



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2021

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MS.JUSTICE R.N.MANJULA

O.S.A.No.49 OF 2019 &
C.M.P.No.5017 of 2019

M/s.Essar Shipping Ltd.,
No.26, Haddows Road,
Chennai-600 006.

...Appellant/2nd Respondent

versus

1. The Tamil Nadu Water Supply and Drainage Board,
rep. by its Special Chief Engineer,
Veeranam Project, Chepauk,
Chennai-600 005.

2. M/s.Sathyanarayana Brothers Private Ltd.,
No.25, Edward Elliots Road,
Chennai-600 004.

...1st & 2nd Respondents/
Plaintiff & 1st Defendant

Prayer: This Original Side Appeal is filed under Order XXXVI Rule 1/11 of O.S.Rules against the order of the learned single Judge dated 19.11.2008 in Application Nos.7024 of 2018 in E.P.No.70 of 2015.

Prayer in A.Nos.7024/2018 Prayer in E.P. 70/2015:

Application praying that this Hon'ble Court be pleased to set aside the order dated 14.08.2018 passed by the Learned Master, High Court, Madras in E.P. No. 70/2015 permitting the Respondent/Decree Holder to let in Evidence.

Prayer in E.P. No. 70/2015:

Decree Holder prays that Hon'ble Court may pleased to attach the unmovable property of the 2nd Defendant morefully specifically mentioned hereunder in the Schedule and to keep the attachment subsentence and incase the 2nd Defendant does not deliver the crane to the plaintiff.



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Description of Property: A Building with Door No. 56(Old) New No. 77 CP Ramasamy Road, Alwarpet, Chennai, Mylapore Sub Registration District and Central Madras Registration District.

For Appellant

.. Mr.Manoj Menon for
M/s.Menon

For Respondents

.. Ms.S.Thamizhrasi for R1
No representation for R2

JUDGMENT

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

This Original Side Appeal has been directed against the order of the learned single Judge dated 19.11.2008 made in Application Nos.7024 & 7025 of 2018 in E.P.No.70 of 2015.

2. The appellant herein is one of the Judgment Debtors and the Tamil Nadu Water Supply and Drainage Board/1st respondent herein is the Decree Holder in E.P.No.70 2015. The said E.P. was filed by the 1st respondent, seeking to direct the appellant herein to deliver the possession of a Crane. The said E.P. was resisted by the appellant by filing a counter affidavit, inter alia, stating that the E.P. itself is not maintainable since it was barred by limitation as it was filed after a lapse of 14 years from the date of the decree. Pending E.P., the 1st respondent sought for a direction to attach immovable property of the appellant and filed a proof affidavit, wherein, the 1st respondent was permitted to let in evidence by the learned Master. This was objected by the appellant, contending that the 1st respondent cannot seek different mode of execution that what was sought for in the E.P. and it would amount to enlarging the scope of the E.P. However, the learned Master rejected such contention. Questioning the same, the appellant herein has moved applications in A.Nos.7024 and 7025 of 2019 before this Court. The learned single Judge, by order, dated 19.11.2008, dismissed the applications. Challenging the same, the present Writ Appeal has been filed by the appellant.

3. The learned counsel for the appellant would contend that the appellant has raised preliminary issue that the E.P.itself is not maintainable since it was barred by limitation and therefore, the said preliminary issue ought to have been decided before proceeding further. We do not think so. The Execution Petition is meant to give effect to the decree. The issue regarding limitation aspect, is a mixed question of fact and law which would be taken into and dealt with by the Executing Court at the time of final orders being passed in the Execution



Petition. The law does not require to decide the said issue as a preliminary issue. In such view of the matter, we do not find any scope to interfere with the order passed by the learned single Judge and hence, we confirm the same.

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4. Accordingly, this Original Side Appeal along with connected C.M.P. is dismissed. However, taking into consideration the fact that the E.P. has been pending for the last six years, we request the learned Judge to dispose of the same as expeditiously as possible.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

suk

To:

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

+1 CC to M/s.Menon, Advocate, Sr 31090.

+1 CC to Mr.S.Thamizharasi, Advocate, Sr 30970.

O.S.A.No.49 of 2019

SPD(CO)
SP(13/08/2021)