



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2022

CORAM

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.583 of 2010

M/s.Precision Engineering Works,
Rep. by its Proprietor,
Pasupathi,
S/o.Late S.P.Sivagnananasundram,
Trichy, Trichy District. ... Appellant/ Appellant/ Plaintiff
*(Name of the proprietor (appellant) is
substituted vide Court order dated 01.03.2022
made in S.A.(MD)No.583 of 2010 by
GRSJ)*

Vs.

1.M/s.Tamil Nadu Small Scale Industrial
Development Corporation Ltd.,
Rep. by its Chairman & General Manager,
Industrial Colony,
Trichy - 620 010.

2.M/s.Tamil Nadu Small Scale Industrial
Development Corporation Ltd.,
Rep. by its Branch Manager,
Industrial Colony,
Trichy - 620 010. ... Respondents/ Respondents/ Defendants

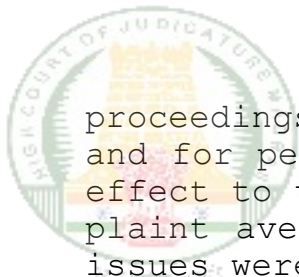
Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.11 of 2006 dated 04.12.2008 on the file of the learned II Additional Sub Judge, Trichy, confirming the judgment and decree in O.S.No.279 of 1998 dated 04.10.2005 on the file of the learned IV Additional District Munsif, Trichy.

For Appellant : Mr.K.Vigneshwaran,
For Mr.R.Rajkumar

For Respondents : Mr.Raguvaran Gopalan

JUDGEMENT

The plaintiff in O.S.No.279 of 1998 on the file of the IV Additional District Munsif Court, Tiruchirappalli is the appellant in this second appeal. The suit was filed for declaring the



proceedings of the TN SIDCO issued on 03.01.1998 as null and void and for permanent injunction restraining the defendants from giving effect to the same. SIDCO filed written statement controverting the plaintiff averments. Based on the divergent pleadings, the following issues were framed by the trial Court:-

"1. Whether the suit is affected by the Principle of res-judicata?

2. Whether the proceedings in 940/B/95-1 dated 03.01.1998 issued by the 2nd defendant is abinitio void, illegal without jurisdiction and ultravires the powers of the defendant?

3. Whether the plaintiff is entitled to the relief of declaration and injunction as prayed for in the plaint?

4. To what relief the plaintiff is entitled?

5. Whether the suit is valued properly? and

6. Whether the jurisdiction of the civil court is ousted under the Revenue Recovery Act to try the present suit?"

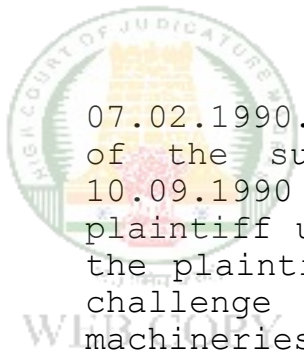
2. The proprietor of the plaintiff concern examined himself as P.W.1 and Exs.A1 to A4 were marked. On behalf of SIDCO, the branch manager examined himself as D.W.1 and Exs.B1 to B10 were marked.

3. After consideration of the evidence on record, the learned trial Judge vide judgment and decree dated 04.10.2005 dismissed the suit. Aggrieved by the same, the plaintiff filed A.S.No.11 of 2006 before the II Additional Sub Court, Tiruchirappalli. By the impugned judgment and decree dated 04.12.2008, the decision of the trial Court was confirmed and the first appeal was dismissed. Challenging the same, this second appeal came to be filed.

4. The learned counsel for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to frame the substantial question of law and admit the second appeal and take it up for disposal later.

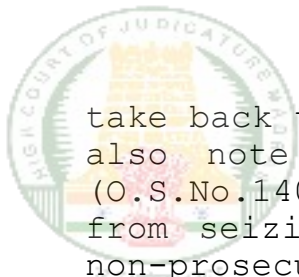
5. Per contra, the learned standing counsel for respondents/SIDCO submitted that no substantial question of law arises for consideration.

