

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.03.2020
DELIVERED ON : 19.03.2020

C O R A M

THE HON'BLE Mr.JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

O.S.A.Nos.75 of 2017 & 222 of 2013
&
CMP.Nos.5371 of 2020 & 5367 of 2017

In O.S.A.No.75 of 2017

1.M.Sailaja

2.Selvi.M.Niyathi Raam Choudhary
Minor daughter of Late Mr.M.Lakshmi Narayana Choudhary
rep.by Natural Guardian & Mother Mrs.M.Sailaja

3.Selvan M.Nihar Mohan Choudhary
Minor son of Late Mr.M.Lakshmi Narayana Choudhary rep.by
Natural Guardian & Mother Mrs.M.Sailaja

.... Appellants

Versus

1. Official Liquidator,
High Court, Madras as the Liquidator of
M/s.Sethuram Thiyagarajan Engineers Pvt.
Limited (In Liquidation)
Corporate Bhavan, 2nd Floor,
First Line Beach Road,
Chennai - 600 001.

2. State Bank of India,
Commercial Branch,
rep. by Assistant General Manager,
Stressed Assets & Management Branch,
No.32, Red Cross Building,
Montieth Road, Egmore,
Chennai - 600 008

(R2 suo motu impleaded vide
court order dated 10.02.2020)

... Respondents

PRAYER: Original Side Appeal filed under Order XXXVI Rule 9 of CPC read with Clause 15 of the Letters Patent against the judgement and Decree dated 19.07.2016 passed by the Justice Mr.Rajiv Shakhder made in Company Application No.1010 of 2015 in C.P.No.103 of 1993.

In O.S.A.No.222 of 2013

- 1.M.Lakshmi Narayana Choudhary (died)
- 2.M.Sailaja
- 3.Selvi.M.Niyathi Raam Choudhary
- 4.Selvan M.Nihar Mohan Choudhary
- 5.M.Kasthuri

... Appellants

(A2 to A5 are impleaded as legal heir of deceased sole appellant as per order dated 31.01.2017 made in M.P.Nos.1 to 3 of 2015)

Versus

1. Official Liquidator,
High Court, Madras as the Liquidator of
M/s.Sethuram Thiyagarajan Engineers Pvt.
Limited (In Liquidation)
Corporate Bhavan, 2nd Floor,
First Line Beach Road,
Chennai - 600 001.
2. The Recovery Officer,
Debt Recovery Tribunal - II,
5th Floor, No.770-A, Anna Salai,
Spencer Towers,
Chennai - 600 002.
- 3.State Bank of India,
Commercial Branch,
rep. by Assistant General Manager,
Stressed Assets & Management Branch,
No.32, Red Cross Building,
Montieth Road, Egmore,
Chennai - 600 008.

- 4.Asokan

... Respondents

PRAYER: Original Side Appeal filed under Order XXXVI Rule 9 of CPC read with Clause 15 of the Letters Patent against the Judgement and Decree dated 29.04.2013 made in Company Application No.125 of 2011 in C.P.No.103 of 1993.

For Appellants
in both OSAs. ... Mr.B.Ravi Raja

For Respondent 1
in both OSAs. ... Mr.S.R.Sundar

For Respondent 2 in O.S.A.
No.75 of 2017 &
Respondents 3 in O.S.A.
No.222 of 2013 ... Mr.C.Mohan,
for M/s.King & Patridge

COMMON JUDGEMENT

Judgement delivered by ABDUL QUDDHOSE, J.

The points for consideration in these intra Court appeals filed under Order XXXVI Rule 9 of CPC read with Clause 15 of the Letters Patent are as follows:

(a) whether the learned Single Judge was right in rejecting the application filed under Section 536(2) of the Companies Act, 1956 by M.Lakshmi Narayana Choudhary (deceased) seeking to validate the Deed of transfer of leasehold rights dated 30.01.1997 executed in his favour by Sethuram Thiagarajan Engineers Pvt. Limited (in short, 'STEPL'), the company under Liquidation on the ground that the alleged transfer is not a bonafide transfer and not entered into in the interest of the company and its creditors.

