

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.10.2018

Pronounced on : 08.01.2019

CORAM**THE HONOURABLE MS. JUSTICE P.T.ASHA****C.R.P.(N.P.D.)No.3465 of 2010
and M.P.No.1 of 2010**

M/s.Deccan's Fun Island and Hotels Limited,
No.6, Haddows Road, First Street,
Chennai – 600 006.

... Petitioner

Vs.

H.Anraj Gadhiya (Died)

1. Susila Devi

2. Nirmal Gadhiya

3.M/s. Deve Sugars Limited,
No.33, Nungambakkam High Road,
Chennai – 600 034.

... Respondents

Prayer :

The Civil Revision Petition is filed under Section 115 of Code of Civil Procedure against the order dated 15.09.2010 made in E.P.No.8 of 2005 in Ar.O.P.No.832 of 1999, on the file of the Principal District Judge, Chengalpattu.

For Petitioners : Mr.G.Saravana Kumar

For Respondents : Mr.J.Chandrasundar for R2 & R3,
Not ready in Notice-Reg-R1.

ORDER

The second respondent/judgment debtor is the revision petitioner before this Court. The Civil Revision Petition is filed challenging the order of attachment granted in E.P.No.8 of 2005 in Arbitration O.P.No.832 of 1999 by the Principal District Judge, Chengalpattu.

2. The facts preceeding the filing of the above execution petition which are necessary for disposing of the present Civil Revision Petition is narrated herein below:

2.1. It appears that the deceased decree holder and the 3rd respondent herein had entered into an M.O.U. on 06.02.1994 in respect of the shares of the decree holder that he held in the 3rd respondent company. It was the case of the decree holder that he had entered into an M.O.U. with the 1st respondent in respect of the shares held by him and his family members in the revision petitioner

company. The revision petitioner company had acquired lease hold rights in respect of an immovable property situated in the St. Thomas Mount, Village, to an extent of 4.25 acres. The decree holder and his associates had invested over a sum of Rs.1,00,00,000/- to put up a five star hotel. The revision petitioner company's assets as on 31.03.1994 was a sum of Rs.1,06,56,056.54/-. The 3rd respondent herein wanted to take over the revision petitioner company and after mutual discussions an M.O.U. dated 06.02.1994 was entered into between the deceased decree holder and the revision petitioner herein. The terms of this M.O.U. was that the equity shares held by the deceased decree holder and his family members were to be transferred to the 3rd respondent company or its nominees in return for which the deceased decree holder was to be paid a sum of Rs.2.8 Crores. On 05.02.1994 an advance of Rs.10,00,000/- was paid and thereafter no money was being paid. In fact two advance cheques that had been issued for Rs.30,00,000/- and Rs.35,00,000/-. The one for Rs.30,00,000/- was returned with the endorsement insufficient funds. The cheque for Rs.35,00,000/- was never deposited. Despite several requests the revision petitioner company did not come forward to clear his outstanding and therefore the decree holder was constrained to issue notices for referring the dispute to arbitration. As the revision petitioner did not come forward to cooperate in the appointment of the

arbitrator, the deceased decree holder was constrained to approach this court under Section 11 of the Arbitration and Conciliation Act for appointing an arbitrator to decide the disputes and this court was pleased to appoint Mr. Justice S.M. Ali Mohamed (Former Judge, High Court, Madras) as the Arbitrator.

2.2. The Hon'ble Arbitrator by his award dated 01.08.1999 was pleased to pass the following award:

(1) The first respondent M/s. Deva Sugars Limited, shall pay a sum of Rs.2,70,00,000/- (Two crore and seventy lakhs only) to the claimant towards the balance of sale consideration, as per Ex.C.2, dated 06.02.1994.

(2) The first respondent M/s. Deva Sugars Limited, shall also pay to the claimant interest at 24% p.a., on Rs.2,70,00,000/- (Two crore and seventy Lakhs only) from 1.7.1996 to 1.12.1996, a sum of Rs.1,56,60,000/- and further interest till the date of realisation as per clause 8 of Ex.C.2 dated 6.2.1994.

