IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.04.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD)No.3428 of 2011
and M.P.No.1 of 2011

1.Shri.Balaji Traders,
Rep. by its Managing Partner,
V.S.Kesavan

2.V.S.Kesavan

3.V.S.Mani
All are residing at
No.18, Subramania Koil Street,
Vyasarpadi,
Chennnai – 600 039. .. Petitioners

versus

Dhamani Enterprises,
Rep. by its Power of Attorney
Holder V.N.Damani
13, Rangan Street,
T.Nagar, Chennai – 600 017. .. Respondent

PRAYER: Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure, against the order dated 11.08.2011 made in E.P.No.57 of 2010 in O.S.No.10200 of 1996 on the file of the learned IX Assistant Judge [City Civil Court], Chennai.

For Petitioners : Mr.S.Annamalai
For Respondent : Mr.S.Udayakumar

O R D E R

Aggrieved over the order of the Executing Court attaching the machineries in the Saw-Mill in Executing Proceedings, the present Civil Revision Petition is filed.

2. The only contention of the learned counsel appearing for the revision petitioners before this Court is that, the machineries sought to be attached is the immovable properties and it cannot be attached. In support of his contentions, the learned counsel has relied upon the judgment of the Hon'ble Supreme Court in ***DUNCANS INDUSTRIES LTD., vs. STATE OF U.P. AND OTHERS*** reported in ***2000 SAR (Civil) 156.***

3. The learned counsel appearing for the respondent would submit that those machineries are temporarily erected and removable and that cannot be construed as immovable properties. In support of his contentions, he has also relied upon the judgment of the Hon'ble Supreme Court in ***SIRPUR PAPER MILLS LTD., vs. COLLECTOR OF CENTRAL EXCISE, HYDERABAD*** reported in ***(1998) 1 SCC 400*** and the judgment of this Court in ***KUMARARAJA PAPER MILLS (P) LTD., vs. TAMIL NADU PRINCIPAL REVENUE CONTROL OFFICER-CUM-THE INSPECTOR GENERAL OF REGISTRATION*** reported in ***2012 (1) CTC 315.***

4. It is not in dispute that the Execution Petition was filed in pursuance of the decree passed in O.S.No.10200 of 1996 and an appeal was filed as against the above decree and the same was also dismissed. The decree holder has filed Execution Petition in E.P.No.57 of 2010 and the Executing Court passed an order to attach the movable properties shown in the Execution Petition.

5. It is the contention of the judgment debtors that those machineries are movable properties that cannot be construed as immovable properties. It is to be noted that the movable properties shown in the Executing Petition are the machineries erected in the Saw-Mill. The first item is Saw Mill machine had sought to be attached, it is a common sense that the Saw Mill machine can be erected and dismantled, it is not permanently embedded in the earth.

6. No doubt in the judgment of the Hon'ble Supreme Court in ***DUNCANS INDUSTRIES LTD., vs. STATE OF U.P. AND OTHERS*** reported in ***2000 SAR (Civil) 156*** has held that the intention of the parties is material to decide whether the machineries embedded in the land is immovable property or movable property, the Hon'ble Supreme Court taking into consideration of the conveyance deed in the above case and come to the conclusion that the plant embedded in the earth is immovable property.

7. In the judgment of ***SIRPUR PAPER MILLS LTD., vs. COLLECTOR OF CENTRAL EXCISE, HYDERABAD*** reported in ***(1998) 1 SCC 400,*** the Hon'ble Supreme Court has held as follows:

*"**4**. In view of this finding of fact, it is not possible to hold that the machinery assembled and erected by the appellant at its factory site was immovable property as something attached to earth like a building or a tree. The Tribunal has pointed out that it was for the operational efficiency of the machine that it was attached to earth. If the appellant wanted to sell the paper-making machine it could always remove it from its base and sell it.*

***5**. Apart from this finding of fact made by the Tribunal, the point advanced on behalf of the appellant, that whatever is embedded in earth must be treated as immovable property is basically not sound. For example, a factory owner or a householder may purchase a water pump and fix it on a cement base for operational efficiency and also for security. That will not make the water pump an item of immovable property. Some of the components of the water pump may even be* *assembled on site. That too will not make any difference to the principle. The test is whether the paper making machine can be sold in the market. The Tribunal has found as a fact that it can be sold. In view of that finding, we are unable to uphold the contention of the appellant that the machine must be treated as a part of the immovable property of the Company. Just because a plant and machinery are fixed in the earth for better functioning, it does not automatically become an immovable property.*

6*. A further argument was made that the entire machinery as it is cannot be bought and sold because the machinery will have to be dismantled before being sold. The Tribunal has pointed out that the appellant had himself bought several items and completed the machinery. It had purchased a large number of components and fabricated a few and manufactured the paper-making machine at site. If it is sold it has to be dismantled and reassembled at another site. We do not find any fault with the reasoning of the Tribunal on this aspect of the matter.*

7*. Lastly, it was contended that the paper-making machine was not really manufactured by the appellant. Various components and parts were purchased and a few of the parts were fabricated at the factory and the assesses ultimately assembled* *various parts of the machine. We are unable to uphold this argument also because it has to be seen whether a final product is something distinct and apart from the components that have gone into its production. What the appellant has erected in its factory is a paper-making machine. It may have purchased various components to make the machine but nonetheless what has been produced is something quite different from the components that had been purchased. A new marketable commodity has emerged as a result of the manufacturing activity of the appellant.*

