

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice C.SARAVANAN

O.S.A.No.116 of 2017
and
C.M.P.No.7776 of 2017

Sulekha.com New Media Private Limited,
No.96, Pantheon Apartments,
Janapriya Crest,
Pantheon Road,
Egmore,
Chennai - 8.

...Appellant

Vs

1.The Official Assignee,
High Court,
Madras.

2.Sunil Anand & Company Private Limited,
No.17, Pantheon Apartments,
34, Pantheon Road, 1st Lane,
Egmore,
Chennai - 8.

3.Arjunlal Sunderdas

4.S.M.Lal

..Respondents

Appeal preferred under Order XXXVI Rule 1 of O.S. Rules r/w
Clause 15 of Letters Patent against the order dated 24.02.2017
made in A.No.343 of 2015 in I.P.No.25 of 2014.

For Appellant

.. Mr.Sathish Parasaran,
Sr. Counsel
for Mr.Shobhan M.Padmanabhan

For First Respondent..

Mr.K.V.Ananthakrushnan
assisted by Ms.A.Janani

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal is directed against the order of the learned single Judge dated 24.02.2017 made in A.No.343 of 2015 in I.P.No.25 of 2014, who, while reconfirming the earlier order passed, directed the appellant to pay a sum of Rs.1,15,92,611/- to the office of the Official Assignee.

2.An application was filed by the Official Assignee seeking a direction to the appellant herein to remit the rent to the Official Assignee. The appellant entered into an agreement by unregistered lease agreement signed on 07.04.2011 for the purpose of usage of office space belonging to the second respondent. The second respondent originally consists of two directors viz., respondents 3 and 4 who are incidentally the shareholders. The third respondent was holding 20% in the second respondent as against 25% held by the fourth respondent. The third respondent was declared as insolvent on 21.04.2014 in I.P.No.25 of 2014. It is the case of the Official Assignee that the remaining 25% share held by the fourth respondent in the second respondent was relinquished in favour of the third respondent, which factum we are not inclined to go into in this appeal.

3.In fact, the lease was segregated into two. One is with respect to the space and the other is with respect to the amenities. It appears prima facie that the appellant wrote letters to the second respondent indicating their desire to vacate the premises in question. Ultimately, the appellant vacated the building on 29.02.2016. The admitted rent has been deposited with the Official Assignee. Therefore, to that extent, there is no dispute. We make it clear that this amount that has been deposited with the Official Assignee by the appellant is for the rent payable upto the month of February 2016 and therefore, whatever may be the nature of dispute, the appellant cannot be asked to replay it once again, if at all, any claim is made by the company. Therefore, the issue to be considered is with respect to the enhanced rent as per the agreement, if any, and the entitlement for the rent after the premises is vacated by the appellant, starting from the month of March, 2016 till the actual handing over of keys in favour of the Official Assignee.

4.Learned single Judge, in the order passed, has made it clear that the appellant is bound to make the payment upto the date of handing over of the keys without assigning any specific reason for doing so. Incidentally, the issue of enhanced rent has also not been discussed and decided specifically. As a result, the issue pertaining to scope of Section 7 of The

Presidency Towns Insolvency Act, 1909 and piercing the wheel of the second respondent were also not decided. The second issue may also have a bearing on the maintainability of the application made with specific reference to Sections 7 and 36 of the The Presidency Towns Insolvency Act, 1909.

5. Therefore, we are of the considered view that inasmuch as the learned single Judge has not considered those issues, we are not inclined to go into the same at this point of time. In our view, the scope is rather limited with respect to the entitlement of the Official Assignee to claim arrears of rent from 01.03.2016 onwards in this appeal. Even for that, there is no specific finding. Now, it is informed at the bar that a Special Bench has been constituted to decide the case. Accordingly, this Original Side Appeal stands disposed of in the following terms:

(i) The admitted amount of rent paid by the appellant in favour of the Official Assignee is taken as the amount payable to the second respondent.

(ii) The matter stands remitted to the specially constituted Division Bench consisting of Justice C.V. Karthikeyan and Dr. Justice G. Jayachandran to consider the other issues including the scope and applicability of Sections 7 and 36 of the The Presidency Towns Insolvency Act, 1909, maintainability of the application filed, entitlement of enhanced rent and the liability of the appellant to pay the same from 01.03.2016 onwards till the date of handing over the keys in favour of the Official Assignee.

(iii) In such view of the matter, the application stands remitted back to the Division Bench consisting of Justice C.V. Karthikeyan and Dr. Justice G. Jayachandran.

(iv) The appellant shall pay the electricity charges that have arisen after 01.03.2016 along with reconnection charges as agreed upon without prejudice to the other contentions on merit.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Insp. Cell)

// True Copy //

Sub Assistant Registrar

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To

1.The Official Assignee,
High Court, Madras.

2.The Sub Assistant Registrar,
Original Side,
High Court, Madras.

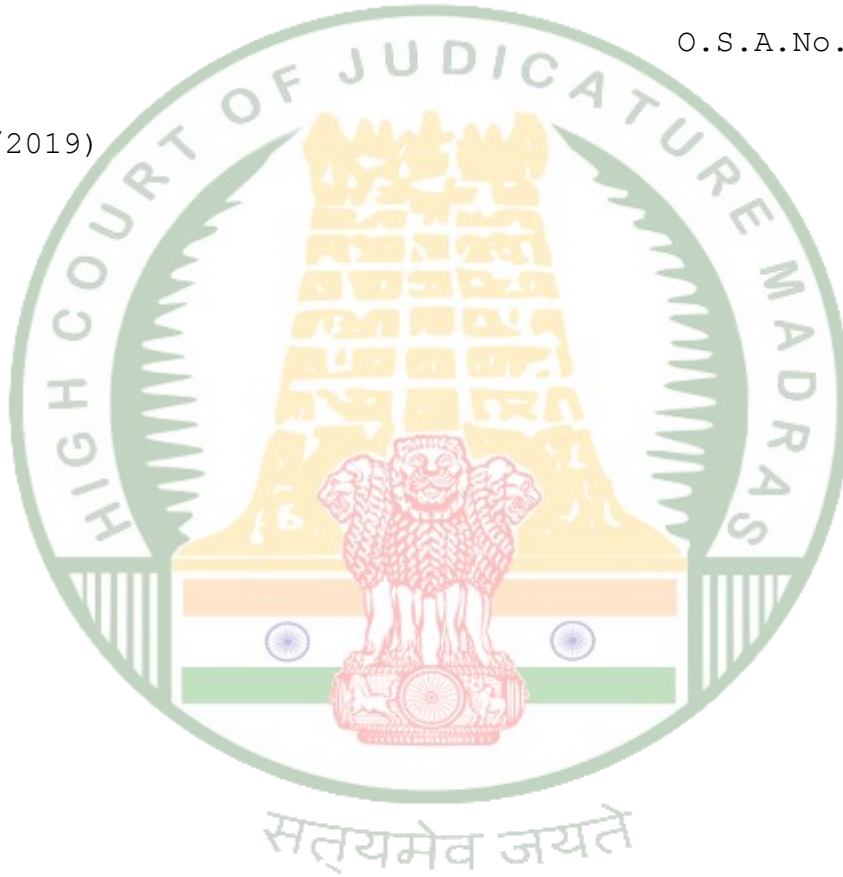
+lcc to Mr.Shobhan.M.P, Advocate, S.R.No.23687

+lcc to Mr.K.V.Ananthakrishnan, Advocate, S.R.No.23456

O.S.A.No.116 of 2017

SV (CO)

RRS (07/05/2019)



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