

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :05.06.2018
PRONOUNCED ON:08.06.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1550 of 2004
and
C.M.P.No.12163 of 2004

- 1.Gopal Sankar
- 2.Purushothaman
- 3.Saraswathi Ammal

... Appellants

Vs.

- 1.The District Collector,
Cuddalore District,
Cuddalore.
- 2.The Tahsildar,
Panruti.
- 3.Sudharsan Chits Pvt. Ltd.,
(In Liquidation),
represented by
The Official Liquidator,
High Court of Kerala,
Cochin.

... Respondents

Prayer:Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the Principal District Judge of Cuddalore dated 26.02.2002 passed in A.S.No.82 of 2002 dismissing the appeal, confirming the judgment and decree dated 17.12.1999 of the Additional District Munsif Court, Cuddalore in O.S.No.676 of 1995.

For Appellants : Mr.R.Gururaj

For RR1 and R2 : Mrs.A.Madhumathi
AGP (CS)

R3 Dismissed vide order dated
25.7.2006

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 26.02.2002 passed in A.S.No.82 of 2002 on the file of the Principal District Court, Cuddalore confirming the judgment and decree dated 17.12.1999 passed in O.S.No.676 of 1995 on the file of the Additional District Munsif Court, Cuddalore.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiffs in brief is that the plaintiffs subscribed for chits with the third defendant and the first plaintiff was the successful bidder in the chit and received the bid amount and the plaintiffs 2 and 3 are the guarantors. The plaintiffs were paying the monthly installments regularly till the third defendant went under liquidation and thereafter, the plaintiffs could not pay the amount, since there was no demand to receive the amount and if the amounts paid by the plaintiffs are taken into consideration, no amount will be due from the plaintiffs to the third defendant. The third defendant is now administered by the official liquidator of the High Court of Kerala and the third defendant through the official liquidator, if at all entitled to recover the amount, can do only by executing the decree obtained and while so, the third defendant is attempting to receive/realize the amount from the plaintiffs through the defendants 1 and 2 by invoking the provisions of the Revenue Recovery Act and to the notice dated 05.07.1995, the plaintiffs have issued a suitable reply and the third defendant being a private chit company, it cannot resort to the provisions of the Revenue Recovery Act and hence the demand notices issued by the defendants under the Revenue Recovery Act are illegal and cannot be enforced and hence the suit for necessary reliefs.

5. The case of the defendants 1 and 2 in brief is that the suit laid by the plaintiffs is not maintainable either in law or on facts. The plaintiffs have admitted that they have subscribed to the chits run by the third defendant and the third defendant on liquidation, the High Court of Kerala in C.C.No.2320 of 1988 dated 10.02.1989 ordered for the recovery of amount from the defaulters and therefore the case of the plaintiffs that the third defendant would be entitled to recover the dues only pursuant to the obtainment of the decree in the Civil suit has no legs to stand and the third defendant represented by the official liquidator, High Court of Kerala, Ernakulam had obtained the decree in the abovesaid proceedings

and on that basis, recovery proceedings had been initiated. Already the plaintiffs had been directed to pay the amount, failing which, proceedings under the Revenue Recovery Act would be resorted to and it is false to state that the provisions of the Revenue Recovery Act cannot be invoked to collect the dues of the third defendant. The Government of Kerala has decided that it is necessary in public interest to make applicable the provisions of the Revenue Recovery Act to collect the dues due to the Official Liquidator and thereby issued the notification accordingly, letters had been received from the Collector, Ernakulam by the first defendant to collect the amount by invoking the provisions under the Revenue Recovery Act and therefore the plaintiffs cannot evade the payment by filing the Civil action and hence the suit is liable to be dismissed.

6.The case of the third defendant in brief is that the suit laid by the plaintiffs is not maintainable either in law or on facts. The plaintiffs are liable to pay the amounts to the third defendant as per the decree passed by the High Court of Kerala in C.C.No.2320 of 1988 and the plaintiffs are not entitled to seek the relief sought for in the suit and the liquidator has taken the legal steps for the recovery of the amount and it is not open to the plaintiffs to contend that the Revenue Recovery Act is not applicable for the recovery of the amount due to the third defendant. The third defendant is entitled to have recourse to the provisions of the Revenue Recovery Act and further the suit laid by the plaintiffs is not maintainable as per Section 446(1) of the Companies Act and the suit is liable to be dismissed.

7.In support of the plaintiffs' case, Exs.A1 to A7 were marked. On the side of the defendants, Exs.B1 to B5 were marked. No oral evidence has been adduced on both sides.

8.On a consideration of the materials placed on record and the submissions made, the Courts below were pleased to dismiss the plaintiffs' suit and impugning the same, the second appeal has been laid.

9.At the time of admission of the second appeal the following substantial questions of law were formulated for consideration.

- i. Whether the provisions of Revenue Recovery Act of any Government are applicable to a private Company as the respondent?
- ii. Whether any G.O or any other proceeding has been made in order to apply the provisions of The Revenue Recovery Act to the respondent?
- iii. Whether the Provisions of Kerala Revenue Recovery Act be extended to natives of

Tamil Nadu and properties in Tamil Nadu?
iv. Whether the provisions of Revenue Recovery Act can be invoked merely because Government Officials are involved in execution?

