

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CRP (PD) No.3796 of 2013
and M.P.No.1 of 2013

Judgment reserved on 20.10.2017	Judgment delivered on 09.02.2018
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M.O.H. Aslam

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Petitioner

Vs.

1.M/s.Evergreen Tube Well Services
(P) Ltd., rep. By its Authorised
representative Thiru Pazhaniyandi
s/o Thirumudi Mudaliar,
No.102-B, Old No.50, Bharathi Street,
Pondicherry.

2.M.O.H.Iqbal
3.H.Najuminissa
4.Shakeela
5.Faisal

सत्यमेव जयते...

Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 08.04.2013 passed in CMA No.2 of 2011 on the file of the II Addl.District Judge, Pondicherry reversing the fair and decretal order dated 16.03.2011 passed in I.A.No.138 of 2011 in I.A.No.1446 of

2005 in I.A.No.738 of 2011 in O.S.No.207 of 1978 on the file of Principal Sub Judge, Pondicherry.

For Petitioner : Mrs.Chitra Sampath,
Senior Counsel for
M/s.T.S.Baskaran

For R1 : Mr.R.Thiagarajan

For R2 to R5 : No appearance

ORDER

The Revision Petitioner is the plaintiff in Suit and first respondent in CMA, the first respondent is the third party to the suit and appellant in CMA and the second respondent is second defendant in the suit and second respondent in CMA. Respondents 3 to 5 are the legal heirs of second defendant and respondents 4 to 6 in CMA.

2. The petitioner filed suit in O.S.No.207 of 1978 on the file of Sub Court, Pondicherry. He filed the said suit for passing of preliminary decree dissolving the Evergreen Tube Well Services, a Partnership Firm for taking accounts from 01.07.1993 till the date of the suit and to value the assets of the firm mentioned in the plaint and other assets whatever it is found and directing each partner of the firm to pay into court any balance due from him to partnership firm

and other relief, appoint a receiver to take charge of management of firm with all its assets and liabilities till the winding up of firm is completed and for permanent injunction. After contest, the said suit was dismissed. The petitioner filed A.S.No.260 of 1987 on the file of this Court. The said Appeal was allowed by this Court by judgment and decree dated 26.04.1999 and passed a preliminary decree for dissolution of partnership firm and for accounts. The LPA No.105 of 1999 filed by the second respondent and A.M.S.Issac, second defendant in the suit was dismissed by the Division Bench of this Court on 03.12.2002. SLP filed by them also was dismissed.

3. The petitioner filed I.A.No.738 of 1999 for appointment of receiver. Trial Court, by order dated 03.03.2003 allowed the said application but did not appoint any receiver. The petitioner filed a memo to name the receiver which was allowed by the Trial Court on 07.09.2004. Meanwhile, the second respondent herein and second defendant in the suit filed I.A.No.732 of 1999 seeking amendment of the plaint. The said I.A. was dismissed. Against the said order, second respondent herein and second defendant filed CRP No.732 of 2005 challenging the order passed against them in I.A.No.732 of 1999. This Court, by order dated 17.08.2005 directed the Trial Court to name the receiver and also appoint an Advocate Commissioner.

The petitioner filed I.A.No.1446 of 2005 to appoint him as a party receiver as there is no panel of receiver in the Court. The said application was dismissed on 23.11.2005 on the ground that no party receiver can be appointed. Challenging the said order of dismissal, the petitioner filed CRP No.3656 of 2007. This Court, by order dated 27.11.2007 allowed the CRP and restored I.A.No.1446 of 2005 and directed the Trial Court to dispose of the I.A. on merits. The Trial Court, by order dated 18.10.2010 allowed I.A.No.1446 of 2005 appointing the petitioner as party receiver for the assets of the partnership firm and also directed the petitioner to take charge of management of first respondent herein.