(b) whether the learned Single Judge was right in dismissing the application filed by Lakshmi Narayana Choudhary (deceased) under Section 446 (1) of the Companies Act, 1956 seeking leave of the Court to institute a suit against STEPL, the company under liquidation for (i) recovery of a sum of Rs.40,13,169.21 and (b) permanent injunction restraining the defendants 2 and 3 in the proposed suit from any manner attempting to deal with his entitlement to 167 sq. ft of site area and builtup area admeasuring 3962.59 sq. ft - 1279 sq. ft inclusive of common area in the 5th floor, "Temple Tower:", 672/476, Anna Salai, Nandanam, Chennai - 600 035.

2. The entire case revolves upon the Deed of transfer of leasehold rights dated 30.01.1997 executed by Sethuram Thiagarajan Engineers Pvt. Limited, the company under liquidation in favour of Lakshmi Narayana Choudhary (deceased). The Appellants herein are the legal representatives of the deceased Lakshmi Narayana Choudhary who was the applicant

seeking validation of the said transfer. According to the Appellants, Lakshmi Narayana Choudhary (deceased) did not have knowledge about the pendency of winding up petition filed against STEPL, at the time of entering into the deed of transfer of leasehold rights dated 30.01.1997. According to the Appellants, Lakshmi Narayana Choudhary (deceased) parted with a sum of Rs.30,00,000/- to the respondent Bank on the date of transfer of leasehold rights and therefore, Lakshmi Narayana Choudhary (deceased) cannot be branded as a malafide transferee. It is the case of the Appellants that the company under liquidation as well as its creditors benefitted by the Deed of transfer of leasehold rights dated 30.01.1997 executed in favour of Lakshmi Narayana Choudhary (deceased) and therefore, Lakshmi Narayana Choudhary (deceased) is a bonafide transferee and according to them, the learned Single Judge of this Court ought to have allowed the application seeking for validation of transfer of leasehold rights under section 536(2) of the Companies Act, 1956.

3. However, it is the case of the respondents that Lakshmi Narayana Choudhary (deceased), the alleged transferee under the Deed of transfer of leasehold rights dated 30.01.1997 is not a bonafide transferee and further it is their case that Lakshmi Narayana Choudhary (deceased) had full knowledge of the pendency of winding up proceedings and the payment of Rs.30,00,000/- was also not paid by him towards discharge of the loan availed by the company under liquidation. It is also their case that the application filed by Lakshmi Narayana Choudhary (deceased) seeking validation of transfer is hopelessly barred by law of limitation as it has been filed only in the year 2011. It is also their case that the relief sought for in the proposed plaint to be filed against the company under liquidation cannot be granted by the company Court as Lakshmi Narayana Choudhary (deceased) is not a bonafide transferee, entitled for validation of the Deed of transfer of leasehold rights dated 30.01.1997.

4. The learned single judge dismissed Company Application CA.No.125 of 2011 seeking validation of transfer of leasehold rights dated 30.01.1997 filed under Section 536(2) of the Companies Act, 1956 on the following grounds:

(a) Deed of transfer of leasehold rights dated 30.01.1997 by STEPL in favour of Lakshmi Narayana Choudhary (deceased) is not a bonafide transfer.

(b) Lakshmi Narayana Choudhary (deceased) is not competent to question the validity of the mortgage with State Bank of India as he is not a bonafide transferee. If the mortgage in favour of the bank fails, the property will go to the common kitty of the Official liquidator and will enure to the benefit of the large body of unsecured creditors and not to Lakshmi Narayana Choudhary (deceased).

(c) It is not open to Lakshmi Narayana Choudhary (deceased) to raise objections with regard to discrepancies in the description of the mortgaged property, since he is not a bonafide transferee.

5. Aggrieved by the dismissal of CA.No.125 of 2011 on 29.04.2013, O.S.A.No.222 of 2013 has been filed.

6. The learned Single Judge by a separate order dated 19.07.2016 in C.A.No.1010 of 2015 dismissed the application filed by the Appellants who are the legal representatives of Lakshmi Narayana Choudhary (deceased) under Section 446(1) of the Companies Act, 1956 seeking leave to institute a suit against the company in liquidation on the ground that the Appellants will have to establish that Lakshmi Narayana Choudhary (deceased) was a bonafide transferee under the Deed of transfer of leasehold rights dated 30.01.1997 which is the subject matter of consideration before the Division Bench in O.S.A.No.222 of 2013 and without establishing their right of interest in the property, they cannot seek leave under section 446(1) of the Companies Act, 1956 to institute a suit against the company under liquidation.