10. From the materials placed on record and the submissions made and also from the admissions contained in the pleadings, it is found that the plaintiffs have subscribed to the chits run by the third defendant and accordingly owe money to the third defendant. Though, the plaintiffs would claim that they had been periodically remitting the amount to the third defendant, with reference to the abovesaid case of the plaintiffs, there is no material forthcoming. Similarly, with reference to the claim of the plaintiffs that only the third defendant is liable to pay the amount to the plaintiffs, the same also is not borne out by any materials on record. Thus, resultantly, it is seen that when admittedly, the plaintiffs have subscribed to the chits run by the third defendant and liable to pay the amount thereby, being the successful bidders, accordingly, it is found that the third defendant would be entitled to recover the amount from the plaintiffs as per law.

11. Materials placed on record would go to show that the third defendant went into liquidation and accordingly as per the proceedings of the High Court, Kerala, it is found that the Official Liquidator has been appointed to monitor the affairs of the third defendant and accordingly it is seen that the High Court, Kerala has empowered the Official Liquidator to recover the amounts due to the third defendant from the various defaulters as per the order passed in C.C.No.2320 of 1988 dated 10.02.1989. Further, following the said order, it is found that the Kerala Government has issued the notification empowering the Official Liquidator to recover the amount from the defaulters by invoking the provisions of Revenue Recovery Act and accordingly, it is found that recovery proceedings had been initiated against all the defaulters including the plaintiffs for the recovery of the amount due to the third defendant as per the abovesaid Act. As rightly found by the Courts below, the Collector of a District can request the Collector of another District to collect the suit dues under the Revenue Recovery Act and in this connection the Courts below are right in relying upon the Exs.B4 and B5. Accordingly it is found that various communications had been issued by the defendants 1 and 2 to the plaintiffs to remit the amount due to the third defendant, failing which, proceedings under the Revenue Recovery Act would be resorted to. As such it is found that when the third defendant's concerns had been entrusted to the Official Liquidator by the Order of the High Court, Kerala and in the wake of the same, the Revenue Recovery Act proceedings had been invoked by the Kerala Government and the follow up action has been taken thereto by

the defendants 1 and 2 as per the Act, the plaintiffs cannot be allowed to contend that the defendants are not entitled to resort to the provisions of the Revenue Recovery Act for collecting the amount due from them. Thus, it is found that the Courts below are justified in upholding the case of the defendants for invoking the provisions of the Revenue Recovery Act in accordance with the orders issued by the High Court, Kerala followed by the notification of the Kerala Government. In such view of the matter, I do not find any reason to interfere with the above said determination of the Courts below that the defendants are entitled to resort to the provisions of the Revenue Recovery Act.

12. In addition to that, as rightly contended by the defendants, in particular, the third defendant company having not been driven to liquidation and the Company Court i.e., the High Court, Kerala had appointed an Official Liquidator to run the business of the third defendant for the purpose of collecting the arrears due to it, it is found that as rightly determined by the Courts below, if at all the plaintiffs have any cause of action as against the consequential proceedings which had emanated therefrom, the plaintiffs should have resorted only knocked at the doors of the company Court, ie., the High Court, Kerala for redressing their grievances and thus it is found that as rightly determined by the Courts below, the plaintiffs' suit is barred under section 446(1) of the Indian Companies Act 1956. Thus, as rightly determined by the Courts below, it is found that the plaintiffs' suit is unsustainable and misconceived in view of the bar under section 446(1) of the Indian Companies Act 1956.

13. In the light of the above discussions, on all accounts it is found that the plaintiffs are not entitled to maintain the suit as well as not entitled to obtain the reliefs prayed for and the dismissal of the plaintiffs' suit by the Courts below, accordingly, does not call for any interference. For the reasons aforesaid, the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiffs.

14. In support of his contentions the counsel for the plaintiffs relied upon the decisions reported in

1. (1997) 1 Supreme Court Cases 35 [Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others]
2. AIR 1955 Madras 639 [Director of Public Instruction Vs. N.Mohandas]
3. 1995 (1) Law Weekly 141 [Annapoorni Vs. Janaki]
4. AIR 1970 Supreme Court 838 [Smt.Kaushalya Devi and Others Vs. K.L.Bansal]
5. AIR 1970 Supreme Court 794 (V 57 C 167) [Ferozi Lal Jain

- Vs. Man Mal and another]
6. (1996) 6 Supreme Court Cases 424 [Allahabad Development Authority Vs. Nasiruzzaman and others]
 7. (1996) 6 Supreme Court Cases 96 [P.G.Eshwarappa Vs. M.Rudrappa and others]
 8. (1990) 1 Supreme Court Cases 193 [Sushil Kumar Mehta Vs. Gobind Ram Bohra (dead) Thorugh his Lrs]
 9. AIR 1973 Supreme Court 2391 (1) [Chandrika Misir and another Vs. Bhaiyalal]
 10. AIR (38) 1951 Supreme Court 230 [The United Commercial Bank Ltd Vs. Their Workmen]
 11. AIR 1991 Supreme Court 1546 [Ishar Singh Vs. National Fertilizers and another]
 12. AIR 1969 Supreme Court 78 [Dhulabhai etc Vs. State of M.P and another]

The principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the present case.

15. In fine, the second appeal is found to be devoid of merits and hence dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

mfa

To

1. The Principal District Judge,
Principal District Court,
Cuddalore.

2. The Additional District Munsif,
Additional District Munsif Court,
Cuddalore.

Copy to

The Section Officer,
VR Section,
High Court.

+1 CC to Mr.R. Gururaj, Advocate sr 36212.

+1 CC to The Govt. Pleader sr 35689

S.A.No.1550 of 2004

SP(19/07/2018)