***8.** Marketability being a question of fact, we are of the view there is no scope for interference with the order passed by the Tribunal. It cannot be said that the Tribunal has overlooked any material fact or its decision is perverse."*

8. Similarly, this Court in the judgment of ***KUMARARAJA PAPER MILLS (P) LTD., vs. TAMIL NADU PRINCIPAL REVENUE CONTROL OFFICER-CUM-THE INSPECTOR GENERAL OF REGISTRATION*** reported in ***2012 (1) CTC 315,*** has observed as follows:

"15.Yet another submission was made by the

learned counsel for the Appellant that the Plant and Machinery sold by the SIPCOT cannot be construed as 'immovable properties'. In this regard, the learned Counsel relied on a judgment reported in ***Sirupur Paper Mills Ltd. v. Collector of Central Excise, Hyderabad,*** *AIR 1998 SC 1489. On going through the facts of the case, I find that the judgment was delivered in the Central Excise Act while dealing with the case under the Central Excise Act and the Hon'ble Supreme Court has come to the conclusion as under:*

"5. The test is whether the paper making machine can be sold in the market. The Tribunal has found as a fact that it can be sold. In view of that finding, we are unable to uphold the contention of the Appellant that the machine must be treated as a part of the immovable property of the company just because a Plant and Machinery are fixed in the earth for better functioning, it does not automatically become an immovable property".

The said principle cannot be made applicable to the facts of the case on hand since this appeal arises under the Stamp Act, which concerned about the levying of stamp duty on the true market value of the property purchased by the Appellant. Hence, the dictum laid down under the Central Excise Act cannot be applied to the facts of this case.

17. In fact, the principles laid down in the decision relied on by the learned Government Advocate reported in ***Duncans Industries Ltd. v. State of U.P.****, 2000 (1) CTC 374 (SC) : AIR 1998 All 72, are squarely applicable to the case on hand since in the instant case, land and building along with Plant and Machinery attached to the earth were altogether conveyed to the Appellant on 7.6.2002. The relevant paragraphs in the said decision are extracted hereunder:*

"9. The truth of argument of Shri Shanti Bhushan was that since the Plant and Machinery did not satisfy the description of 'immovable property', hence their transfer was effected by delivery of possession and not by means of the instrument in question and, therefore, no stamp duty was chargeable in relation to the value of the Plant and Machinery. Reliance was placed on ***South Indian Bank Ltd. v. V.K. Chettiar and Brothers, AIR 1953 Mad 215*** *(sic) in support of the contention that Plant and Machinery in the instant case, be treated as movable properties. The decision aforesaid is not of much avail to resolving the controversy as to whether the Plant and Machinery annexed to the earth satisfy the description of immovable property for, in the ultimate analysis, it "depends upon the mode of annexation and primarily on the intention*

of the parties and other relevant surrounding circumstances in each particular case" as propounded in the said decision. In ***Reynolds v. Ashby and Sons****, 1904 AC 466, the machineries were fixed, as in the present case, to concrete beds in the floor of the factory by bolts and nuts and could have been removed without injury to the building or the beds, Lord Liudley observed :*

"The purpose, for which machines were obtained and fixed, seems to me unmistakable; it was to complete and use the building as a factory. It is true that machines could be removed, if necessary, but the concrete beds and bolts prepared for them negative any idea of treating machines when fixed as movable chattels."

The decision by House of Lords in the case of ***Reynolds*** *(supra) was noticed by a learned Single Judge of this Court in* ***Official Liquidator v.Sri Krishna Deo****, AIR 1959 All 247, in which case the Plant and Machinery were either embedded in the earth or they were permanently fastened to things attached to earth. It was held that the Plant and Machinery of the company could not be treated as movable property in that the machines permanently fastened to the things attached to earth "were set up there with definite intention of running oil mills and not with the idea of removing the same". It* *may be pertinently observed that the 'Fertilizer Business' in the instant case, was transferred as a running concern on "as is where is" basis and annexation of the Plant and Machinery to the earth was of a permanent nature in that they were annexed to earth or permanently fastened to the things attached to earth with the definite intention of running the fertilizer factory and not with the idea of removing the same. In the circumstances of the case, therefore, I am of the considered view that the Plant and Machinery which are delineated in the plan attached to the conveyance deed, are to be treated as immovable property and the submission made by the learned counsel to the controversy cannot be countenanced.*

10. It would, however, make no difference whether the Plant and Machinery are held to be moveable or immovable property in case these are found to have been transferred with the title thereto vesting in the CCFC as a result of the conveyance deed in question. The crucial question, therefore, that remains to be decided is as to whether the Plant and Machinery of the Fertilizer Factory were transferred and title thereto vested in CCFC as a result of conveyance deed in question ....."."

9. Considering the above aspects, further the Saw Mill machine sought to be attached is fixed with earth capable of dismantling, I am of the view that it cannot be construed as immovable property as contended by the revision petitioners. Accordingly, there is no error or infirmity in the order passed by the Executing Court.

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

01.04.2019

Speaking Order/Non Speaking Order
Index : Yes / No
Internet : Yes
sri

To

The IX Assistant Judge
[City Civil Court],
Chennai.

N.SATHISH KUMAR, J.,
sri

C.R.P.(NPD)No.3428 of 2011
and M.P.No.1 of 2011

01.04.2019