7. Aggrieved by the order of the learned Single Judge dated 19.07.2016 passed in C.A.No.1010 of 2015, OSA.No.75 of 2017 has been filed.

8. Since both the appeals O.S.A.Nos.222 of 2013 and 75 of 2017 arise out of the same subject matter, they are disposed of by this common judgment.

9. Heard Mr.B.Ravi Raja, learned counsel for the Appellants and Mr.S.R.Sundar, learned counsel for the Official Liquidator/first respondent and Mr. C.Mohan, learned counsel appearing for the State Bank of India.

10. Learned counsel for the Appellants submitted that Lakshmi Narayana Choudhary (deceased) is a bonafide transferee under the Deed of transfer of leasehold rights dated 30.01.1997. According to him, a sum of Rs.30,00,000/- paid to the respondent bank to discharge the dues of the company in liquidation is undisputed. According to him, Henkel Spic India Limited who paid the said sum is a tenant of Lakshmi Narayana Choudhary (deceased) and only at the request of Lakshmi Narayana Choudhary, the said sum was paid to the respondent bank to discharge the dues of STEPL, the company in liquidation.

11. According to the learned counsel for the Appellants, the learned Single Judge failed to give due weightage to the independent purchase of 167 sq. ft. of specified land in the year 1995 by Lakshmi Narayana Choudhary (deceased). Learned counsel for the Appellants after inviting the attention of this Court to the findings of the learned Single Judge, submitted that the learned Single Judge has erroneously observed that the independent purchase of 167 sq. ft. may be in respect of some other portion in the fifth floor of the same premises. According to him, such a finding is not borne out of records and is not based upon the pleadings.

12. Learned counsel for the Appellants further contended that the mortgage created by the company in liquidation in favour of the respondent bank is not a valid mortgage as original title deeds pertaining to the mortgaged property have not been deposited with the respondent bank by the company in liquidation. According to him, the learned Single Judge has erroneously rejected the contention of the Appellants and held that the mortgage through deposit of title deeds can be created even through Xerox copies.

13. Learned counsel for the Appellants also submitted that there are discrepancies with regard to the extent of built up area which is the subject matter of mortgage with the respondent bank. According to him, as per form 66 filed by the respondent bank before the official liquidator only an extent of 1279 sq. ft. was disclosed but the property auctioned by the respondent discloses 2967 sq ft. as the built up area. According to the learned counsel for the Appellants, the learned Single Judge misappreciated these facts and has come to a wrong conclusion.

14. Learned counsel for the Appellants also drew the attention of this Court to the findings given by the learned Single Judge with regard to limitation and submitted that the

finding that the application filed under Section 536(2) of the Companies Act, 1956 is barred by law of limitation, is an erroneous one as according to him, Limitation Act is not applicable for an application under Section 536(2) of the Companies Act, 1956 seeking validation of transfer.

15. Per contra learned counsel for the Official Liquidator would submit that the learned Single Judge has rightly rejected the application as Lakshmi Narayana Choudhary (deceased) is not a bonafide transferee and the application filed by him under section 536(2) of the Companies Act is also hopelessly barred by law of limitation. The Official Liquidator referring to Section 441 of the Companies Act 1956 would point out that the winding up of the company relates back to the date of filing of the winding up petition. According to him, since the winding up petition was filed on 16.08.1993, the Deed of transfer of leasehold rights dated 30.01.1997 in favour of Lakshmi Narayana Choudhary is void.