4. The second respondent and second defendant in the suit filed CMA No.7 of 2010 challenging the said order. After contest, the said CMA was dismissed. The first respondent filed I.A.No.138 of 2011 to set aside the orders dated 18.10.2010 in I.A.No.1446 of 2005 appointing petitioner as party receiver to take charge of management of first respondent. The said I.A.No.138 of 2011 was dismissed on 16.03.2011. The first respondent filed CMA No.2 of 2011 challenging the order dated 16.03.2011 made in I.A.No.1386 of 2011. By judgment dated 08.04.2013, CMA No.2 of 2011 was allowed setting aside the order dismissing I.A.No.138 of 2011.

5. Against the said order made in CMA No.2 of 2011, the present Civil Revision Petition has been filed.

6. The learned Senior Counsel appearing for the petitioner submitted that -

(a) the application and the appeal filed by the first respondent who is a third party to the suit is not maintainable.

(b) All the assets of the partnership firm are with first respondent company and this fact has been admitted by the second respondent in the written statement filed by him.

(c) the grounds raised by the first respondent are hit by principles of resjudicata.

(d) all the above grounds were raised by the second defendant in the suit who was also a Director of the company and it has been rejected by this Court in the First Appeal and confirmed in LPA & SLP.

(e) the petitioner has given list of assets of the Partnership Firm and all these assets are with the first respondent company.

(f) This Court, in the preliminary decree passed in the First Appeal, dissolved the Partnership Firm and directed that the assets of the firm to be accounted for, as described in the schedule to the plaint which are now in possession of the first respondent company and it is not correct to state that the petitioner is claiming relief against the company for the first time in the application for appointment of receiver.

(g) This Court, in the preliminary decree directed the Trial Court to appoint a receiver to take charge of the firm with all the assets and its liabilities till the entire procedures of the winding up of the firm are completed.

(h) the decree passed against the firm is binding on the company as the first respondent company has taken all the assets of the firm and is running the business of the firm in the name of the company. The person who has filed the

Appeal is not a Director of the first respondent and is taking a new plea which was not taken by the Director of the company.

(i) The third party who has filed Appeal in CMA No.2 of 2011 failed to prove that he is a party having authority to represent the first respondent.

7. The learned counsel for the first respondent contended that the first respondent is not a party to the suit and no relief is sought for against the first respondent company. The first respondent is a separate legal entity and the decree passed against the partnership firm is not binding on the company. The Trial Judge, without considering all the facts, appointed the petitioner as party receiver to take charge of the management of the first respondent company. The learned Appellate Judge has given valid reason for setting aside the order of the Trial Court. As per the preliminary decree passed by this Court in the First Appeal, a receiver can be appointed only to take charge of the assets of the Partnership Firm and not the company and only to manage the Partnership Firm till all the procedure of winding up is completed. There is no direction to appoint receiver to take charge of the assets of the first respondent company.

8. Heard the Senior Counsel for the petitioner and learned counsel for the first respondent and perused the materials available on record.

9. The petitioner filed suit for dissolution of the Partnership Firm Evergreen Tube Well Services on the ground that the funds, assets and business of said Partnership Firm were diverted to Evergreen Tube Well Services Pvt. Ltd., the first respondent herein. The suit was dismissed. The appeal in A.S.No.260 of 1987 was allowed by this court and the suit was decreed. OSA and SLP filed by the respondents 2 to 5 were dismissed. The petitioner filed I.A.No.738 of 1999 for appointment of receiver to take charge of the assets of Partnership firm as well as private company. The said application was allowed on 03.03.2003. The first respondent company filed I.A.No.2249 of 2003 to set aside the order of appointment of receiver and I.A.No.2252 of 2003 for stay. The petitioner filed I.A.No.1446 of 2005 to appoint him as a party receiver. By the order dated 18.10.2010, the petitioner was appointed as party receiver for both Partnership Firm as well as first respondent company. The respondents 2 to 5 filed CMA No.7 of 2010 and the same was dismissed on 19.01.2011 after contest. The respondents 2 to 5 filed CRP No.2078 of 2011 against the order

dismissing CMA No.7 of 2010. Subsequently, the said CRP was dismissed as withdrawn. One Palaniyandi claiming to be the Manager of the first respondent company filed I.A.No.864 of 2007 to permit him to represent the first respondent company. According to him, by Board Resolution, he was authorised to represent the first respondent company in the suit. He did not file any resolution alongwith the said application.