(3) The claimant is entitled to a charge on the assets of the second respondent company limited to the balance of sale consideration of Rs.2,70,00,000/- (Rupees two crores and seventy lakhs only) and is entitled to enforce the charge only after the first recovering the balance of sale consideration from the 1st respondent company.

(4) Each party shall bear its own costs of the arbitration proceedings.

3. After the award was passed the claimant/decreed holder had moved this court in O.P.No.832 of 1999, under Section 34(4) of the Arbitration and Conciliation Act (hereinafter referred to as "the Act"), for the disallowed portion.

4. His grievance was that the Hon'ble Arbitrator after giving a clear finding that the revision petitioner is a necessary party to the claim ought to have been given an award against the revision petitioner and the 3rd respondent jointly and should have created a charge in respect of the entire claim including the interest which became payable within 29 months from the date of the execution of the M.O.U.; that is on 06.02.1994. The petitioner was aggrieved by the fact that though the Arbitrator had given a clear finding that the revision petitioner is a necessary party and the claim made by the sole claimant against the revision petitioner is maintainable, he has failed to give an award against the revision petitioner jointly with the 3rd respondent. He is aggrieved by the fact that a charge should have been created in respect of the entire claim awarded to the petitioner. Since the entire dues revolve on the transfer of shares of the revision petitioner the award should have also included the revision petitioner.

This court by order dated 19.04.2002, was pleased to modify the award, this court has directed that a charge be created on the property in respect of 2.70 Crores also included the interest portion that has been left out. To that extent the award was modified.

5. It is thereafter seen that the legal representatives of the decree holder had filed E.P.No.8 of 2005 on the file of the Principal District Judge, Chengalpattu. Pending the execution proceedings, the sole claimant had died and his legal representatives have been brought on record. The execution proceedings was filed to attach the properties of the revision petitioner and to bring it for sale.

6. The revision petitioner had filed a counter inter alia contending that the decree holder was entitled to proceed against the property only after the petitioner had exhausted his remedy against the 3rd respondent herein. A reply was filed by the claimant inter alia contending that the decree holders have tried all their efforts to recover money from the 1st respondent by filing applications before the Official Liquidator. The 1st respondent however had no properties to its name from and out of which the claim could be satisfied.

7. They had also contended that the petitioner's claim has to be

adjudicated as per the provisions of Sections 529(A) and 530. The execution proceedings was ultimately ordered by an order dated 15.09.2010. The learned Principal District Judge, contended that there is no prohibition of recovery of money from the revision petitioner without exhausting the claimants remedies against the 3rd respondent company. The learned Judge proceeded to grant an order of unpaid vendors lien over the properties of the revision petitioner since the decree holders had an unpaid vendors liens over the properties of the revision petitioner by virtue of the award.

8. Challenging this order the revision petitioner is before this court. The only argument that has been put forward by the learned Counsel appearing on behalf of the Judgment debtor Mr.G.Saravana Kumar, is that the execution proceeding is premature in as much as the respondents 1 & 2, have not taken steps to recover money from the 3rd respondent herein. Therefore, he would contend that the petition is not maintainable.

9. Heard the learned Counsel and perused the papers. A reading of the award dated 01.08.1999 would indicate that the decree holder is entitled to enforce the charge after first recovering the balance of sale

consideration from the 1st respondent company. In the case on hand it is evident that there is no chance of recovering any money from the 3rd respondent.