16. The learned counsel for the Official Liquidator further submits that there is no builder's agreement for 1679 sq. ft. which is proportionate to the 167 sq. ft. undivided share of land purchased by Lakshmi Narayana Choudhary on 14.08.1995 and there is a builder's agreement dated 17.04.1997 only for 364 sq. ft of undivided share of land which is the subject matter of Deed of transfer of leasehold rights dated 30.01.1997. According to him, the sale deed dated 14.08.1995 for 167 sq. ft. corresponds to a different portion of the building and not to the subject matter of the present litigation. According to him, the learned Single judge has considered every aspect of the dispute and has rightly come to the conclusion that Lakshmi Narayana Choudhary is not a bonafide transferee under the Deed of transfer of leasehold rights dated 30.01.1997.

17. In support of his submissions, the learned Official Liquidator cited the following authorities:

(a) VGP Finances Limited vs. Official Liquidator and another dated 22.12.2017;

(b) Chittor District Co-operative Marketing Society vs. M/s.Vegetols Ltd and Another reported in 1987 (Supp) SCC 167;

(c) NGEF Ltd. vs. Chandra Developers (P) Ltd. and Another reported in (2005) 8 SCC 219;

(d) ICICI Ltd. vs. Ahmedabad Manufacturing & Calico Printing Co. Ltd. and Another reported in (2004) 9 SCC 747;

(e) In re Gray's Inn Construction Ltd reported in (1979) 1 WLR 711 ;

(f) Express Electrical Distributors Ltd. vs. Beavis and others reported in(2016) 1 WLR 4783;

18. Per contra, Mr.C.Mohan, learned counsel for the respondent Bank would submit that mortgage of title deeds relating to leasehold rights was created by the company in liquidation on 30.01.1991. Even in the suit C.S.No.2117 of 1995 filed by the respondent Bank against the company in liquidation, the mortgage created by company was disclosed. Further he would submit that the application filed by Lakshmi Narayana Choudhary before the learned Single Judge under Section 536 (2) of the Companies Act, 1956 to validate the transfer is hopelessly barred by law of limitation as the mortgage was created on 30.01.1991, whereas the application was filed only in the year 2011. According to him, the contentions raised by the applicants have been duly considered by the learned Single Judge in the impugned order. Further he would submit that due to the pendency of this appeal, the respondent bank is unable to exercise its power to sell the property and adjust the sale proceeds towards its mortgage dues.

Discussion:

19. Section 536 of the Companies Act, 1956 reads as follows:

"536. Avoidance of transfers, etc., after commencement of winding up.

(1) In the case of a voluntary winding up, any transfer of shares in the company being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of the winding up, shall be void. (2) In the case of a winding up by the Court, any disposition of the property (including actionable claims) of the company, and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall, unless the Court otherwise orders, be void."

20. The effect of section 536(2) of the Companies Act is that where a winding up proceeding is by or subject to the supervision of the Court, any disposition of the property of the company which is made after the commencement of the winding-up is void, unless the Court otherwise orders.

21. Under Section 441 (2) of the Companies Act, 1956, a winding up of a company by the Court is deemed to have commenced at the time of presentation of the petition for winding up. Sub

section 2 of Section 536 confers an enabling power on the Court to direct that a disposition of the property of a company shall not be void, though it was effected after the commencement of the winding up proceedings. This principle is incorporated to protect bonafide transactions carried out and completed in the ordinary course of the current business of a company.

22. The authorities relied upon by the learned Official Liquidator will lead to the following principles with regard to the application for validate the transfer under Section 536(2) of the Companies Act, 1956: (a) The Court has an absolute discretion to validate a transaction; (b) This discretion is controlled only by the general principles which apply to every kind of judicial discretion; (c) The Court must have regard to all the surrounding circumstances, and if from all the surrounding circumstances, it comes to the conclusion that the transaction should not be void, it is within the power of the Court under Section 536(2) to say that the transaction is not void; (d) if it be found that the transaction was for the benefit of and in the interest of, the company or for keeping the company going or keeping things going generally, it ought to be confirmed; (e) If the terms of the transaction cannot be ascertained with a reasonable degree of certainty, the transaction is void; (f) The applicant must not suppress any material factor and must approach the Court with clean hands and only then, the transaction can be validated under section 536(2) of the Companies Act, 1956.

23. We will now examine whether the learned Single Judge was right in coming to the conclusion that the applicant was not a bonafide transferee and the application is also barred by law of limitation.