6. I carefully considered the rival contentions and went through the evidence on record. There is no dispute that the plaintiff and SIDCO entered into a hire purchase agreement on 28.11.1973 under Ex.B1. The plaintiff committed default. Hence, the second defendant issued notice to the plaintiff to clear the liabilities under the hire purchase agreement in the year 1978. The plaintiff filed O.S.No.1400 of 1978 but the same was dismissed as not pressed on 18.07.1980. A second injunction suit was filed by the plaintiff in O.S.No.568 of 1983, when the second defendant threatened to seize the machineries. The second suit was also dismissed for default on



07.02.1990. The plaintiff filed I.A.No.1966 of 1990 for restoration of the suit. At this stage, the SIDCO issued letter dated 10.09.1990 informing the plaintiff that the machineries given to the plaintiff under the hire purchase agreement will be seized. Though the plaintiff received the said communication, he did not chose to challenge the same. An inventory was taken and the seized machineries were sold through auction. According to the defendants, only a sum of Rs.36,000/- was fetched in the said auction and that as per the statement of accounts, the plaintiff owed to pay a further sum of Rs.1,75,707/-. To this effect, the communication dated 03.01.1998 (Ex.B10) was sent. Challenging the said communication, the suit came to be instituted.

7.The primary contention of the learned counsel for the appellant is that SIDCO being a State Instrumentality within Article 12 of the Constitution of India, ought to conduct its dealings in a just and fair manner. The machineries seized from the plaintiff could have been sold only through a public auction. In the case on hand, the defendants had not adduced any evidence to challenge the assertion of the plaintiff that the machineries were sold through private means. The defendants had not marked a copy of any paper publication issued in this regard. The grievance of the appellant's counsel is that this fundamental aspect of the matter was not even taken note by the Courts below. It is for this reason, the learned counsel for the appellant wants this Court to intervene with the judgments and decrees passed by the Courts below. He also relied on the decisions report in **[(2005) 4 SCC 456 (Karnataka State Industrial Investment & Development Corporation Limited vs. Cavalet India Ltd and Others)]** and **[(2011) 4 SCC 171 (Kerala Financial Corporation vs. Vincent Paul and Another)]**. In those decisions, the Hon'ble Apex Court had laid down a set of guidelines which should govern the sale of properties by any State Instrumentality. The legal proposition advanced by the learned counsel for the appellant is beyond cavil. No exception can be taken. I do sustain the contention of the learned counsel for the appellant that there is nothing on record to show that the seized machineries were sold by SIDCO through public auction. No paper publication appears to have been effected. If such a paper publication had been effected, then certainly a copy of the same would have been marked. No such evidence is forthcoming. But the question is whether on this ground I should interfere. It is obvious that the machineries eventually sold by SIDCO were given to the appellant way back in the year 1973 and the seizure itself took place in the year 1990. Even by then, more than 17 years have elapsed. As per the terms of the hire purchase agreement, SIDCO had the contractual authority to seize the machinery. It is interesting to note that notice preceded the seizure of the machinery and even though the plaintiff acknowledged receipt of the said notice, he did not choose to challenge the same. The auction appears to have been conducted some time in the year 1995. The plaintiff had done nothing to clear his liability and



take back the machinery. He simply chose to wait and watch. I must also note the conduct of the plaintiff. He filed two suits (O.S.No.1400 of 1978 and O.S.No.568 of 1983) for restraining SIDCO from seizing machineries. Both the suits suffered dismissal for non-prosecution. I have no doubt whatsoever in my mind that by 1990, the value of the machineries would have suffered considerable diminution. I am really surprised that the machineries could even fetch a sum of Rs.36,000/- in the year 1995. More than anything else, by instituting the present suit, the plaintiff had also effectively stalled the defendants/SIDCO from taking action for recovery of the balance amount payable by the plaintiff. We are now in the year 2022. If effective action had not been taken so far, any further action for recovery of the balance amount would obviously be time barred. It is SIDCO that appears to be the loser in the bargain. The plaintiff does not appear to have suffered any prejudice whatsoever. Here is a case of a classic defaulter, who has literally gone scot-free. It is not a case in which the Court should exercise its jurisdiction under Section 100 of CPC and interfere on the technical ground that public auction was not conducted by SIDCO. The second appeal stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)

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To:

- 1.The II Additional Sub Court, Tiruchirappalli.
- 2.The IV Additional District Munsif Court,
Tiruchirappalli.

Copy to:

The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.RAGUVARAN GOPALAN, Advocate (SR-10704[F] dated
08/03/2022)

S.A.(MD)No.583 of 2010
08.03.2022

RD(29.03.2022) 4P 6C