IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

S.A.Nos.1404 and 1405 of 2001
and C.M.A.No.1157 of 2001

S.A.No.1404 of 2001:-

1. Venkataswamy
2. Rangammal (died)
3. Srilakshmi Textile Process
   Represented by Appellants
   and partners
4. Petchimuthu.V
5. Sundaraj.V
6. Rajeswari.R
7. Radhika.P
   (AA4 to A7
   brought on record as LR's
   of the deceased A2 Viz.,
   Rangammal vide
   Court order dated
   06.01.2022 made in
   C.M.P.Nos.116 to 118 of 2022 in
   S.A.No.1404 of 2001) .. Appellants

Vs.

1 The Tamil Nadu Industrial
   Investment Corporation Ltd.,
   having Regd.Office at
   No.473, Anna Salai, Nandanam,
   Chennai and Branch at
   "Jawans Bhavan", 27 T.B.Road,
   Coimbatore-641 018.
2. V.K.Padmanabhan .. Respondents

S.A.No.1405 of 2001:-

1. Venkataswamy
2. Rangammal (died)
3. Srilakshmi Textile Process
   Represented by Appellants
   and partners
4. Petchimuthu.V
5. Sundaraj.V
6. Rajeswari.R
7. Radhika.P
   (A2 died, A4 to A7
   brought on record as LR's
   of the deceased A2 vide
   Court order dated
   21.09.2022 made in
   C.M.P.No.429 of 2022 in
   S.A.No.1405 of 2001) .. Appellants

Vs.

1. V.K.Padmanabhan
2. The Tamil Nadu Industrial
   Investment Corporation Ltd.,
   having Regd.Office at
   No.473, Anna Salai, Nandanam,
   Chennai and Branch at
   "Jawans Bhavan", 27 T.B.Road,
   Coimbatore-641 018. .. Respondents

C.M.A.No.1157 of 2001:-

1. M/s. Srilakshmi Textile Process
   Represented by Partner R.Venkataswamy

2. Venkataswamy
3. Rangammal .. Appellants

Vs.

The Tamil Nadu Industrial
Investment Corporation Ltd.,
having Regd.Office at
No.473, Anna Salai, Nandanam
Chennai and Branch at
"Jawans Bhavan", 27 T.B.Road,
Coimbatore-641 018. .. Respondents

Prayers in S.A.Nos.1404 and 1405 of 2001:- Second Appeals filed under Section 100 of CPC as against the Judgment and Decree of the Learned 1st Additional District Judge-cum-Chief Judicial Magistrate Court at Coimbatore, dated 30.04.2001 in A.S.No.145 of 2000 and in A.S.No.166 of 2000 reversing the Judgment and Decree of the IVth Additional District Munsif Court at Coimbatore dated 11.04.2000 in O.S.No.1178 of 1994.

Prayer in C.M.A.No.1157 of 2001:- Civil Miscellaneous Appeal filed under Section 32(9) of the State Financial Corporations Act, 1951 as against the Fair and Decreetal Order of the 1st Additional District Judge-cum-Chief Judicial Magistrate Court at Coimbatore, dated 30.04.2001 in T.S.F.C.O.P.No.136 of 1997.

In S.A.No.1404 of 2001

For Appellants : Ms.T.R.Gayathri
for Mr.V.S.Parthasarathy

For Respondents

R1 : Mrs. Rita Chandrasekar
for M/s Aiyar and Dolia
R2 : Mr.M.Baskar

In S.A.No.1405 of 2001

For Appellants : Ms.T.R.Gayathri
for Mr.V.S.Parthasarathy

For Respondents

R1 : Mr.M.Baskar
R2 : Mrs. Rita Chandrasekar
for M/s Aiyar and Dolia

In C.M.A.No.1157 of 2001

For Appellants : Ms.T.R.Gayathri
for Mr.V.S.Parthasarathy

For Sole Respondent : Mrs. Rita Chandrasekar
for M/s Aiyar and Dolia

COMMON JUDGMENT

The S.A.Nos.1404 and 1405 of 2001 have been filed as against the Judgment and Decree of the Learned 1st Additional District Judge-cum-Chief Judicial Magistrate Court at Coimbatore, dated 30.04.2001, in A.S.No.145 of 2000 and in A.S.No.166 of 2000 reversing the Judgment and Decree of the IVth Additional District Munsif Court at Coimbatore, dated 11.04.2000, in O.S.No.1178 of 1994.