24. In order to find the answer to the issue on hand, it is first necessary to take note of the few relevant dates:

(a) On 16.08.1993, the petition for winding up was presented before the Company jurisdiction of this Court;

(b) On 08.01.1995, State Bank of India filed the suit against the company in liquidation for recovery, claiming that there was a mortgage of the property;

(c) On 30.01.1997, the applicant got a Deed of transfer executed and also got it registered on 17.04.1997;

(d) The order of winding up of the company was passed on 10.12.1999;

(e) The applicant claims to have made payment of Rs.30.00 Lakhs to the State Bank of India on 17.04.1997, towards the discharge of the mortgage dues. This claim on the part of the applicant shows that he was aware of the mortgage. Therefore, it is clear that he purchased the leasehold rights with the full knowledge of the mortgage and was even eager to get the mortgage discharged;

(f) On 25.07.2000, the Official Liquidator admittedly wrote a letter to the applicant, calling upon him to hand over the property within ten days. The Official Liquidator again wrote another letter on 17.01.2001;

(h) On 30.08.2004, the Debts Recovery Tribunal passed a final order leading to the issue of a certificate of recovery in DRC.No.148 of 2004 on 01.11.2004;

(i) On 05.01.2007, the Recovery Officer of Debts Recovery Tribunal ordered the attachment of the property in question;

(j) In 2009, the Bank came up with an application in Comp.A.No.1445 of 2009 before the learned Single Judge of this Court seeking permission to sell the property through the Debts Recovery Tribunal, in pursuance of the certificate of recovery issued by the Debts Recovery Tribunal. During the pendency of the said application, Mr.Lakshmi Narayana Choudhary (deceased), the applicant in C.A.No.125 of 2011 came up with an application in Comp.A.No.1694 of 2009 seeking to implead himself as a party to the application Comp.A.No.1445 of 2009. That impleading application was allowed on 26.11.2009 and the applicant came on record and objected to the sale;

(k) On 26.11.2009, the learned Single Judge allowed the company application C.A.No.1445 of 2009 in the presence of the applicant in C.A.No.125 of 2011 permitting the sale of the property through the Debts Recovery Tribunal and leaving it open to the applicant (Lakshmi Narayana Choudhary) to work out his remedies before the Debts Recovery Tribunal;

(l) Thereafter, the applicant (Lakshmi Narayana Choudhary) filed objection petitions before the Recovery Officer, got his objections overruled and filed an appeal in A.No.7 of 2010 before the Tribunal; and

(m) Subsequently, on 31.01.2011, the applicant came up with the above application Comp.A.No.125 of 2011 filed under Section 536(2) of the Companies Act, 1956 seeking validation of transfer of Leasehold rights dated 30.01.1997.

25. The learned Single Judge has taken note of the fact that the sum of Rs.30,00,000/- which was paid to State Bank of India on 17.04.1997 towards discharge of the mortgage dues was not paid by the applicant (Lakshmi Narayana Choudhary), but it was paid by Henkal Spic India Limited. The contention of the Appellants that the said money belongs to Lakshmi Narayana Choudhary (deceased) and only on his instructions, Henkel Spic India Limited paid Rs.30,00,000/- to the bank is not supported by any iota of evidence. Excepting for the bald averments in the affidavit filed in support of the application under section 536 (2) of the companies Act, no evidence whatsoever has been placed before the learned Single Judge in support of the applicant's contentions that the said sum of Rs.30,00,000/- belongs to Lakshmi Narayana Choudhary (deceased) and was paid by Henkel Spic India Limited on his instructions to the respondent bank towards discharge of the loan availed by the company in liquidation. The company petition for winding up of STEPL was presented before this Court on 18.08.1993 and the said Company petition was admitted by the learned Single Judge of this Court on 03.09.1993 and notices were directed to be issued to the company as well as the Registrar of Companies. On 23.04.1996, the learned Single Judge of this Court passed an order in the Company petition directing the company in liquidation not to sell its assets without the permissions of the Court. Subsequently, on 10.12.1999, the company STEPL was ordered to be wound up. Lakshmi Narayana Choudhary (deceased) has sought for validation of the transfer of leasehold rights dated 30.01.1997 in his favour. Admittedly, the Deed of transfer of leasehold rights was entered into, subsequent to the filing of the winding up petition and subsequent to the passing of the order dated 23.04.1996 directing the company in liquidation not to sell its assets without obtaining the permission of the Court.

