



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Thursday, the Thirty First day of March Two Thousand Twenty Two

PRESENT

THE HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR JUSTICE D.BHARATHA CHAKRAVARTHY

WMP.Nos.4281 of 2022 in WP.No.28096 of 2014

AND

WMP.NO.4286 OF 2022 IN WP.NO.5988 OF 2017

1 MRS.S.AMMSAVALLI [PETITIONERS IN BOTH THE PETITIONS]
2 MRS.S.PREMALATHA
3 MR.S.KAMESH RAJ
4 MR.T.S.UMESH RAJ

Vs

1 M/S. ACL CEMENTS (P) LTD., [RESPONDENTS IN WMP.4281/2022
REP.BY ITS MANAGING DIRECTOR, IN WP.28096/2014]]
M.RAJKUMAR, 243/59, THANDALAMCHERRY VILLAGE,
GUMMIDIPOONDI TALUK,
THIRUVALLUR DISTRICT-601 201.
PRESENTLY AT 144/179, I FLOOR,
EVR LANE, POODAMALEE ROAD, KILPAUK, CHENNAI 600 010.

2 THE TAMIL NADU INDUSTRIAL INVESTMENT CORPORATION LIMITED,
REP.BY ITS REGIONAL MANAGER, REGIONAL OFFICE, NO.692,
ANNA SALAI, NANDANAM, CHENNAI-35.

3 THE BRANCH MANAGER,
TIRUVALLUR BRANCH,
THE TAMIL NADU INDUSTRIAL INVESTMENT CORPORATION LIMITED,
86, C & D, 2ND MAIN ROAD, AMBATTUR INDUSTRIAL ESTATE,
CHENNAI-600 058.

1 A.CHOCKALINGAM
2 M.JEYARAMAN



3 THE TAMIL NADU INDUSTRIAL INVESTMENT CORPORATION LIMITED,
REP.BY ITS REGIONAL MANAGER, REGIONAL OFFICE, NO.692,
ANNA SALAI, NANDANAM, CHENNAI-35.

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TIRUVALLUR BRANCH,
THE TAMIL NADU INDUSTRIAL INVESTMENT CORPORATION LIMITED,
86, C & D, 2ND MAIN ROAD, AMBATTUR INDUSTRIAL ESTATE,
CHENNAI-600 058.

5 1 M/S. ACL CEMENTS (P) LTD.,
REP.BY ITS MANAGING DIRECTOR,
M.RAJKUMAR, 243/59, THANDALAM VILLAGE,
GUMMIDIPOONDI TALUK,
THIRUVALLUR DISTRICT-601 201.
PRESENTLY AT
144/179, I FLOOR, EVR LANE,
POONDAMALEE ROAD,
KILPAUK, CHENNAI-600 010.

Petition praying that in the circumstances stated therein
and in the affidavit filed therewith the High Court will be pleased

To permit the petitioners to implead as respondents in
this writ petition and save us from undergoing irreparable loss.(in
WMP.No.4281/2022 in WP.No.28096/2014)and;

(ii) To permit the petitioners to implead as respondents in
this writ petition herein and save us from undergoing irreparable
loss.(in WMP.No.4286/2022 in WP.5988/2017)

Order : These petitions coming on for orders upon perusing
the petition and the respective affidavits filed in support thereof
and upon hearing the arguments of M/S.A.IRUDAYAM, Advocate for the
petitioner in both the petitions and of MR.KARTHIKEYAN Advocate for
1 & 2 respondents in WMP.4286/2022 and MR.VENKATESH MAHADEVAN
Advocate for 5th respondent in WMP.No.4286/2022 and 1st respondent in
WMP.4281/2022 and I.SATISH Advocate for 3 & 4 respondents in
WMP.No.4286/2022 and 2 & 3 respondents in WMP.No.4281/2022 on
behalf of the Respondents the court made the following order:-

(Order of the Court was made by the Hon'ble Chief Justice)

Heard on the applications for impleadment. The applicants are
the legal heirs of R.Shivamani, who is said to have stood as
guarantor for the loan advanced to the writ petitioner - M/s.ACL
Cements Private Limited.

2. It is stated in the applications that a Memorandum of
Understanding was entered on 7.6.2012 to the effect that the
deceased guarantor, late Sivamani, would have charge over the
entire assets of the writ petitioner - M/s.ACL Cements Private



Limited, including land, plant and machineries. The writ petitioner company had also given five post-dated cheques of different dates, totalling to Rs.2.25 crores, creating charge over the assets of the company in favour of late Sivamani. However, the then Managing Director of the writ petitioner company, namely Raj Kumar, had periodically requested late Sivamani not to deposit the cheques, especially on the due date of presentation of the cheques or afterwards, as the writ petitioner company did not have sufficient funds to honour the cheques.

3. It is also stated that the present Managing Director and the previous Managing Director of the writ petitioner company, namely Chockalingam, have failed to repay the loan acquired from the Tamil Nadu Industrial Investment Corporation Limited (TIIC) even after granting them the OTS scheme. An amount of Rs.2,34,44,137/- which has been paid by late Sivamani, the guarantor, to United Bank of India in the year 2013 towards discharge of the loan, is still to be repaid by the writ petitioner company.

4. Taking all those facts into account and mainly the liabilities which were required to be taken care of by the writ petitioner company, the previous Managing Director was willing to pay Rs.3 crores as one time settlement, as the writ petitioner company failed to discharge the liabilities towards the guarantor in terms of the memorandum of understanding. Therefore, it is necessary for the applicants to be impleaded as party respondents in the writ petitions.

5. Serious objection has been raised by learned counsel for the writ petitioner company who submitted that the writ petitions have been filed for quashing of the auction sale notice and for release the collateral security given for the loan amount of Rs.1.07 crores. However, the applicants want to change the nature of the writ petitions by converting them to be for recovery of the amount of the guarantor, though the same is not permissible. If the applicants, being the legal heirs of the guarantor, are entitled to secure the amount paid by late Sivamani, they have to enforce it by taking the remedy for recovery of the amount, but not by impleading in the writ petitions.

6. We have considered the rival submissions and find that the applicants cannot be said to be necessary parties for the reason assigned in the applications. When the issue involved in the writ petitions altogether is different, the applicants cannot be impleaded to recover the amount due and payable to them. If Sivamani had any intention to recover the amount, he could have proceeded to take the remedy available. It is more so when he was having five post-dated cheques till his death. However, no action was taken by Sivamani while he was alive. Now the applicants, who are the legal heirs of the deceased Sivamani, cannot seek recovery of the amount in these writ petitions, which will alter the nature of the reliefs sought in the writ petitions.



7. For all the reasons stated above, the applicants cannot be said to be necessary parties in the writ petitions and, accordingly, the applications are dismissed. It is with clarity that if the applicants have any grievance or any right exists in their favour, the order passed herein would not affect their right to avail the remedy.

-sd/-

31/03/2022

/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

THE BRANCH MANAGER,
TIRUVALLUR BRANCH, THE TAMIL NADU INDUSTRIAL
INVESTMENT CORPORATION LIMITED,
86, C & D, 2ND MAIN ROAD,
AMBATTUR INDUSTRIAL ESTATE,
CHENNAI-58.

C.C. to M/S. A.IRUDAYAM Advocate SR.NO.2389

Order

in

WMP.Nos.4281 of 2022 in WP.No.28096 of 2014

AND

WMP.NO.4286 OF 2022 IN WP.NO.5988 OF 2017

Date :31/03/2022

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