10. The petitioner filed counter and opposed the said application on the ground that the petitioner is only a servant of Shahjahan, Managing Director of the first respondent company and he is not the Manager of the first respondent company and he was not authorised to represent the first respondent company. He also disputed the fact that Shahjahan resigned as Managing Director of the first respondent company. On the other hand, the said Shahjahan was directed to appear before the court and various applications were filed from 25.09.2003 to 14.02.2011 and the respondents filed counter to the said applications and adjournments sought for by Shahjahan for enquiry from 27.10.2003 to 14.02.2011. After taking 238 adjournments, it was stated that the said Shahjahan resigned as Managing Director of first respondent company.

11. The said Palaniyandi filed I.A.No.105 of 2008 in I.A No.864 of 2007 to condone the delay in filing the documents, I.e. the Board of Directors authorising him to contest the suit. Both the applications are pending While so, the said Palaniyandi filed I.A.No.138 of 2011 to set aside the order dated 18.10.2010 in I.A.No.1446 of 2010 appointing the petitioner as party receiver for the first respondent company also. The petitioner filed counter affidavit and opposed the same. The learned Judge, considering various proceedings initiated by the parties, dismissed the application holding that assets of the Partnership firm can be taken possession of wherever they are located and income from them is to be ascertained and that admittedly the assets of the firm are in the hands of the first respondent company. The first respondent filed CMA No.2 of 2011 challenging the order. The Appellate Authority allowed the appeal holding that the petitioner has filed suit for dissolution of Partnership firm and taking assets of the said firm and this Court passed the preliminary decree for taking possession of assets of Partnership firm only and for the first time, the petitioner is claiming the relief against the first respondent company which is not a party to the suit.

12. From the materials available on record, it is seen that the petitioner has filed the suit for dissolution of partnership firm and take

possession of assets of the said firm on the ground that the assets and funds are diverted to the first respondent company. The first respondent company has admitted that they are in possession of assets of partnership firm but they claim that they have purchased the said assets from the partnership firm and discharged the amounts due to the Bank in respect of the loan taken by the partnership firm. During pendency of the suit or appeal, this stand was not taken by the respondents 2 to 5. Further, after number of proceedings including CRP filed before this Court by petitioner, I.A.No.1446 of 2010 was finally disposed of appointing the petitioner as party receiver for the partnership firm for both the partnership firm as well as first respondent company. The respondents 2 to 5 who are the defendants in the suit challenged the said order by filing CMA No.7 of 2010. The said CMA was dismissed on 19.01.2011 after contest on merits. The respondents filed CRP No.2078 of 2011 challenging the dismissal of CMA No.7 of 2010. The said CRP was dismissed as withdrawn.

13. After dismissal of CRP, the first respondent has filed I.A.No.138 of 2011 challenging the order dated 18.10.2010 appointing the petitioner as party receiver. The first respondent company has challenged the said order on the very same ground raised by the respondents 2 to 5. The said application was filed by the first

respondent represented by one Palaniyandi. The application in I.A.No.864 of 2007 filed by Palaniyandi for permission to represent him for the first respondent company was not ordered granting permission as claimed by him. In view of the same, the contention of the petitioner that the said Palaniyandi has no locus standi to file I.A.No.138 of 2011 is acceptable. Further, the order appointing petitioner as receiver was challenged by the respondents 2 to 5 and failed to get favourable orders. They also withdrew the CRP filed by them before this Court.

14. It is clear from the materials on record that the first respondent has filed the present application on the very same ground raised by the respondents 2 to 5 after the objections taken by the respondents 2 to 5 were rejected. Admittedly, the assets of Partnership firm is with the first respondent company. The learned Appellate Authority failed to consider this aspect and also the admitted fact that the assets of the Partnership firm are with the first respondent company. The Judge also failed to consider the fact that the Trial Court did not give permission to Palaniyandi to represent the first respondent company. The petitioner has stated in the counter that Registrar of Companies has furnished information by letter dated 27.02.2008 under Right to Information Act that no resolution was

received from the company about change of Directors after 2003. The learned Judge also failed to consider that Palaniyandi did not file the alleged resolution authorising him to represent the company when he filed I.A.No.864 of 2007. The said Palaniyandi filed I.A.No.105 of 2008 to condone the delay in filing the said resolution after the petitioner pointed out that no resolution as alleged to have been passed has been filed.

