

Comp.A.Nos.7 and 230 of 2020
in
C.P.No.255 of 2014

R.SUBRAMANIAN, J.

Comp.A.No.7 of 2020 has been filed by the Official Liquidator under Section 446 of the Companies Act, 1956 for a direction to the respondent/ debtor to pay a sum of Rs.1,95,99,284.95/- allegedly due under the sale agreement dated 29.12.2008 and 28.09.2011.

2. Though, the respondent Company had paid the lease rentals payable under the said agreements as claimed by the learned Official Liquidator, according to the Official Liquidator, it has not returned the machineries leased on the expiration of the lease agreements and therefore the Company is bound to pay the depreciated value of the machinery along with interest which worksout to the sum aforesaid.

3. This application was filed into Court on 06.01.2020. The term of the Lease Agreements is for a period of 36 months which is equivalent to 3 years. The first agreement viz., Agreement No.15 was entered into on

29.12.2008 and was valid upto 28.12.2011. The second agreement viz., Agreement No.17 was entered into on 28.09.2011 and the same was valid upto 27.09.2014.

4. The respondent upon service, has come up with the Comp.A.No.230 of 2020 seeking rejection of the claim on the ground that the claim is on the face of it barred by limitation.

5. Heard Mr.Arun Karthik Mohan, learned counsel appearing for the applicant and Mrs.Latha Parimalavadhana, learned Official Liquidator for the respondent.

6. Mr.Arun Karthik Mohan, learned counsel appearing for the applicant would submit that this application is, on the face of it, barred by limitation, hence, merits need not be gone into and the application should be rejected at the out set. He would also draw my attention to Rule 6 of Company Court Rules, which provides that an application under Section 446 is akin to that of the civil suit under the Code of Civil Procedure and the

provision of Order VII Rule 11 of the Code of Civil Procedure would be applicable to the proceedings before the Company Court. He would also rely upon the judgments of the Hon'ble Supreme Court in **Ramesh B.Desai & Others Vs. Bipin Vadilal Mehta & Others** reported in (2006) 5 SCC 638 and **Dahiben Vs.A.K.Bhanusali**, reported in (2020) 7 SCC 366.

7. In **Ramesh B.Desai & Others Vs. Bipin Vadilal Mehta & Others** cited supra, while considering the scope of the Order VII Rule 11(d), the Hon'ble Supreme Court had held that, if limitation is a mixed question of fact and law and the same will have to be decided on the basis of evidence. However, in **Dahiben Vs.A.K.Bhanusali**, reported in (2020) 7 SCC 366, the Hon'ble Supreme Court pointed out that Order VII Rule 11(d) could still be invoked if the plaint or the claim appears to be barred by limitation on the face of it, without there being any evidence required. A Division Bench of this Court had in **Dr.L.Ramachandran and others Vs. K.Ramesh and others** reported in 2015(4) LW 595 has also restated the said position of law.

