IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice N.ANAND VENKATESH

O.S.A.Nos.117 to 120 of 2014
and
M.P.Nos.1 of 2014 and 1, 1, 1 of 2015

The Sri Ganapathy Mills Company Limited
rep. by its Managing Director
K.Vee.Rajenthiran .. Appellant in all the O.S.As

Vs

1.The Official Liquidator
at the Provisional Liquidator
of The Sri Ganapathy Mills Company
Limited (in liquidation),
Kuralagam, Block 1, First Floor,
Esplanade, Chennai - 108.

2.Kotak Mahindra Bank Limited,
Ceebros Centre, 39, I Floor,
Montieth Road, Egmore,
Chennai - 8. .. Respondents in all the O.S.As

Appeals preferred under Order XXXVI Rule 1 of O.S. Rules r/w Clause 15 of Letters Patent against the order dated 02.04.2014 made in C.A.Nos.596, 597, 598 and 599 of 2017 in C.P.No.51 of 2005.

For Appellant .. Mr.A.K.Mylsamy
for M/s.A.K.Mylsamy Associates

For Respondents.. Mr.A.P.Babu for R1
Mr.Om Prakash,
Sr. Counsel
for M/s.Ramalingam Associates
for R2

COMMON JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

All these appeals have been filed by the appellant, being aggrieved over the dismissal of the applications including the applications filed seeking to stay further proceedings and to set aside the exparte order dated 19.12.2006. Incidentally, the learned single Judge, on finding that the appellant has not complied with the undertaking given, restored the original order of winding up.

2.Learned counsel appearing for the appellant would submit that subsequent to the orders by the learned single Judge, proceedings have been initiated under The Recovery of Debts Due to Banks and Financial Institutions Act, 1993. It was put into challenge before the Debts Recovery Tribunal - I, Chennai. The Tribunal passed an order in favour of the second respondent. However, an appeal was filed by the second respondent against the interest levied interalia contending that what is liable to be paid by the appellant is the contractual rate as against the simple interest. In the aforesaid proceedings, the appellant would deposit a sum of Rs.1 crore to comply with the conditional order while condoning the delay. Therefore, the affidavit filed before the learned single Judge and thereafter before us will have to be taken as proper compliance.

3.Learned senior counsel appearing for the second respondent would submit that while admitting the company petition, the appellant, despite notice having been served, did not appear. Thereafter, an order was passed directing the appellant to withdraw certain amount on 02.09.2008. This order was not complied with. There was partial compliance of the two subsequent orders dated 22.06.2010. Further direction issued also was not complied with. The appellant had failed in complying with the orders passed by this Court, which have become final inter se parties. It is also to be noted that even the order passed by the Tribunal has not been appealed against by the appellant. The affidavit filed has also not been complied with notwithstanding the dispute regarding the quantum. The demand made before the Debts Recovery Tribunal was to comply with the conditional order passed therein. The subsequent proceedings initiated by the second respondent will not vitiate the non-compliance of the orders passed by this Court, which have been taken note of in dismissing the application. Hence no interference is required.

4.We do not find any merit in these appeals. Admittedly, the undertaking given either before the learned single Judge or before us have not been complied with in letter and spirit. The appellant has been given sufficient opportunities by the learned single Judge himself on two occasions. The alleged compliance as submitted by the learned counsel for the appellant is on the order passed by the Tribunal and not by this Court. In fact, this Court was constrained to grant an interim order, based upon the undertaking affidavit filed by the appellant, which has been breached. The appellant has been steadfast in not complying with the orders passed mostly by consent. It appears that the liability is several crores as of now. There is no dispute on the liability as such, which can be, at best stated with respect to the quantified sum. Thus, looking from any perspective, this Court does not find any merit in these appeals. Initiating subsequent proceedings pursuant to the order passed by the learned single Judge by the second respondent would not vitiate the non-compliance of the orders passed by this Court. Therefore, all these Original Side Appeals stand dismissed. Accordingly, the order dated 02.04.2014 made in C.A.Nos.596, 597, 598 and 599 of 2017 in C.P.No.51 of 2005 stands confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

mmi

To

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

O.S.A.Nos.117 to 120
of 2014

RSI(CO)
TR(09/07/2018)