15. Considering the above facts, I hold that Palaniyandi has no locus standi to represent the first respondent company and I.A.No.138 of 2011 filed by him is not maintainable both on technical ground as well on merits. The learned Trial Judge has considered all the above facts and dismissed the application by giving cogent and valid reason. The learned Appellate Judge, on erroneous grounds allowed CMA No.2 of 2011 without appreciating the above facts in proper perspective, especially dismissal of CMA No.7 of 2010 which was filed by the respondents 2 to 5 against the very same relief. For the above reason, the impugned judgment of the learned Appellate Judge is liable to be set aside and it is hereby set aside. The order of the learned Trial Judge dated 16.03.2011 passed in I.A.No.138 of 2011 in I.A.No.1446 of 2005 in I.A.No.738 of 2011 in O.S.No.207 of 1978 is restored and confirmed.

16. In the result, this Civil Revision Petition is allowed. No costs.
Consequently, connected Miscellaneous Petition is closed.

09.02.2018

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Index: Yes
Speaking/Non-speaking order

To

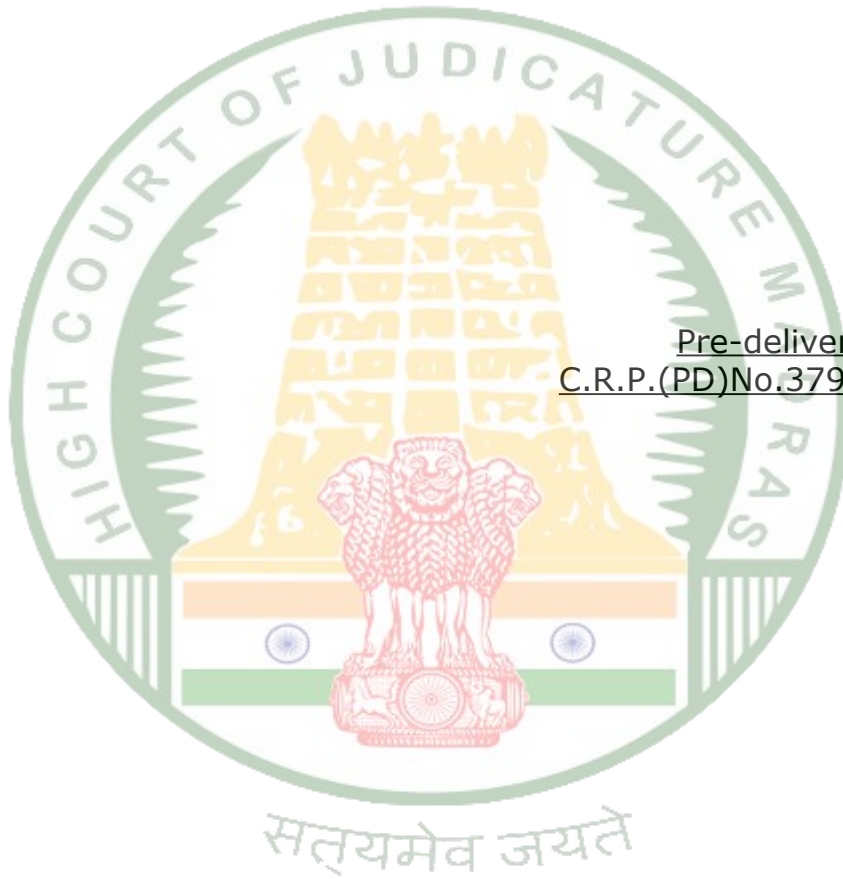
1. The II Addl.District Judge,
Pondicherry.
2. The Principal Subordinate Judge,
Pondicherry.



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V.M.VELUMANI, J.

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Pre-delivery Order in
C.R.P.(PD)No.3796 of 2013

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