Ramakrishna Singh, Managing Director of Vijetha Group of Companies, Guntur, but not against the respondent Company. The District Consumer Forum passed the orders against the said Ramakrishna Singh, but not against the respondent Company in liquidation. It is also rightly held that the agreement dated 08.07.2002 in favour of the applicant was not executed by the respondent Company, but someone claiming to be the Managing Director of Vijetha

Group of Industries, executed the said agreement. Further, the said Ramakrishna Singh was not the Managing Director of the Company in 2002-2003. Therefore, the learned single Judge rightly held that the consumer dispute case was filed against Ramakrishna Singh in his alleged capacity as the Managing Director of Vijetha Group of Industries, but not against the respondent Company. The learned single Judge further rightly held that the Company is not a party to C.D.No.242 of 2003 and the agreement was not executed by the Company in favour of the applicant. Thus, the applicant failed to establish his right, title to the application schedule property and failed to establish conveyance or acquisition of title to the schedule property from the respondent Company. It is also observed that some unauthorized persons, who executed the agreement, do not take away the title of the respondent company. Thus, the applicant failed to discharge the burden that the properties claimed by him belong to him and they are his personal properties. Therefore, the learned single Judge, after going into merits of the case, has passed the well reasoned order and this Court does not want to interfere with the said order.

13. With the above observations, these Original Side Appeals are dismissed by confirming the common order, dated 29.04.2016, in Company Application Nos.1674 & 1675 of 2008 passed by the learned single Judge of this Court.

14. Miscellaneous Petitions, if any, pending in these
Original Side Appeals shall stand closed.

(SANJAY KUMAR, J)

(ANIS, J)

03.01.2017
MVA



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