10. A reading of the order in question would indicate that the 3rd respondent company has already been wound up and the Official Liquidator had taken charge of the 3rd respondent company. The decree holder had made an attempt by addressing a letter to the Official Liquidator, asking the Official Liquidator to pay up the amount due to the decree holders from the revision petitioners. The Official Liquidator had replied that the claim of the decree holders could not be verified as no statement of affairs has been filed by the Directors of the revision petitioner company and in the absence of such a statement it is not possible to verify decree holders claim. It is also seen that the assets of the 3rd respondent company had been sold by the Debts Recovery Tribunal, Bangalore, and the burden of proof has been shifted to the revision petitioner to establish that some assets of the 3rd respondent is still available for attachment of sale.

11. Therefore, it is very clear that no amounts can be recovered from the 3rd respondent company and the award of the Hon'ble

Arbitral Tribunal has to be given effect to. The contention of the revision petitioner that the filing of the application was premature is erroneous as the decree holders have tried all avenues to recover the money and all these avenues have been closed. Therefore, I find no infirmity in the order passed in E.P.No.8 of 2005 dated 15.09.2010 by the learned Principal District Judge, Chengalpattu.

12. In the result, the Civil Revision Petition therefore stands dismissed. The order passed in E.P.No.8 of 2005 dated 15.09.2010 by the learned Principal District Judge, Chengalpattu is confirmed. However there shall be no order as to costs. Consequently, the connected Miscellaneous petition is closed.

08.01.2019

(1/2)

Index : Yes

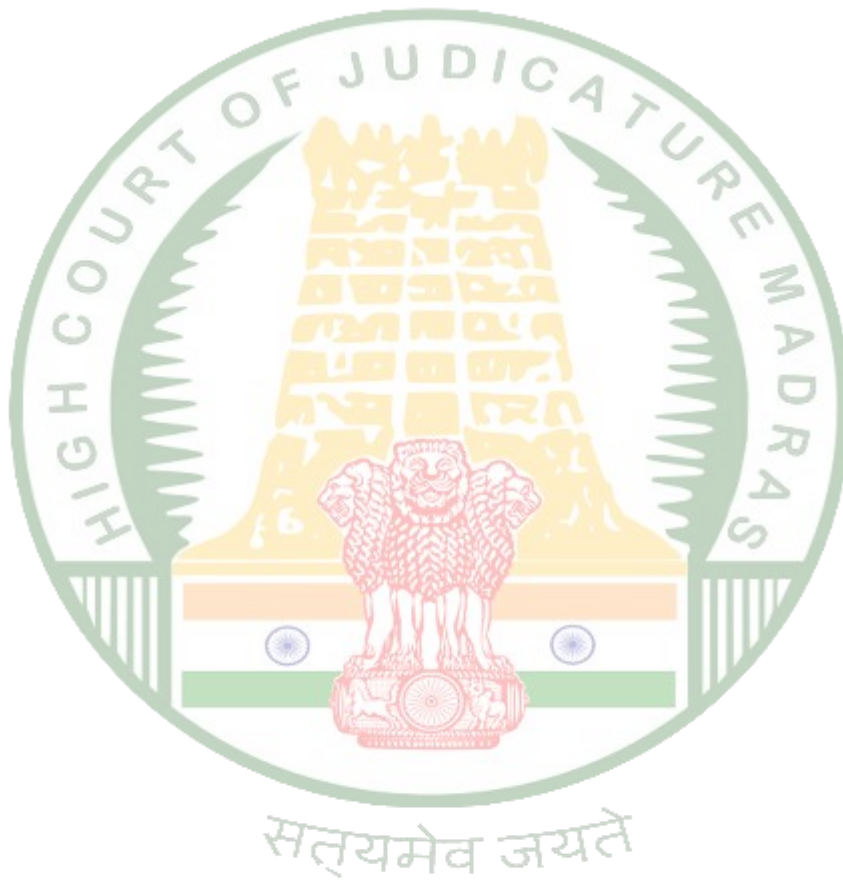
Internet : Yes

Speaking Order / Non Speaking Order

msvm

To

The Principal District Judge,
Chengalpattu.



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P.T.ASHA,J.

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Pre-delivery Order in
C.R.P(NPD).No.3465 of 2010



08.01.2019

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