IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

O.S.A.No.4 of 2015

M/s.Shree Vijayalakshmi Charitable Trust,
A Registered Trust rep. by its
Managing Trustee
Mr.A.Senthil Kumar,
having office at No.107-A, Sengupta
Street, Ramnagar, Coimbatore-641 009.
... Appellant

-vs-

1. The Official Liquidator,
High Court, Madras,
As the Liquidator of
M/s.SIV Industries Ltd.,
(In Liquidation)

2. Fairdeal Supplies Ltd.
Rep. by its Director,
No.4, B.B.D.Bag (East),
5, Stephen House,
1st Floor, Kolkatta-700 001. ... Respondents

Original Side Appeal filed under Order 36 Rule 11 read with Clause 15 of the Letters Patent against the order dated 17.11.2014 made in Company Application No.317 of 2013 in Company Petition No.17 of 2004 passed by this Court. The Company Applicant praying this Court to permit the applicant to remove the pipeline forming part of the ETP plant and pipeline as seen in the ITCOT report dated 16.07.2007, with the assistance of the official Liquidator.

For Appellant : Mr.G.Arul Murugan

For Respondents : Mr.S.R.Sundar for R1
Mrs.K.Vasuki for R2

JUDGMENT

(Judgment of the Court was pronounced by T.RAJA, J.)

This Original Side Appeal has been filed against the order dated 17.11.2014 made in Company Application No.317 of 2013 in Company Petition No.17 of 2004 by this Court.

2. The Company Application No.317 of 2013 has been filed by the 2nd respondent herein, namely, Fairdeal Supplies Limited rep. by its Director, No.4 B.B.D. Bag (East), No.5, Stephen House, 1st Floor, Kolkatta-700 001, seeking an order to remove the pipeline forming part of the ETP Plant and pipe line as mentioned in the ITCOT report dated 16.07.2007, with the assistance of an Official Liquidator. The same was allowed by an order dated 17.11.2014 in and by which it was held that the purchaser of Lot F1 is entitled to the relief because the applicant therein, being the purchaser of the property categorised as F1, which includes ETP Plant i.e., the pipeline system to bring water supply into the farm lands till the entry into the farm lands, valued at Rs.1046.49 Lakhs. It has been further held that the applicant therein was entitled to seek for removal of the pipeline forming part of the ETP plant and pipeline, as mentioned as per the ITCOT Consultancy and Services Limited Report dated 16.07.2007, with the assistance of the Official Liquidator. Aggrieved thereby, this Original Side Appeal has been filed by the 2nd respondent therein.

3. In order to give a quites to this issue, in an earlier occasion, after hearing the parties, the Company Court has directed both sides to give a Valuation Report on the pipeline laid. Based on which, the 2nd respondent herein has submitted their Valuation Report. Subsequently, an order dated 17.11.2014 was passed holding that since the pipeline was included in the Valuation Report of the 2nd respondent, their claim for the pipeline is sustainable. Accordingly, when this Court has ordered to pay a sum of Rs.60,00,000/- as a lump sum towards the cost of the pipeline to be payable to the 2nd respondent herein, though the appellant prepared to make the said payment, but the 2nd respondent refused to accept the same. On the other hand, they demanded a sum of Rs.1,75,00,000/-. This is again disagreed by the appellant on the ground that during the passage of time, the pipeline has also lost its utility.

4. Thereafter, a Memo dated 11.03.2021 has been filed stating that the appellant is not interested in retaining the pipeline and they are giving up their claim for the pipeline. The relevant portion of the Memo filed by the appellant dated 11.03.2021 is extracted here under:

''3. It is respectfully submitted that however by order dated 17.11.2014, the Hon'ble Company Court passed order stating that since the pipeline was included in the valuation report of the 2nd respondent their claim for the pipeline is sustainable. In the above appeal filed by us, this Hon'ble Court was pleased to fix a sum of Rs.60,00,000/- (Rupees Sixty Lakhs) as lump sum as on 09.12.2015 for the pipeline and the appellant accepted to make payment but the 2nd respondent refused to accept the same. But however now after 6 years the pipeline has lost its value and the appellant is also not in a position to make the above payment as it will not be beneficial for the Trust. Therefore, the appellant is not interested in retaining the pipeline and they are giving up their claim for the pipeline in appeal.''

5. Placing on record the Memo dated 11.03.2021 filed by the appellant herein, the Original Side Appeal is disposed of accordingly. It is for the 2nd respondent to remove the pipeline subject to their convenience. No costs. It is needless to mention that the Memo dated 11.03.2021 shall form part of the decree.

*Herein enclosed the Xerox copy of the Memo filed by the Appellant.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To:

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

+1cc to Mr.G.Arul Murugan, Advocate, S.R.No.67663

OSA.No.4 of 2015

EV(CO)
SU(27/01/2022)