2. The C.M.A.No.1157 of 2001 has been filed as against the Fair and Decreetal Order of the 1st Additional District Judge-cum-Chief Judicial Magistrate Court at Coimbatore, dated 30.04.2001 in T.S.F.C.O.P.No.136 of 1997.

3. For the sake of convenience, the parties are referred to as per their rankings in the Trial Court.

4. In both the second appeals, the appellants 1 to 3 are the plaintiffs. The plaintiffs 1 to 3 are also the respondents in the petition filed by the Tamil Nadu Industrial Investment Corporation Ltd, in T.S.F.C.O.P.No.136 of 1997. The case of the plaintiffs 1 to 3 is that they had approached the Tamil Nadu Industrial Investment Corporation Ltd for financial assistance and a sum of Rs.5,50,000/- was sanctioned on 06.12.1985. Out of sanction amount, a sum of Rs.2,50,000/- alone was disbursed and because of this attitude, the plaintiffs were put to heavy loss and could not repay the loan amount. While borrowing the loan, the Tamil Nadu Industrial Investment Corporation Ltd also obtained cheques for security purpose and they also initiated proceedings under Section 138 of NI Act. In the meanwhile, the property worth about Rs.11,00,000/- was auctioned on 28.04.1984 for a meagre sum of Rs.3,00,000/-. The sale itself is not in accordance with the provisions contained in the State Financial Corporation Act. Therefore, the sale itself is invalid, fraudulent, illegal, inadequate and not binding on the plaintiffs. In fact, there was no notice to them about the alleged date of auction. Now, the balance of liability even after the sale of the property falls on the plaintiffs who have no other property than the

suit property. The second defendant one V.K.Padmanabhan is the auction purchaser who had colluded with the first defendant and brought the suit property for sale fraudulently. Therefore, the entire liability has been discharged by the plaintiffs on the first defendant's own conduct. Hence, the suit.

5. Resisting the same, the first defendant filed a written statement stating that the first and second plaintiffs are the partners of the third plaintiff. The first defendant sanctioned the loan to the tune of Rs.5,50,000/-. However, the plaintiffs availed only a sum of Rs.2.97 lakhs and did not opt to avail the balance loan amount which was originally sanctioned in favour of the plaintiffs. The plaintiffs hypothecated the machineries and mortgaged the suit property in favour of the first defendant. The loan is repayable in ten half yearly installments after a holiday period of two years. The plaintiffs are chronic and systematic defaulters in payment of installments. They consistently defaulted to pay the installments. Therefore, the first defendant caused notice on 16.07.1990 and thereafter, the unit and securities were repossessed by the first defendant. In order to auction the assets, the first defendant made publication. In fact, the plaintiffs filed a writ petition before this Court in W.P.No.2750 of 1991, in which this Court directed the first defendant to hand over the possession of the suit property by 26.04.1991, on condition that the plaintiffs shall remit a sum of

Rs.1,00,000/- on or before 13.03.1991, failing which the first defendant is at liberty to repossess the unit and proceed further in accordance with law. Accordingly, possession was handed over to the plaintiffs and even thereafter the plaintiffs failed to comply the condition imposed by this Court. Therefore, again the first defendant repossessed the entire unit on 16.05.1991. In fact, the first defendant brought the suit property for auction on three occasions, since there were no bidders and as such the plaintiffs requested the first defendant to waive the entire interest. Considering the said request, the first defendant also waived the interest to the tune of Rs.83,388/-. There again the plaintiffs had committed default in payment of installments. Therefore, the sale of the assets became inevitable. After following the due procedure of law, the first defendant brought the property for sale, which was valued at Rs.9,46,000/-. However, no bidder was inclined to purchase the suit schedule property for the said value. When the said property was brought for auction sale for the fourth time, the sale was confirmed for the highest bid of Rs.3,00,000/- by the second defendant and the same was confirmed in his favour. When the plaintiffs were not able to bring buyers for a good price, they cannot challenge the auction sale. The first defendant never levied any interest in an exorbitant manner and only claimed the interest as per the RBI guidelines, since the first defendant is also a Corporation and is a Government organization. Mere inadequacy of sale consideration cannot be a ground to set aside the auction sale. Therefore, the first defendant also filed an original petition for recovery of balance amount for enforcing the liability against the sureties personally.

6. The second defendant filed a separate written statement stating that the first defendant conducted the auction sale, in which the second defendant is the highest bidder. The first defendant had collected a sum of Rs.5,000/- towards E.M.D and called for sealed tenders for the auction to be conducted on 20.04.1994. The second defendant being the highest bidder, became the successful bidder and paid a sum of Rs.3,000/- being 10% of the value of the bid amount. Thereafter, the balance sale consideration was duly remitted by the second defendant on 01.07.1994 and he was delivered possession of the suit schedule property by the first defendant.

