A.Nos.329 & 330 of 2011

in

E.P.No.3114 of 2009

SENTHILKUMAR RAMAMOORTHY, J

These applications are filed to set aside the attachment order dated 27.10.2010 of the learned Master in E.P.No.3114 of 2009 in C.S.No.134 of 2002 and for an order of interim stay of all further proceedings in the aforesaid E.P.

2. I heard the learned counsel for the decree holder and the learned counsel for the judgment debtors.

3. The learned counsel for the decree holder submitted that an undertaking was given on 07.01.2001 by the judgment debtor, which is a Partnership Firm and its partners accepting the liability of US $ 45020.45. Therefore, C.S.No.134 of 2002 was filed by the decree holder for recovery of a sum of Rs.41,91,885/- along with interest thereon. During the pendency of the suit, he submits that a counter affidavit was filed by one of the partners, namely, B.S.Rajendran, on

behalf of all the partners, wherein it was stated categorically that he is a partner of the first defendant Firm. On the basis of the admission of liability in letter dated 07.01.2001, he submitted that an application was taken out for a judgment on admission under Order XII Rule 6 C.P.C. and by order dated 26.12.2002, the Court passed an order directing the defendants to pay a sum of Rs.21,83,470/-. Thereafter, the judgment and decree in the suit was issued on 30.10.2006. He pointed out that the applicants herein did not contest the suit by contending that they are not partners in the partnership firm. In order to execute the decree, E.P.No.3114 of 2009 was filed and for the first time, in the counter in the said E.P., the defence was taken that they are no longer partners. It was further stated therein that the assets that was sought to be attached no longer belonged to the erstwhile partners of the partnership firm.

4. In this connection, the learned counsel for the decree holder pointed out that under Sections 25 and 32 of the Indian Partnership Act, 1932 (the Partnership Act), all partners are liable in respect of the liabilities of the partnership firm and such liability continues in respect of all acts while they were partners.

5. He also referred to the relevant provisions of the Code of Civil Procedure and, in particular, Order XXI Rule 50 CPC which relates to execution of decree against the firm and its partners. By drawing reference to Order XXX Rule 7 and 8 of CPC, he pointed out that it is open to a person who receives summons as a partner under Rule 3 of Order XXX CPC to enter appearance under protest stating that he was not a partner at the material time. In this case, he pointed out that the applicant herein did not lodge a protest by citing his retirement from the partnership firm. He concluded his submissions by referring to Section 53 of the Transfer of Property Act, which deals with fraudulent transfer by pointing out that the alleged transfer by settlement deed dated 15.09.2006 is evidently fraudulent because it is in favour of the spouses of the partners concerned without payment of consideration. In this connection, he also referred to and relied upon the judgment of the Hon'ble Supreme Court in ***ASHUTOSH VS STATE OF RAJASTHAN & OTHERS (2005 970 SCC 308)*** wherein the right of the decree holder to execute the decree against a retiring partner was upheld.

6. In response, the learned counsel for the applicants/judgment debtors submitted that the applicants ceased to be partners with effect from 15.06.2001 and that the relevant Form A was filed with the Registrar of Firms. In support of this submission, she referred to paragraph-8 of the counter in E.P.No.3114 of 2009. She pointed out that in paragraphs 5 and 6 of the said counter, the details of the settlement deeds 22.08.2005 and 12.07.2006 were provided so as to establish that the partners no longer owned the property which is the subject matter of attachment in the E.P. Consequently, she submitted that the learned Master should have examined the question of title under Order XXI Rule 58 of C.P.C.

7.She also pointed out that the decree holder is in a position to realize the dues by proceeding against the assets of the partnership firm. For this purpose, she relied upon an additional affidavit dated 15.03.2012 stating that the applicants obtained an encumbrance certificate for the period, 01.01.1987 to 28.02.2012, which reveals that the properties were earlier mortgaged with the Tamilnadu

Industrial Investment Corporation Limited under two deeds of mortgage dated 11.01.1987 and 10.06.1998 as Document Nos.3483/87 and 1298/1998 and that the mortgages were discharged and, consequently those assets were free from encumbrance as of 01.04.2012. Therefore, the learned counsel submitted that the order of the learned Master is liable to be set aside.

8. I considered the submissions of the learned counsel for the respective parties and examined the relevant records.

9. The first question that should be considered is with regard to the liability of the applicants/judgment debtors. The main defence, in this regard, is that the said individuals ceased to be partners with effect from 15.06.2001. On perusal of the cause of action, as per the paragraph-10 of the plaint, it is clear that the relevant transactions took place in the year 1997 when the applicants/judgment debtors were admittedly partners of the partnership firm. In this connection, as pointed out by the learned counsel for the decree holder, both Sections 25 and 32 of the Partnership Act are apposite and there can be no doubt that these persons continue to be liable for the liabilities of the

partnership firm.

10. The other aspect to be considered is with regard to the transfer of the assets in question by these partners. The said transfers was effected by settlement deeds dated 15.09.2006, which is during the pendency of the suit but prior to the issuance of the final judgment and decree dated 30.10.2006. In this connection, the submission of the learned counsel for the applicants/judgment debtors to the effect that the validity of the said transfer and the consequential question as to whether the property is liable to be attached should have been decided by the learned Master is tenable.

11. However, in view of the facts set out above and especially keeping in mind that the liability of the partners to discharge the decree is beyond doubt, I am not inclined to set aside the order of attachment. However, no further proceedings shall be taken pursuant to that order until the learned Master considers the contentions of the parties with regard to the transfer made by way of the settlement deeds.

12. Therefore, these applications are disposed of by remitting the matter to the learned Master to determine the question with regard to the transfer of the asset by way of settlement and the question as to whether the said asset is nonetheless liable to be attached. Until the above questions are determined, as stated above, no further proceedings in furtherance of the order of attachment shall be taken.

22.01.2020

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SENTHILKUMAR RAMAMOORTHY, J

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32. Retirement of a partner. -(1) A partner may retire - With the consent of all the other partners. in accordance with an express agreement by the partners, or Where the partnership is at will by giving notice in writing to all the other partners of his intention to retire (23)_ A retiring partner may be discharged from any liability to any third party for acts of the firm done bef ore his retirement by an agreement made by him with such third party and the partners of the reconstituted firm after he had knowledge of the retirement. (3) Not withstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement. Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner. (4) Notices under sub section (3) may be given by the retired partner or by any partner of the reconstituted firm. 33. Expulsion of a partner - (1) A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good

25. Liability of a partner for acts of the firm Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.