IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.06.2018

Pronounced on : 04.06.2019

CORAM:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**

C.R.P.(NPD)No.2369 of 2017

G.Srinivasan ... Petitioner

Vs.

1. M/s.Sakthi Aishwarya Spinning Mills (P) Ltd.,
   having its registered office at No.36,
   Padmavathy Puram, 6th Street,
   Avinashi Road, Gandhi Nagar Post,
   Tiruppur – 641 605 and having the Mills at
   Pachaal Post, Puduchatram via, Namakkal District,
   Represented by its authorised signatory
   K.Sakthi Vignesh,
   S/o.late P.Karuppusamy,
   No.36, Padmavathy Puram,
   6th Street, Avinashi Road,
   Gandhi Nagar Post,
   Tiruppur – 641 605.
2. P.Karuppusamy
3. Ruchmani
4. Easwari

... Respondents

Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the fair and decreetal order of the learned Principal District Judge, Namakkal, made in R.E.P.No.75 of 2016 in A.P.No.1 of 2009 dated 25.05.2017.

For Petitioner : Mr.S.D.Venkateswaran
For Respondents : Mr.V.Raghavachari for
M/s.Vignesh Venkat

O R D E R

This civil revision petition has been filed to set aside the order of allowing the execution petition filed by the respondents in REP.No.75 of 2016 in A.P.No.1 of 2009, dated 25.05.2017 passed by the learned Principal District Judge, Namakkal.

2 The petitioner and the respondents had entered into an agreement dated 23.02.2007, wherein, it was agreed by both the parties that 70% of the equity shares owned by the first respondent company has to be transferred to the petitioner for a consideration of Rs.12,50,00,000/- (Rupees Twelve Crores and Fifty Lakhs only). Both the parties agreed to complete all obligations under the agreement on or before 30.06.2007 and it was further agreed that time can be extended by mutual consent for performance of the obligations. After extending time for more than two times, since the petitioner failed to perform his part of obligations, the respondent has invoked arbitration proceedings in A.P.No.1 of 2009, wherein, an award dated

15.07.2009 was passed in favour of the respondents directing the petitioner to handover the Company and all the assets transferred by the respondents. Against which, the petitioner filed petition under Section 34 of Arbitration and Conciliation Act, 1996, in Arb O.P.No.219 of 2010, before the Principal District Judge, Coimbatore, which was later transferred to Principal District Judge, Tiruppur, and renumbered as Ar.O.P.No.21 of 2012 and by order dated 05.10.2012, was dismissed. The petitioner, against the order dated 05.10.2012, preferred a civil miscellaneous appeal in C.M.A.No.3109 of 2012 before this Court and the same was dismissed on 05.06.2015, against which the petitioner went upto Hon'ble Supreme Court and failed and therefore the Award of the sole Arbitrator in A.P.No.1 of 2009 has attained finality. In the meantime, the respondents filed execution petition in R.E.P.No.75 of 2016 before the learned Principal District Judge, Namakkal, and by order dated 29.04.2016, which is impugned in this civil revision, the petitioner was directed to handover the possession of the Company and all the assets. As against the order dated 29.04.2016, the petitioner filed this civil revision petition.

3 According to learned counsel appearing for the petitioner, the respondents suppressed before the Execution Court that the award in A.P.No.1 fo 2009 itself suffering from impossibility of being performed in view of the circumstances that the subject immovable property was provisionally attached and subsequently confirmed by the Adjudicating Authority under the Prevention of Money Laundering Act, 2002,(for brevity "PMLA") New Delhi, in O.C.No.369 of 2014 vide its order dated 19.01.2015. He would further submit that by virtue of the provisional attachment order and the subsequent confirmation order, the possession of the subject assets itself is deemed to be in judicial custody and only subsequent to the proceedings under Section 58 of PMLA which may be initiated, the Arbitration Award becomes executable. Further, the respondents received part consideration and has failed to perform their part of obligations and cancelled the agreement dated 23.02.2007 and subsequent supplementary agreements. The respondents 2 to 4 herein are incompetent persons and as such they had no authority to enter into any agreement in respect of the assets of the first respondent herein. As per order dated 11.08.1999, issued by the Board for Industrial and Financial Reconstruction (BIFR) in Case No.21/99, 1st respondent shall not alienate any of its assets without prior approval of BIFR, but, the first respondent, till now did not obtain any such approval. The Execution Court has failed to consider the above aspects and erroneously passed the order of repossession. Therefore the respondents are not entitled for repossession and the petitioner seeks to set aside the order of repossession passed by the Execution Court.