7. On the basis of the pleadings, the Trial Court framed the following issues:-

> *"1. Whether the plaintiffs are entitled to the declaratory relief as prayed for?*
>
> *2. Whether the plaintiffs are entitled to the permanent injunction as prayed for?*
>
> *3. To what any other relief ? "*

8. On the side of the plaintiffs, they had examined P.Ws.1 to 3 and

marked Exs.A1 to 36. On the side of the defendants, they had examined D.Ws.1 and 2 and marked Exs.B1 to 45. On a perusal of oral and documentary evidences, the Trial Court partly decreed the suit and set aside the sale. Therefore, the plaintiffs as well as the first defendant preferred A.S.Nos.145 and 166 of 2000. Both the appeal suits were heard together and allowed the appeal and thereby the suit filed by the plaintiffs was dismissed. Hence, this second appeal.

9. This Court admitted S.A.No.1404 of 2001 on the following substantial questions of law:-

> *"1. When the Apex Court has clearly laid down in AIR 1993 S.C.935 that in exercising the power under Section 29 of the State Financial Corporations Act (63 of 1951) certain guidelines/directions have to be followed in conducting the auction, whether the sale conducted by the 1st respondent Corporation without adhering to the aforesaid guidelines is valid in law?*
>
> *2. When as per Section 29(4) of the State Financial Corporations Act (63 of 1951) in cases of sale of defaulter unit by public auction the Corporation should act as a Trustee, its actions must be fair, honest, cautious and reasonable and every attempt should be made to fetch the maximum price, whether the sale conducted by the 1st respondent Corporation in auctioning the suit property worth more than Rs.11 lakhs for a sum of Rs.2.43 lakhs is justifiable in law?"*

This Court admitted S.A.No.1405 of 2001 on the following substantial questions of law:-

> *"1. When the Apex Court has clearly laid down in AIR 1993 S.C.935 that in exercising the power under Section 29 of the State Financial Corporations Act (63 of 1951) certain guidelines/directions have to be followed in conducting the auction, whether the sale conducted by the 2nd respondent Corporation without adhering to the aforesaid guidelines is valid in law?*
>
> *2. When as per Section 29(4) of the State Financial Corporations Act (63 of 1951) in cases of sale of defaulter unit by public auction the Corporation should act as a Trustee, its actions must be fair, honest, cautious and reasonable and every attempt should be made to fetch the maximum price, whether the sale conducted by the 2nd respondent Corporation in auctioning the suit property worth more than Rs.11 lakhs for a sum of Rs.2.43 lakhs is justifiable in law?"*

10. The learned counsel for the appellants would submit that the sale was conducted on 28.04.1994 and the same was illegal and void, since the value of the suit property was Rs.11,00,000/- at the time of alleged auction sale. Whereas, the second defendant purchased the said property only for a meagre sum of Rs.3,00,000/- because of that other creditors were facing recovery of balance amount. If the property was properly valued and properly auctioned, it would have fetched more than the amount required by the first defendant. In fact, as per the notice letter dated 07.06.1994 which was marked as Ex.B13, the property was properly valued at Rs.9.49 lakhs. Even then, the first defendant

auctioned the property for a meagre sum of Rs.3,00,000/. Therefore, it is clear that there was a clear collusion between the first and second defendants. That apart, the first defendant failed to follow any of the guidelines laid down by the Hon'ble Supreme Court of India. The first defendant should have acted as a trustee and its actions ought to have been fair, honest, cautious and reasonable. The first defendant failed to make any attempt to fetch the maximum price for the suit schedule property. She further submitted that if at all the property was properly valued and properly auctioned, there is absolutely no chance for balance loan amount and no question of recovery of balance amount from the creditor would arise.

11. Per contra, the learned counsel for the first respondent in S.A.No.1404 of 2001 submitted that the suit property was properly valued and issued publication for auctioning the property. However, on three occasions, there was no bidder to purchase the suit schedule property. Only on fourth time, the second defendant in S.A.No.1404 of 2001 Viz, Venkataswamy quoted a highest sum for the suit property. Therefore, the first defendant had no other option than to sell the property and proceeded for balance loan amount as against the creditors.

12. The learned counsel for the second respondent in S.A.No.1404 of 2001 submitted that though the second defendant purchased the suit property, even till today, he is not able to put up construction, since the appellants keeps on filing number of petitions.

