



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.09.2019**

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRP PD(MD)Nos.727 & 728 of 2012

and

M.P.(MD)Nos.1&1 of 2012

1.Jyothi Muthulakshmi ... Petitioner in CRP.727/2012
2.R.Rathnakumar ... Petitioner in CRP.728/2012

Vs.

1.Alpic Finance (P) Ltd.,
having its Branch Office
No.6, Rajamannar Street,
Chennai, Rep.by its Vice President
T.V.Cheddy, S/o.Gopalchetty
rep.by its Present Power Agent
Subbiah

2.The Official Liquidator of
M/s.Alpic Finance (P) Ltd.,
High Court Bombay ... Respondents in both CRPs

*(R2 impleaded vide order of this
Court dated 13.06.2016)
(MP 2 of 2012 in CRP 727 and 728 of 2012)

COMMON PRAYER:The petitions are filed under Article 227 of Civil Procedure Code, challenging the proceedings of the trial Court in I.A.Nos.100 of 2011 in O.S.No.9 of 2008 and I.A.No.160 of 2011 in O.S.No.23 of 2008, on the file of Principal District Court, Tirunelveli.

For Petitioners : Mr.M.Venkataseshan
(in both CRPs)
For Respondent-1 : Mr.D.Shanmugaraja Sethupathy
(in both CRPs)
For Respondent-2 : No Appearance



COMMON ORDER

These Civil Revision Petitions have been filed for a direction to the trial Court to reject I.A.Nos.100 & 160 of 2011 filed by the 1st respondent to set aside the *ex parte* decree.

WEB COPY

2. The petitioners are the plaintiffs and they filed a Suit for specific performance against the 1st respondent. An *ex parte* decree came to be passed by Judgment and Decree dated 24.06.2008. This Decree has been executed and a sale deed was also registered in favour of the petitioners, on 08.09.2009. Subsequently, the 1st respondent has filed a petition to set aside the *ex parte* decree in I.A.Nos.100 & 160 of 2011.

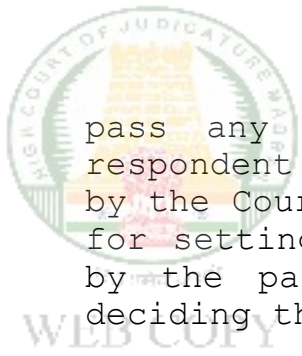
3. The petitioners have raised an objection by stating that the 1st respondent Company has already been wound up, by an order passed by the Company Court in Company Petition No.100 of 2002. Therefore, the 1st respondent does not have the *locus standi* to maintain the petition and only an official liquidator can represent the Company after it is wound up.

4. The learned counsel for the petitioners submitted that the application filed by the 1st respondent ought not to have been entertained by the Court below, since it is against the provision of Section 446 of the Companies Act. The learned counsel submitted that it is only the official liquidator, who can represent the company and therefore, the application filed by the 1st respondent is liable to be rejected.

5. Per contra, the learned counsel appearing on behalf of the 1st respondent submitted that the petitioners were aware about the fact that an official liquidator was appointed even at the time when the *ex-parte* decree was passed. However, the official liquidator was not made as a party in the Suit and an *ex parte* decree was obtained only as against the first respondent. Learned counsel further contended that the Suit for specific performance has been filed based on a forged sale agreement and there is also a report that is available and criminal proceedings are also pending in this regard. The learned counsel submitted that even now the official liquidator can represent the Company and contest the application and the present Civil Revision Petitions cannot be maintained by the petitioners, at this stage.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. The objections that have been raised by the petitioners can very well be raised even before the Court below. The Court below is yet to consider the application and the objections of the petitioners. Therefore, this Court does not want to preempt and



pass any orders in these Civil Revision Petitions. The 1st respondent shall be represented by an official liquidator appointed by the Court and he shall proceed to prosecute the application filed for setting aside the ex parte decree. All the contentions raised by the parties shall be considered by the Court below, while deciding the application.

8. In the result, both the Civil Revision Petitions are disposed of by directing the Court below to decide the application in I.A.Nos.100 of 2011 and 160 of 2011, on its own merits and in accordance with law, within a period of one month from the date of receipt of a copy of this order. It is made clear that the 1st respondent will be represented by the official liquidator appointed by the High Court, Bombay. No costs. Consequently, the connected miscellaneous petitions are closed.

9. Mark a copy of this order to the official liquidator, appointed by the High Court, Bombay, to administer the 1st respondent company.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

MPK

To

1.The Principal District Court,
Tirunelveli.

2.The Official Liquidator of
M/s.Alpic Finance (P)Ltd.,
High Court, Bombay.

+1 CC to M/s.M.V.VENKATASESHAN, Advocate (SR-90002[F] dated 27/09/2019)

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-89780[F] dated 26/09/2019)
MPK

CRP PD(MD)Nos.727 & 728 of 2012
26.09.2019