

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

ORIGINAL SIDE APPEAL NO.260 OF 2020
& C.M.P.NOS12942, 12946 & 12947 OF 2020

1.Reddy Veeranna Investments Private Limited,
Having its registered address at
No.109, 10th Main, 7th Cross,
R.M.V. Extension, Bengaluru,
Karnataka-560 080.
represented herein by its authorized signatory
Ms.Sangeetha Reddy.

2.Reddy Veeranna,
An Indian inhabitant,
Having his address at No.109, 10th Main,,
7th Cross, R.M.V. Extension, Bengaluru,
Karnataka-560 080.

3.Suguna Reddy, W/o Reddy Veeranna
An Indian Inhabitant,
Having her address at No.109,
10th Main, 7th Cross,
R.M.V. Extension, Bengaluru,
Karnataka-560 080.

...Appellants

Vs.

1.IFL Income Opportunities Fund Series II,
A fund managed by IIFL Asset Management Limited,
Having its registered Office at
6th Floor, IIFL Centre, Kamala City,
Senapati Bapat Marg, Lower Parel, Mumbai-400 013.
also at Branch Office
5th Floor, Kothari Building,
114, Mahatma Gandhi Road,
Nungambakkam, Chennai,
Tamil Nadu-600 034.

2.Beacon Trusteeship Limited,
Having its registered Office at
4C, Siddhivinayak Chambers,
Opp. MIG Cricket Club, Kala Nagar,
Bandra, Mumbai, Maharashtra-400 051.

3.Manyata Developers Private Limited,
Having its registered Office at
9/1, 2nd Floor, Classic Court,
Richmond Road, Bengaluru,
Karnataka-560 025.

...Respondents

Original Side Appeal is filed under Order XXXIX Rule 2 of the Original Side Rules read with Clause 15 of Letters Patent aggrieved by the order dated 20.11.2020 passed by the learned single Judge in O.A.No.622 of 2020 in Commercial Suit No.327 of 2020.

For Appellants : Mr.Mukul Rothagi, S.C., and
Mr.N.L.Rajah, S.C., for
M/s Rohini Ravikumar and
Maheshkumar

For Respondents : Mr.P.S.Raman, S.C., for
Mr.Palaniandavan for R1
Mr.C.Aryama Sundaram, S.C., for
Mr.Giridharan for R2
Mr.M.S.Krishnan, S.C., for
M/s.Sella Visalakshi & Ashwin for R3

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

This appeal has been posted before us in view of the change in the roster as the regular Court is not sitting.

2.Heard Mr.N.L.Rajah and Mr.Mukul Rothagi, learned Senior Counsels appearing for M/s Rohini Ravikumar and Maheshkumar, learned counsel for the appellants and Mr.P.S.Raman, learned Senior Counsel for Mr.Palaniandavan learned counsel for the first respondent, Mr.C.Aryama Sundaram, learned Senior Counsel for Mr.Giridharan, learned counsel for the second respondent, Mr.M.S.Krishnan, learned Senior Counsel for M/s.Sella Visalakshi and Ashwin, learned counsel for the third respondent. Since arguments have been made on merit, the issue qua the maintainability is not gone into.

3.The learned Senior Counsel appearing for the appellants submitted that the default is attributable towards the affiliate. On an interpretation of Clause 16 of the Debenture Trust Deed, which deals with cross default and the consequence of an event of default, the procedure required will have to be followed. Though a notice has been issued on the company, the same has not been issued to the owners. In any case, the appellants are inclined to give an undertaking to the effect that the liability of the affiliate, which is a subsidiary company of the first appellant would be discharged on or before 15th of December, 2020. It is stated that an affidavit would be filed with respect to the other liability which might arise insofar as the first appellant on or before 15th of January, 2021. There are contentious issues involved and the learned single Judge, after hearing the parties could have considered the grant of an interim order on merit, particularly, when prejudice would be caused by creating third parties interest.

4.The learned Senior Counsel appearing for the respondents would contend that the default by the first appellant is different from a cross default committed by the affiliate. This is a clause involving vicarious liability. Duty is enjoined upon the second respondent Trust to take a follow up action by selling the debentures, otherwise, they will be answerable to SEBI. Interim order granted in the earlier suit has worked itself out, particularly by the order passed by the Appellate Forum, In any case, if any mistake, which formed basis for an interim order obtained in the earlier suit is no longer available in view of the subsequent action taken by the Industrial Development Bank of India (IDBI) followed by the action taken by the second respondent. The default is huge and the value of the debentures is going down day by day.

5.Upon hearing the learned Senior Counsels appearing for the parties, we are of the view that the contentious issues of fact and law will have to be decided only in the application in O.A.No.622 of 2020 in C.S.No.327 of 2020, which is scheduled to be taken up on 24.11.2020. Deciding this appeal on merit will make the application infructuous.

6.The learned Senior Counsel appearing for the respondents submitted that the counter affidavits are ready and to be filed today (23.11.2020). We find that the issue qua the effect of the interim order passed in the earlier suit, the scope and applicability of Clause 16 of the Debenture Trust Deed with respect to the default and cross default and the procedure required to be followed are matters to be considered by the learned single Judge at length after hearing the parties. Therefore, we are refraining ourselves from passing any order in this appeal.

7. Certainly, the decision to order notice without recording the respective contentions of the parties would certainly cause prejudice. Though the learned Senior Counsel appearing for the respondents submitted that there is no irreparable loss, we are of the view that inasmuch as the contentions of the parties having been considered, especially, after deciding to issue notice, the question of interim protection ought to have been considered. In such view of the matter, we are inclined to dispose of the appeal directing the parties to maintain status quo as of now till the order to be passed by the learned single Judge. The learned counsel for the respondents are directed to serve the counter affidavits on the learned Senior Counsel appearing for the appellants today itself. We request the learned single Judge to dispose of the application on or before 25.11.2020. We further clarify that we are not expressing anything on merits since the application is posted for hearing on 24.11.2020, which is expected to proceed.

8. The Original Side Appeal is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Assistant Registrar,
Original Side Section,
High Court, Madras-104.

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