13. Heard the learned counsel for the appellants in all the appeals and the learned counsel for the respondents in all the appeals.

14. Admittedly, the plaintiffs borrowed loan from the first defendant by mortgaging the suit property. The plaintiffs committed default and as such the first defendant had brought the suit property for auction sale in order to realize the loan amount. The first defendant also had taken possession of machineries in the presence of the plaintiffs. Thereafter, the first defendant had brought the property for auction sale by due notice published in Indian Express on 15.02.1991, which was duly communicated to the plaintiffs. In fact, on receipt of the said communication, the plaintiffs challenged the notice before this Court in W.P.No.2750 of 1991. This Court, stayed the auction on condition that the plaintiffs shall pay a sum of Rs.50,000/- on or before 15.03.1991 and further, Rs.1,00,000/- on or before 30.04.1991 and to discharge the entire liability on 30.04.1991 and on failure to make such payment, further order is passed on

24.04.1991, directing the first defendant to hand over the possession to the borrowers by 26.04.1991, on condition that the plaintiffs shall pay a sum of Rs.1,00,000/- on or before 30.04.1991. However, the plaintiffs failed to comply with the said condition and as such the entire unit was repossessed by the first defendant and subsequently part of the interest portion also was waived. Even then the appellants did not come forward to settle the entire loan amount. Therefore, the suit property was brought for auction sale. Accordingly, auction was fixed on 23.02.1993 and the advertisement was effected in daily newspaper on 10.02.1993. In fact, it was intimated to the plaintiffs with a copy of the advertisement on 12.02.1993 which was marked as Ex.B30. In fact, public auction was again postponed to 10.06.1993, since there was no bidder on the date of earlier auction held on 23.02.1993. Accordingly, a public advertisement was released. However, on 10.06.1993 also there was no bidders and again public auction was fixed on 21.10.1993. The advertisement was published in the daily newspaper on 25.09.1993 and the plaintiffs were duly intimated about the auction sale to be held on 21.10.1993. However, there was no bidder to purchase the suit property. Therefore, once again, the tender cum public auction was fixed at 28.09.1994, in which the land, building and machineries were estimated to the tune of Rs.9,49,000/-. The second defendant was the highest bidder in the said auction sale for the sale consideration of Rs.3,00,000/-. Again the plaintiffs were given an opportunity to pay the said amount by two installments, within a period of 30 days. Even after due receipt of the same, the plaintiffs failed to make any payment. Therefore, the sale was confirmed in favour of the second defendant by the letter dated 26.04.1994. Thereafter, on 08.07.1994, the possession of the land, building and machineries were handed over to the second defendant under delivery note, which was marked as Ex.B40. Thereafter, the sale deed was executed in favour of the auction purchaser on 26.10.1995. After deducting the amount of Rs.3,00,000/-, for the balance loan amount, the first defendant filed an Original Petition.

15. It is also seen that the plaintiffs were given concessions and opportunities to discharge their liability. Even then, they failed to come forward to remit the balance loan amount. Therefore, the first defendant had no other option than to bring the property for auction sale and after following all the procedures as contemplated under the guidelines, auctioned the property. Further, the first defendant cannot wait, in order to fetch the highest bidder by conducting the sale through public auction. In fact, the plaintiffs were given an opportunity to bring the buyers. Even then, the plaintiffs failed to bring any buyers to purchase the suit property for more value. Therefore, there is absolutely no ground to find fault with the first defendant, when the suit

property was brought in for auction sale. Now, the auction purchaser i.e, the second defendant had taken possession of building, machineries and land and running his own industry by investing huge sum and as such his right to enjoy the property cannot be interfered with, that too after 25 years.

16. Therefore, this Court finds no infirmity or illegality in the orders passed by the Court below and also finds no substantial questions of law involved in these appeals and all the substantial questions of law are answered in favour of the defendants and the second appeals are liable to be dismissed.

17. Accordingly, the S.A.Nos.1404 and 1405 of 2001 are dismissed. No costs.

18. In view of the Judgment passed in S.A.Nos.1404 and 1405 of 2001, the C.M.A.No.1157 of 2001 is also dismissed. No costs.

13.02.2023

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
mn

G.K.ILANTHIRAIYAN,J.

mn

To

1. The 1st Additional District Judge-cum-Chief Judicial Magistrate Court at Coimbatore.
2. The IVth Additional District Munsif Court at Coimbatore.

S.A.Nos.1404 and 1405 of 2001 and C.M.A.No.1157 of 2001

13.02.2023