



CRP No.4177 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on: 17.08.2022

Delivered on: 25.11.2022

C O R A M

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

Civil Revision Petition No.4177 of 2019
& CMP Nos.576, 578 of 2020
and CMP.No.27193 of 2019
CMP.No.27179 of 2019 in CRP.SR.157155/2019

1.M.Mohammed Habibullah and Co
through its Partner M.Nazar Mohammed
Flat no.A1 Alphine Enclave,
31 Club Road, Chetpet., Chennai.

2.M.Nazar Mohammed
Partner of M.Mohammed Habibullah and Co.

.. Petitioners/respondents/Defendants
in both CRP.4177 of 2019
&CRP.SR.157155/2019

Vs

Kwality Skin Company
A registered partnership Firm
of Parvinder Kumar Arora
No.45, G.T.Road,
Hide Market
Amritsar.

.. Respondents//Petitioner/Plaintiff in
both the petitions



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Prayer in CRP No.4177/2019: Civil Revision Petition is filed to set aside the order dated 04.11.2019 passed in E.P.No.22 of 2017 in O.S.No.230 of 2005 on the file of III Additional District and Sessions Judge, Tirupathur, Vellore District.

Prayer in CRP No.SR157155/2019: Civil Revision Petition is filed to direct the learned III Additional District and Sessions Judge, Tirupathur, Vellore District to advance the hearing considering the application made in REA SR No.5925 of 2019 in REA No.1 of 2019 in E.P.No.22 of 2017 in O.S.No.230 of 2005 filed by the petitioners and pass orders in REA no.1 of 2019 in E.P.No.22 of 2017 in O.S.no.230 of 2005, filed by the petitioners within a time frame and till such time not to proceed with the sale of the properties described in the sale proclamation dated 07.11.2019 fixed on 19.12.2019.

For Petitioners .. Mr.N.Muralikumaran for
M/s.Mc Gan Law Firm

For Respondent .. Mr.G.Vinodhkumar

COMMON ORDER

At the time of commencement of the hearing in the matters, the learned counsel for the petitioners, submitted that the relief sought for in CRP. SR. No. 157155 of 2019, has now become infructuous, on account



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of the subsequent events and as such informed this Court that the petitioners are not pressing the same and further submitted that it is suffice, if the issue involved in C.R.P. No. 4177 of 2019, is decided by this Court.

2. Hence, CRP.SR.No.157155 of 2019, is dismissed as infructuous and C.R.P. No. 4177 of 2019, in which the petitioners have prayed to set-aside the Order dated 04.11.2019 passed by the III Additional District and Sessions Judge, Tirupattur, Vellore District in [E.P.No. 22 of 2017](#) in [O.S.No. 230 of 2005](#), in and by which proclamation of sale was ordered, was taken up for final hearing.

3. The crux of the revision petition in hand is that, the learned III Additional District and Sessions Judge, Tirupattur vide Order dated 4.11.2019 in [E.P.No. 22 of 2017](#) in [O.S.No. 230 of 2005](#), without considering the facts that there is charge over the properties in favour of M/s. Reliance Commercial Finance; that the machineries covered in the said sale proclamation is not in the schedule to the EP and that the



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properties have already been taken control by a Insolvency Resolution Professional appointed by the National Company law Tribunal, ordered sale proclamation of the properties owned by the 1st respondent, in which the 2nd respondent is a Partner. It is the further case of the petitioners that the Amina's report is bad for having undervalued the properties @ Rs. 2,57,40,750/- (Rupees Two Crores Fifty Seven Lakhs Forty Thousand Seven Hundred and Fifty only), while the actual worth is Rs. 20,00,00,000/- (Rupees Twenty Crores only). Even the application filed under Order 21, Rule 89 r/w Section 151 C.P.C. in R.E.A. No. 1 of 2019 in the above E.P.No.22 of 2017 on 12.11.2019, against the said sale proclamation and the petition to advance the hearing in the same was also not considered. Hence the present Revision petition was filed.

4. The learned counsel for the petitioners would submit that when a charge has been created over an asset by a financial organization, which deals with public money, any claim over such property, is only subject to full satisfaction of the debt to such financial institution. Further, when a National Forum, has declared moratorium period and when the subject



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property is also a subject matter of liquidation, ordering sale proclamation of such property, would amount to interfering in to the liquidation process, as it would amount to infringing the rights of other debtors, who have created charge over the property.

5. The further case of the petitioner is that when the Insolvency Resolution Professional has taken control of the property and has appointed security personnels in the property, without the knowledge of the Resolution Professional, the Amina could have not valued the properties, on the date the Amina alleged to have inspected and valued the property. The silence about the existence of Resolution profession appointed by the National Company Law Tribunal, in the Amina's report itself would clearly establish that the Amina of the Court below, has filed valuation, without conducting any inspection and it is an outcome of assumption and influence.

6. The learned counsel for the petitioners also submitted that the petitioners during the course of the execution proceedings paid the



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respondent through his counsel a sum of Rs. 1,25,000/- (Rupees One Lakhs and Twenty Five Thousand only) by way of Demand Draft on 25.07.2019 and in addition to the same, pursuant to the Interim Order dated 13.01.2020, of this Court, the petitioners have also deposited a sum of Rs. 14,70,689/- (Rupees Fourteen Lakhs Seventy Thousand Six Hundred and Eighty Nine only) vide challan No. 410026 in E.P. No. 22/2017 in O.S.No.230/05, before the Court below. Therefore the petitioners have paid and deposited a total sum of Rs. 15,95,689/- (Rupees Fifteen Lakhs Ninety Five Thousand Six Hundred and Eighty Nine only), to the credit of the execution proceedings.

7. The respondent though entered appearance through a counsel, inspite of several opportunity given, did not file any counter. Further, the counsel though was present in the Court representing the respondent today, did not make any submission or objected to the submissions of the learned Counsel for the petitioners and he only pressed for permission to withdraw the deposit made by the petitioners in the court below, pursuant to the above interim order of this Hon'ble Court.



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8. Considering the facts and circumstances of the case, I am of the opinion that when the property has been valued at Rs. 6,32,60,000/- (Rupees Six Crores Thirty Two Lakhs and Sixty Thousand only), by M/s. Reliance Capital Ltd., in the year 2014, valuing the very same property in 2019 as Rs. 2,57,40,750/- (Rupees Two Crores Fifty Seven Lakhs Forty Thousand Seven Hundred and Fifty only), is improper and proven to be an undervaluation.

9. Therefore, the sale proclamation ordered pursuant to an improper valuation is liable to be set-aside and accordingly the same is hereby set-aside. As regards the permission sought by the counsel for the respondent for withdrawal of the deposit made by the petitioners, pursuant to the order of this Court, the learned III Additional District and Sessions Judge, Tirupattur, can decide the same on merits, if an application is moved by the respondent in the EP proceedings pending before it.



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10. Accordingly the CRP No.4177 of 2019 is allowed and the connected miscellaneous petitions are closed. No costs.

25.11.2022

Index : Yes/No
Internet : Yes
RR/nvsri

To

1.The III Additional District and Sessions Judge,
Tirupathur, Vellore District.

2.The Record Keeper, V.R.Section, High Court, Madras.



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J.NISHA BANU, J.

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