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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.03.2022

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

CMSA.NO.32/2018

R.Chandra

... Appellant/2nd Respondent/
Respondent/Petitioner

Versus

1.N.Allimuthu
2.G.Chinnaraju
3.Selvambal

... Respondents/Appellants/
1 to 3 Petitioners/Respondents
26,29,35

4.Kannammal
5.R.Dhanapal
6.R.Manimekalai
7.R.Manikandan
8.R.Prabhakaran

... Respondents/Respondents 3 to 7/
4 to 8 Petitioners/Respondents
38 to 42

9.R.Ravichandran
10.R.Jayaraj

... Respondents/Proposed Party

(Cause title accepted vide order dated 05.02.2018 made in
CMP.21400/2018 in CMASR.123921/2018)

Prayer : -

Civil Miscellaneous Second Appeal filed under Section 100 of CPC to set aside the fair and decreetal order in CMA.No.8/2017 dated 19.04.2018 passed by the learned II Additional District Judge, Salem by reversing the fair and decreetal order in I.A.No.12/2016 in I.P.No.56/2000 dated 02.02.2016 passed by the learned Principal Subordinate Judge, Salem.

For Appellant	:	Mr.B.Gopalakrishnan
For R1 to R3	:	No appearance
For R4 to R8	:	Mr.N.Manoharan



JUDGMENT

- (1) Two petitioners, M.R.R.Rajamanickam and his wife Mrs.R.Chandra, had both jointly filed an Insolvency Petition in IP.No.56/2000 before the Principal Sub Court at Salem, in what can be termed as Debtors Petition, seeking to declare themselves as insolvents in view of the loans which they have had accrued having borrowed them from various creditors.
- (2) The said Insolvency Petition did not move forward in its normal way. The list of creditors had been declared in the Schedule of the Insolvency Petition. Thereafter, the petitioners had taken a decision to withdraw the Insolvency Petition. That is not possible in law. The learned Subordinate Judge also rejected the request to withdraw the Insolvency Petition. They took the alternate method, and permitted the Insolvency Petition to be dismissed for non prosecution. Even that order by the learned Subordinate Judge can be scrutinised by this Court since the Insolvency Petition, if rights had accrued to the creditors, cannot be dismissed for non prosecution. The learned Principal Subordinate Judge also appointed an Official Receiver to collect rents from the property to which they were entitled. At that particular point of time, an Interlocutory Application came to be filed in the Insolvency Petition, questioning the dismissal of the Insolvency Petition for default/non prosecution. This Interlocutory Application had been filed by three of the creditors.
- (3) That application came up for consideration again before the learned Principal Sub Court, Salem and the Court, by an order dated 02.06.2016, had dismissed the said Interlocutory Application, namely, IA.No.12/2016.
- (4) An appeal was taken up by the three creditors before the District Court and CMA.No.8/2017 came up for consideration before the learned II Additional District Judge, Salem. The Appellate Court, by a judgment dated 19.04.2018, reversed the order passed in IA.No.12/2016 and restored IP.No.56/2000 for further adjudication by the Principal Sub Court.
- (5) In the meanwhile, Mr.M.R.R.Rajamanickam had unfortunately died and his two sons, Tvl.R.Ravichandran and R.Jayaraj, were impleaded as respondents. Questioning the judgment of the learned II Additional District Judge, Salem, dated 19.04.2018 in CMA.No.8/2017, Tmt.R.Chandra, who was the only petitioner surviving, had filed the present CMSA.No.32/2018.
- (6) Before this Court, on 10.03.2022, the Official Receiver was also present and he had also submitted statement with



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respect to the rents which had been collected by him. But, yet another intervening circumstance had arisen, namely that the appellant, R.Chandra, had also died. This fact had been stated by the Official Receiver who had filed a Memo on 09.03.2022. Since the date of the death of both M.R.R.Rajamanickam and Chandra are not available, let me extract the relevant paragraph of the Memo of the Official Receiver in entirety:-

'7.The 1st petitioner in IP.No.56/2000 on the file of the Principal Sub Judge Court, Salem, namely M.R.R.Rajamanickam has died long back during the pendency of IP and CMA proceedings and after filing of CMSA No.32/2018 before the Hon'ble High Court of Madras, the 2nd petitioner in IP.No.56/2000 and appellant in CMSA.No.32/2018 before this Hon'ble Court namely Chandra also died. No steps have been taken in both IP.No.56/2000 on the file of Principal Sub Judge Court, Salem as well as in CMSA No.32/2018 before Hon'ble High Court of Madras in this regard.'

- (7) I am further informed that Mr.M.R.R.Rajamanickam had died on 04.07.2018. In view of the fact that the appellant herein had died, but further that the legal representatives are also shown as respondents, the appeal cannot proceed further and I would rather dismiss the present Civil Miscellaneous Second Appeal, but IP.No.56/2000 is remanded back to the Principal Sub Court, Salem and the learned Principal Subordinate Judge, Salem, may now take a considered decision on the following aspects:-
- (a) The effect of the death of both the petitioners in IP.No.56/2000.
 - (b) The effect of appointment of an Official Receiver who had been collecting the rents and a decision to be taken on the rents which had been collected and whether, since the petitioners had not been declared as insolvents, to apportion the collected rents among the creditors or to return the rent back to the legal representatives / sons of the petitioners.
 - (c) If apportionment is to be done, then whether all the creditors can be joined as possible sharers in the apportionment or only the three creditors, who have now questioned the order in IA.No.12/2016 by filing CMA.No.8/2017 would alone be entitled to a share in accordance with their claim?
 - (d) An adjudication on the claim petitions would also have to be undertaken by the learned Principal Subordinate Judge, Salem.



- (8) All these aspects and any other issue which arises for consideration will have to be decided and determined by the learned Principal Subordinate Judge, Salem, as the Court of the first instance where IP.No.56/2000 has been revived by order dated 19.04.2018 in CMA.No.8/2017 by the learned II Additional District Judge, Salem.
- (9) The present Civil Miscellaneous Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

1. The II Additional District Judge, Salem.
2. The Principal Subordinate Judge, Salem.

Copy To

The Official Receiver,
Salem District Court Complex,
Salem-7.

+1cc to Mr.B.Gopalakrishnan, Advocate, S.R.No.19020

CMSA.No.32/2018

SS (CO)
PM/04/07/2022