26. The consideration disclosed in the Deed of transfer of leasehold rights is Rs.2,68,080.21, but it is the contention of Lakshmi Narayana Choudhary (deceased), applicant that only at his request, the sum of Rs.30,00,000/- was paid to the bank by M/s.Henkel Spic India Limited towards discharge of the loan is unbelievable. The consideration of the lease under the Deed of transfer dated 30.01.1997 is only a sum of Rs.2,68,080.21 whereas the amount paid to the respondent bank towards discharge of the loan is Rs.30,00,000/-. A bonafide transferee would not have paid to the bank a sum much in excess of the consideration for the grant of lease under the Deed of transfer dated 30.01.1997. There are several inconsistencies in the contentions raised by the Appellants who are the legal representatives of the deceased Lakshmi Narayana Choudhary.

27. The Deed of transfer dated 30.01.1997 discloses that the transfer took effect from 01.04.1996. The Deed of transfer

also does not indicate that it was a record of the past transaction. The Deed of transfer does not indicate anywhere that the parties had a prior agreement and that, in pursuance of such a prior agreement, Mr.Lakshmi Narayana Choudhary (deceased) was put in possession on 01.04.1996 itself. Therefore it is palpable that only to circumvent the order of injunction granted by the learned Single Judge in the Company Petition on 23.04.1996, the Deed of transfer dated 30.01.1997 was entered into between the parties disclosing that the lease took effect from 01.04.1996. The learned Single Judge in the impugned order has taken judicial notice of the following fact also and has observed in page 38 of the order as follows:

"The name of the applicant is M.Lakshmi Narayana Choudhary. The name of his father is M.S.Rama Mohan Rao. The builder to whom the task of developing the whole property was granted even originally by the company in liquidation as well as their predecessor in title was M/s.R.K.Investments. In applications under Section 9 of the Arbitration and Conciliation Act, the very same applicant represented the very same M/s.R.K.Investments before me in different proceedings. Therefore, in the course of hearing of the above application, I questioned as to how the applicant, who represents M/s. R.K.Investments, could have entered into a Builder's Agreement with M/s.R.K.Investments in 1997. From the answer provided by the learned counsel on record for the applicant, it appears that the applicant's father was a partner of M/s.R.K.Investments. Therefore, it appears that the company in liquidation had entered into some kind of an arrangement with the applicant as well as M/s.R.K.Investments, for the purpose of violating the order of injunction and defrauding the creditors."

28. The consideration for lease as seen from clause (1) of the Deed of transfer dated 30.01.1997 discloses that the sum was paid on the date of execution of the Deed, whereas the lease has come into effect from 01.04.1996 itself. Any bonafide transferor would not have agreed for transfer of leasehold rights, even before the receipt of the consideration. As observed earlier, the Deed of transfer also does not disclose the reasons for giving effect to the lease from 01.04.1996 itself, even though the consideration was paid only on the date of the lease i.e., on 30.01.1997. Even the builder's agreement discloses that the consideration for the same is only Rs.7,44,088/-. Therefore, the total consideration for acquiring the leasehold rights and putting up a construction is only around Rs.10,00,000/- (Rs.2,68,080.21, the consideration for the Deed of transfer and

Rs.7,44,080/- the consideration for builders agreement). However, it is the case of the Appellants that Lakshmi Narayana Choudhary (deceased) paid a sum of Rs.30,00,000/- to the respondent Bank to discharge the loan of the company in liquidation which is highly imaginary and unbelievable. There are several inconsistencies in the contentions raised by the Appellants and the learned Single Judge has rightly come to the conclusion that the Deed of transfer of leasehold rights dated 30.01.1997 in favour of Lakshmi Narayana Choudhary (deceased) is not a bonafide transfer.

29. Insofar as the alleged discrepancies claimed by the Appellants are concerned, the said claim is untenable as the applicant in application No.125 of 2011 is not a bonafide transferee and he has no locus standi to raise that ground. Despite the same, the learned Single Judge has given a finding with regard to the alleged discrepancies in the property which is the subject matter of mortgage with the bank. As we are concerned only with the validity of the transfer under Section 536 (2) of the Companies Act, 1956, the question of discrepancies in a mortgaged property cannot be raised in these proceedings.