4 According to learned counsel appearing for the respondents, against the award of the sole Arbitrator, attained finality, since the petition filed by the petitioner under Section 34 of Arbitration and Conciliation Act, was dismissed and the civil miscellaneous appeal also dismissed and the petitioner went to the Hon'ble Supreme Court, there also failed. It is true that the subject properties have been attached by the Directorate of Enforcement and subsequently confirmed by the Adjudicating Authority, but it is not a final order and order of confiscation by the Criminal Court under sub Section 5 or 7 of Section 8 of PMLA has not yet passed and only provisional order of attachment has been confirmed under Sub Section 2 of Section 8 of PMLA. In support of his contentions, the learned counsel relied on the decision rendered by this Court in a batch of ***Writ Petitions Nos.1912, 2879, 13421, and 22062 of 2011 dated 11.07.2012*** and the decisions rendered by the Madurai Bench of Madras High Court reported ***in 2016 1 LA 132 (C.Chellamuthu vs. The Deputy Director, PMLA, Directorate of Enforcement, Mubai, Ministry of Finance, Department of Revenue, Govt. of India).*** Further, 2nd respondent has filed Crl.O.P.No.28006 of 2015 to return the Original sale deeds, which were under the custody of the Superintendent of Police, CBI, Bangalore, and this Court allowed the petition by directing the

Police Officials to handover the Documents as prayed for, which shows that the respondents are interested persons over the properties mentioned in the Agreement. Even though, the provisional order of attachment was passed and subsequently confirmed by the Adjudicating Authority, order of confiscation has not yet filed and therefore PMLA nothing to do with the order passed by the Execution Court. The Execution Court also after considering all the factual aspects and after detailed discussion on the same, has passed the order of repossession, which does not call for any interference.

5 Heard the learned counsel appearing on either side and perused the materials available on record.

6 It is seen that the petitioner and the respondents had entered into an agreement dated 23.02.2007, wherein, it was agreed by both the parties that 70% of the equity shares owned by the first respondent company has to be transferred to the petitioner for a consideration of Rs.12,50,00,000/- (Rupees Twelve Crores and Fifty Lakhs only) and all obligations under the agreement should be completed on or before 30.06.2007 and it was further agreed that time can be extended by mutual consent for performance of the obligations. After extending time for more than two times, since the petitioner did not come forward to perform his part of obligations, the respondent has invoked arbitration proceedings in A.P.No.1 of 2009, wherein, an award dated 15.07.2009 was passed in favour of the respondents directing the petitioner to handover the Company and all the assets. Against which, the petitioner filed petition under Section 34 of Arbitration and Conciliation Act, 1996, which was dismissed by order dated 05.10.2012. The petitioner, against the order dated 05.10.2012, preferred civil miscellaneous appeal in C.M.A.No.3109 of 2012 before this Court and the same was dismissed on 05.06.2015, against which the petitioner went upto Hon'ble Supreme Court and failed and the Award of the sole Arbitrator in A.P.No.1 of 2009 becomes final. Since all the attempts made by the petitioner to withhold the Company went in vain, the respondents filed execution petition in R.E.P.No.75 of 2016 before the learned Principal District Judge, Namakkal, and by order dated 29.04.2016, which is impugned in this civil revision, the petitioner was directed to handover the possession of the Company and all the assets, against which the petitioner is before this Court.

7 It is seen Criminal Case has been instituted against the petitioner and it has not been concluded and order of confiscation has not yet passed by the Criminal Court. Only Provisional order of attachment has been passed and confirmed under Sub Section 2 of Section 8 of PMLA. Further, 2nd respondent has filed Crl.O.P.No.28006 of 2015 to return the Original sale deeds, which were under the custody of the Superintendent of Police, CBI, Bangalore, and this Court allowed the petition by directing the Police Officials to handover the Documents as prayed for, which shows that the respondents are interested persons over the properties mentioned in the Agreement. Even though, the provisional order of attachment was passed and subsequently confirmed by the Adjudicating Authority, order of confiscation has not yet passed and therefore PMLA nothing to do with the order passed by the Execution Court, as rightly held by the Execution Court and the Execution Court also after considering all the factual aspects and after detailed discussion on the same, has passed the order of repossession. A careful reading of Sections 5 and 8 of PMLA would go to show that the object of attachment is only to ensure that the proceedings for confiscation of proceeds of crime, are not frustrated. Therefore, merely because physical possession is retained by a person accused of the scheduled offences under the PMLA, it does not mean that the proceedings for confiscation may get frustrated. Section 5(4) of the Act, in fact, makes it clear that nothing in Section 5 of PMLA shall prevent the person, who interested in the enjoyment of immovable properties attached under Sub-Section 1 from such enjoyment. The authorities cited by the learned counsel appearing for the respondents strengthen the case of the respondents.

8 In view of the above, this Court is of the view that the respondents are interested person over the Company and the properties and therefore they are entitled for repossession. Therefore, the order of repossession dated 25.05.2017 passed in R.E.P.No.75 of 2016 in A.P.No.1 of 2009 passed by the Execution Court is hereby confirmed.

9 In the result the civil revision petition is dismissed as devoid of merit and substance. No costs.

04.06.2019

Index:Yes/No

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To

The Principal District Judge, Namakkal.

P.VELMURUGAN, J.,

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Pre-Delivery Order in
C.R.P.(NPD)No.2369 of 2017

04.06.2019