

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

O.S.A.Nos. 191 & 192 of 2019

M/s TTG Industries Ltd
Rep. by its Director,
Mr.V.Ravi Srinivasan,
No.5, T.V.Street,
Chetpet, Chennai.

...Appellant
in both appeals

vs

1.SP.Padmavathi
2.AR.N.Suppiah
3.SP.Arulappan

...Respondents
in both appeals

Prayer: Original Side Appeal No.191 of 2019 filed under Order XXXXVI Rule 1 of O.S. Rules against the judgment and decree dated 08.07.2019 made in A.No.4651 of 2019 in C.S.No.582 of 2014.

Prayer: Original Side Appeal No.192 of 2019 filed under Order XXXXVI Rule 1 of O.S. Rules against the judgment and decree dated 12.06.2019 made in A.No.6583 of 2019 in C.S.No.582 of 2014.

For Appellant : Mr.T.Mohan
(in both appeals) : for M/s.S.Ramachandran

For Respondents : Mr.R.Thigarajan, Senior Counsel
(in both appeals) : for Mr.B.K.Sreenivasan

COMMON JUDGMENT
(Delivered by M.M.SUNDRESH, J.)

As both these appeals emanate from the interim orders passed by the learned Single Judge in the same suit between the same parties, they are taken up together and disposed of by a common judgment.

2. O.S.A.No.192 of 2019 has been filed against the

application in A.No.6583 of 2014, by which an order of attachment was ordered.

3. O.S.A.No.191 of 2019 has been filed against the application in A.No. 4651 of 2019, by which, conditional order was passed while condoning the delay of 1686 days in filing the written statement directing the appellant to deposit a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only/-) after taking note of the arrears of rent payable for a sum of Rs.1,15,44,897/-.

4. Mr.T.Mohan, learned counsel appearing for the appellant would submit that Order V Rule 8 of the Original Side Rules cannot be used as a ruse. The suit having been laid for recovery of money, the respondents cannot be elevated to the status of a secured creditor. There is no material to show that the appellant is alienating or encumbering the properties especially to defeat the future decree to be obtained by the respondents. A conditional order cannot be imposed on an application filed seeking to condone the delay in filing the written statement. Order V Rule 8 of the Original Side Rules does not provide so. It is not as if the decree has been granted and which is sought to be set aside as provided under Order IX Rule 13 of C.P.C. The earlier order could not be complied with in view of the pending proceedings under the Sick Industrial Companies (Special Provisions) Act, 1986 (for short, 'the SICA Act'). Therefore, the appeals will have to be allowed.

5. Mr.R.Thigarajan, learned Senior Counsel appearing for the respondents would submit that even after the SICA Act being repelled, the appellant did not comply with the interim order. The respondents sought for recovery after the conclusion of fair proceedings inter se parties. The difference in rent as per the fixation is Rs.1,26,867/- per month, the arrears at the time of fixation of the order by the learned Single Judge comes to Rs.1,15,44,897/-. The suit was laid in the year 2014. The application was filed seeking to condone the delay of 1686 days, which has not been explained and that is the reason why the conditional order has been passed. Therefore, the appeals will have to be dismissed.

6. The facts are not in dispute. They are to the effect that the appellant has not complied with the earlier order passed. The SICA Act has been repelled with effect from 01.12.2016 though actually done in the month of February, 2017 with retrospective effect. Furthermore, mere pendency of the proceedings under the SICA Act is not a bar for filing the written statement. The proceedings between the appellant and the respondents with respect to the fixation of fair rent attained finality long time back. It is the amount fixed by this Court which is sought to be recovered in the present suit.

Therefore, the position of the respondents is much more than the statutory creditor. The delay has not been explained properly and the same is huge. Any possible defence through a written statement would be nothing more than a moon shine. The appellant is making a belated attempt to prevent the respondents from getting the benefit of the order passed by this Court in fixing the fair rent.

7. The contention of the learned counsel appearing for the appellant is that Order V Rule V of the Original Side Rules does not provide for imposition of cost, cannot be countenanced. It is the discretion of the Court to pass appropriate orders in the interest of justice. Such a discretion would get extended for granting time for filing written statement and if done so, the condition attached to it. After all, the Original Side Rules and the Civil Procedure Code are though procedural, would not stand in the way of the Court passing appropriate orders in the interest of justice. The learned Single Judge did take into consideration the relevant facts including the mounting arrears and the dilatory tactics being adopted by the appellant. Though we have put it to the learned counsel appearing for the appellant that as to whether the appellant is ready and willing to make any payment, it is submitted that he is not in a position to do so except by giving an undertaking that the property under attachment will not be alienated or encumbered. We may note, that the suit property is already under mortgage. The other submission made that the appellant would co-operate for speedy disposal also will not impress us in view of the mounting arrears payable. We doubt as to whether the respondents would be in a position to execute the decree if obtained, if no appropriate orders are passed in these applications.

8. Thus, looking from any perspective, we do not find any error in the order passed by the learned Single Judge warranting interference and the appeals stand dismissed. No Costs. Consequently, connected C.M.P.Nos.17655 and 17661 of 2019 are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

ssm

To

The Sub Assistant Registrar
Original Side
High Court, Madras.

+2cc to Mr.B.K.Sreenivasan, Advocate, S.R.No. 103788, 103789
+2cc to Mr.S.Ramachandran, Advocate, S.R.No. 103821

O.S.A.Nos. 191 & 192 of 2019

CNR (CO)
GN (28/01/2020)



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