30. It must be noted that in all places, the bank had mentioned 2967 sq. ft as the built up area. In form 8 filed with the Registrar of Companies under Section 125 on 31.12.1991, the bank had indicated the area to be 2697 sq. ft (perhaps by typographical error in respect of 2967 sq. ft). But in the Schedule 'A' to the plaint, the Bank mentioned the extent to be 2967 sq.ft. This had been carried throughout. The learned Single Judge after taking note of the above mentioned facts has observed that it is not open to the applicant (Lakshmi Narayana Choudhary) to raise the issue of discrepancies in the mortgaged property.

31. The learned Single Judge has also taken note of the fact that even if the mortgage in favour of the Bank fails, the property will go to the common kitty of the Official Liquidator and can enure only to the benefit of the large body of unsecured creditors and cannot enure to the benefit of the applicant (Lakshmi Narayana Choudhary) alone. We are in agreement with the said observation.

32. The learned Single Judge has also considered the issue of limitation. Admittedly, the mortgage was created by the company under liquidation in favour of the respondent Bank on 30.01.1991 and the Deed of transfer of leasehold rights in favour of the applicant (Lakshmi Narayana Choudhary) was executed on 30.01.1997, whereas the application for validation of transfer has been filed only in the year 2011 after a lapse

of long period of time. The learned Single Judge has held that the application is hopelessly barred by law of limitation. Whenever, the Act does not provide for any specific limitation period, Article 137 of the Limitation Act comes into play. The Companies Act, 1956 also does not bar the applicability of the Limitation Act. Therefore, the application under Section 536 (2) of the Companies Act, 1956 seeking validation of transfer will have to be filed within three years from the date of the alleged transfer. In the case on hand, the application has been filed after a lapse of almost 14 years from the date of Deed of transfer dated 30.01.1997.

33. The learned Single Judge has considered all these aspects and only thereafter has come to the right conclusion that the application filed under Section 536(2) of the Companies Act, 1956 is hopelessly barred by the law of limitation. The decisions relied upon by the learned Official Liquidator squarely supports the contention of the respondents.

34. Unless and until, the applicant (Lakshmi Narayana Choudhary) established that he is a bonafide transferee under the Deed of transfer of leasehold rights dated 30.01.1997, he cannot be permitted to file a suit against the company in liquidation. The applicant (Lakshmi Narayana Choudhary) has sought leave to institute a suit for recovery of money as well as for mandatory permanent injunction against the company in liquidation. The learned Single Judge has rightly dismissed the leave application in C.A.No.1010 of 2015 filed under Section 446 (1) of the Companies Act, 1956. As observed earlier, the applicant (Lakshmi Narayana Choudhary) is not a bonafide transferee and therefore, he cannot be permitted to file a suit against the company in liquidation.

35. For the foregoing reasons, there is no merit in both the appeals. Accordingly, both the appeals are dismissed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

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To

1. Official Liquidator,
High Court, Madras as the Liquidator of
M/s.Sethuram Thiyagarajan Engineers Pvt.
Limited (In Liquidation)
Corporate Bhavan, 2nd Floor,
First Line Beach Road,
Chennai - 600 001.

2. The Recovery Officer,
Debt Recovery Tribunal - II,
5th Floor, No.770-A, Anna Salai,
Spencer Towers,
Chennai - 600 002.

3. The Assistant General Manager,
State Bank of India,
Commercial Branch,
Stressed Assets & Management Branch,
No.32, Red Cross Building,
Montieth Road, Egmore,
Chennai - 600 008.

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

+2ccs to M/s.King & Partridge, Advocate, S.R.No.24266,24267

+2ccs to Mr.N.Ravi Raja, Advocate, S.R.No.24256

+2ccs to Mr.S.R.Sundar, Advocate, S.R.No.24228,24227

O.S.A.Nos.75 of 2017 & 222 of 2013

&

CMP.Nos.5371 of 2020 & 5367 of 2017

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