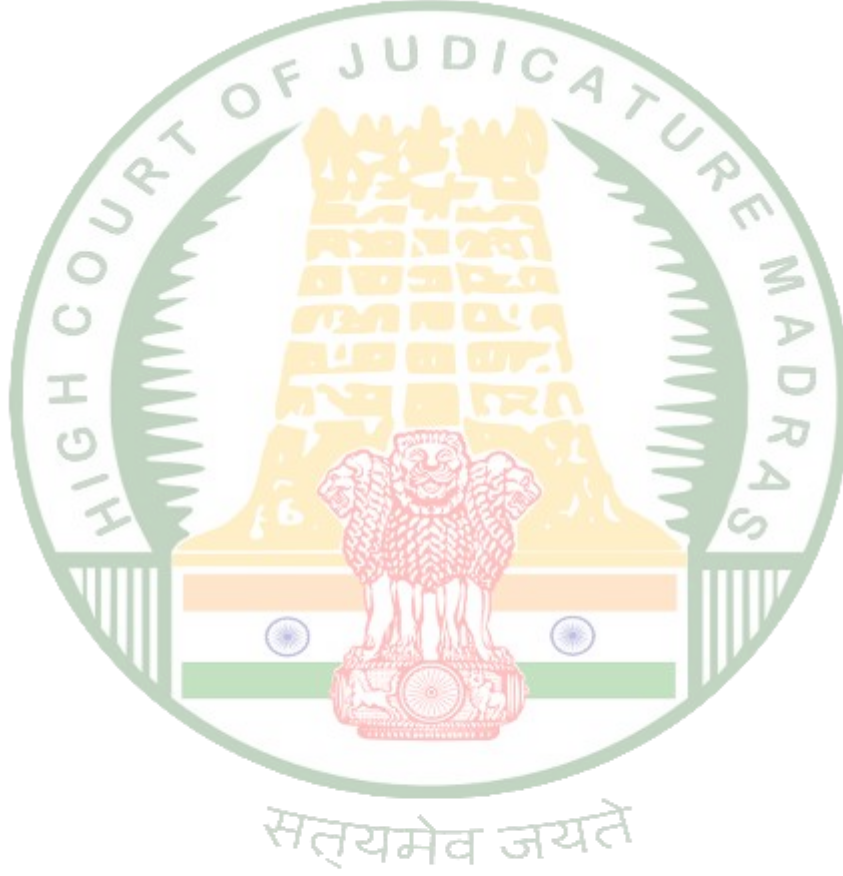
8. Therefore, I do not find any difficulty in deciding the question as to whether the claim petition filed by the learned Official Liquidator is within time or not or barred by limitation. From the records it is seen that the term of the agreement expired on 28.12.2011 and 27.09.2014 respectively. The period available for the Official Liquidator including the period excluded under Section 458A of the Company Courts Act is 4 years and 24 days. The said period of 4 years and 24 days in the case of the first agreement would expire on 22.01.2017 and in the case of the second agreement on 28.10.2018. It is also seen from the records that the notice demanding the sum of Rs.1,95,99,284.95/- was issued by the learned Official Liquidator only on 02.08.2019 i.e., long after expiration of period of limitation that was available to the Official Liquidator. The application was filed subsequently on 06.01.2020. It is therefore clear that the application is barred by limitation and the merits need not be examined.

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9. In view of the above, the application in A.No.230 of 2020 is allowed and the application in A.No.7 of 2020 is rejected as barred by limitation.

25.06.2021

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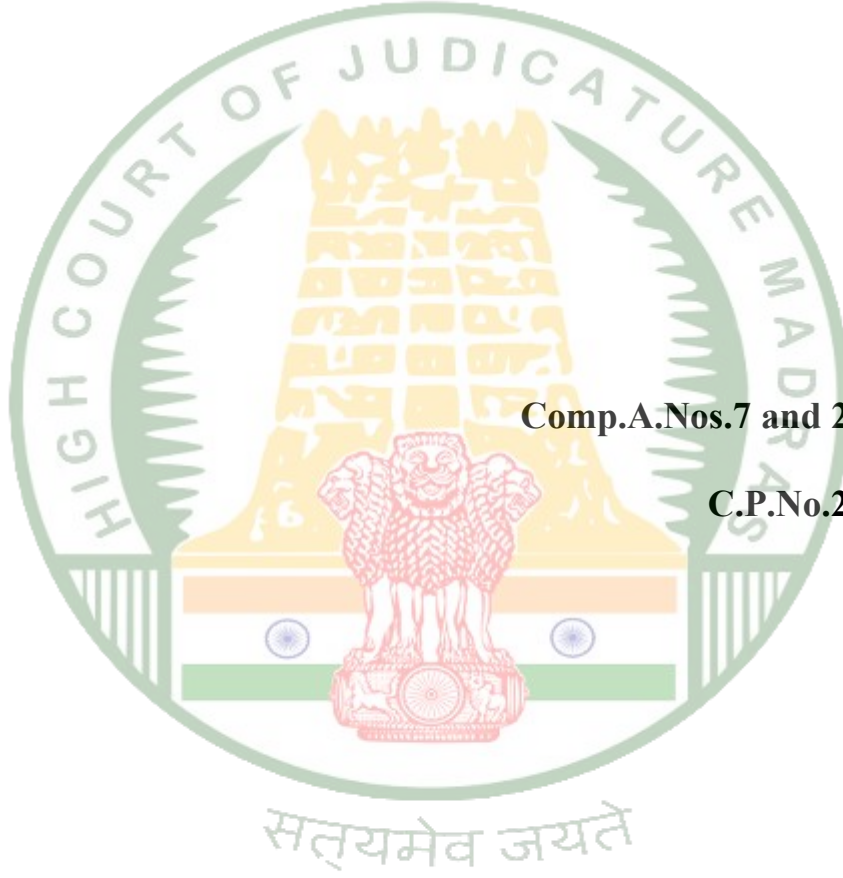


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