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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.2049 of 2016
and
C.M.P.Nos.14991 & 14992 of 2016

1.M/s.Sri Murugan Oil Mills,
represented by its Proprietor,
T.Muthukumar,
Having office and factory at
SF No.50 (Part), Achipatti Village,
Pollachi Taluk – 642 002,
Coimbatore District.

2.T.Krishnamurthy

3.T.Duraisamy ... Appellants/Respondents

Vs.

M/s.The Tamilnadu Industrial
Investment Corporation Limited,
Having its Head Office at
691, Anna Salai,
Nandanam,
Chennai – 600 035,
Branch Office at
United Shopping Complex,
94, Dr.Nanjappa Road,
Coimbatore – 641 018. ... Respondent/Petitioner

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Prayer : Civil Miscellaneous Appeal filed under Section 32(9) of the State Financial Corporations Act, 1951, against the judgement and decree dated 09.06.2016 in T.S.F.C.O.P.No.119 of 2010 on the file of the Principal District Court, Coimbatore.

For Appellants : Mr.S.Kamadevan
for M/s.K.Ashok Kumar

For Respondent : Mr.K.Magesh

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JUDGEMENT

Challenging the judgement and decree dated 09.06.2016 made in T.S.F.C.O.P.No.119 of 2010 on the file of the Principal District Court, Coimbatore, the appellants have filed this appeal.

2. It is the case of the appellants that, the first appellant is M/s.Sri Murugan Oil Mills and the said mill is a small scale industrial unit. For improvement of the said mill, the respondent disbursed a sum of Rs.4.61 lakhs between 23.10.1991 to 18.03.1993 towards building as well as machinery and apart from that, the first appellant also borrowed a loan from the respondent to the tune of Rs.1.41 lakhs between 1991 to 1993. However, for non-payment of the loan amount, the respondent filed an

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application u/s. 31 and 31(1)(g) of the State Financial Corporations Act, 1951 (in short 'the Act') before the District Judge, Coimbatore in T.S.F.C.O.P.No.119 of 2010, in which the first appellant filed a detailed counter and examined P.W.1 and marked 14 documents viz., Ex.P.1 to Ex.P.14. On the side of the respondent, they examined R.W.1 and marked 52 documents viz., Ex.R.1 to Ex.R.52. After adjudication, the Principal District Court allowed the application and directed the first appellant to pay a sum of Rs.1,18,25,098/-. Aggrieved by the same, the present appeal is filed.

3. The learned counsel appearing for the appellants submitted that the first appellant made an application for loan, however, the respondent on its own diverted two loan applications and disbursed a sum of Rs.4,61,450/- and Rs.1,41,000/-, totally, a sum of Rs.6,02,450/- between 1991 to 1993. However, in the year 2010, they claimed a sum of Rs.1,18,25,098/- before the District Court and the District Court, without any proper reasoning, allowed the application as claimed by the respondent, which is not sustainable. Further, he submitted that there was

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a huge calculation error and amount paid by the first appellant was not deducted from the loan amount and the claim towards inspection charges and the wagement charges are exorbitant amount and claiming a higher interest for the loan amount of Rs.6,02,450/- is highly exorbitant and the first appellant industry is a sick industry and as on date, due to the harassment made by the respondent, the mill was closed and they are not able to pay the loan amount. Accordingly, he prays for allowing the appeal.

4. The learned counsel appearing for the respondent submitted that the first appellant was a proprietary concern and on behalf of the first appellant, one Muthukumar made application towards term loan of Rs.4,69,000/-, Soft Seed Capital of Rs.1,43,000/- and Working Capital Term Loan Rs.1,75,000/- on 31.09.1991, for the purpose of construction of building and purchase and erection of machineries for running oil extraction unit. However, the respondent sanctioned a sum of Rs.4,61,000/- as term loan and Rs.1,41,000/- as Soft seed Capital and Rs.1,68,000/- towards Working Capital Term Loan and the term loan was disbursed to the first appellant in due course in consideration of availing

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the loan by the first appellant, executed a deed of Hypothecation dated 08.08.1991 in favour of the respondent containing the terms and conditions and as per the terms and conditions, the first appellant has to repay the loan amount of Rs.7,87,000/-. As per the registered mortgage deed, Rs.50,000/- has to be paid in 12 half yearly. Under the equitable mortgage deed Rs.4,19,000/- has to be repaid in half yearly and towards soft seed capital of Rs.1,43,000/- as to be paid 12 half yearly and the working capital term loan of Rs.1,75,000/- has to be paid 12 half yearly. The rate of interest for first tyre is 13.5% p.a. and second tyre is 14.5% p.a. and first tyre rate will be applicable for the period of one year and the second tyre is applicable for the period of loan amount. Subsequently the rate of interest revised to 18% p.a. upto 31.03.2000 and from 01.04.2000, the rate of interest is 18%. Since the first appellant is a chronic and systematic defaultor in repaying the loan amount, even though 12 half yearly installments are provided for repayment of the loan. However, the first appellant has defaulted in meeting his commitments. Therefore, the respondent foreclosed the loan account on 27.10.1994 after giving notice to the first appellant. The primary assets viz., land, building an machinery was taken possession by the petitioner

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on respondent on 02.02.1995 u/s. 29 of the Act. Since the first appellant remitted 30% over dues i.e., Rs.80,000/- and also under take to pay Rs.10,000/- per week towards balance of arrears, the unit has handed over to the first appellant on 16.02.1995. The appellants did not keep up their promise to settle the loan account, the petitioner again took possession of the primary assets viz., land, building and machinery on 25.07.1996. After possession taken, the first appellant filed a writ petition in W.P.No.15645 of 1996. This Court dispose the same on 01.04.2003 and permitted the first appellant to make a representation before the respondent and the first appellant agreed to enter one time settlement, thereby the unit was handed over to the first appellant on 13.02.2004. However, even then, the amount was not paid, thereby the respondent filed an application before the District Judge under Section 31 of the Act and 31(1)(a)(a) of the Act for claiming a sum of Rs.1,18,25,098/- and the award was passed in favour of the respondent, which cannot be interfered with. Accordingly, he prays for dismissal of the appeal.

5. I have heard the learned counsel appearing for the parties and I

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have perused the materials on record.

6. Admittedly, the first appellant borrowed a sum of Rs.6,02,450/- between 1991 to 1993. As against the taken over possession, the first appellant filed a writ petition in W.P.No.15645 of 1996 and this Court by its order dated 01.04.2003 recording the undertaken given by the respondent and observed that the first appellant is entitled for labour of penal interest and to permit the first appellant to make a representation before the respondent to re-schedule the payment of loan within 30 days from the date of receipt of a copy of the order and directed the respondent to consider the same and pass appropriate orders, pursuant to which, the possession was handed over to the first appellant. Even thereafter, the first appellant oil mill not paid the amount, thereby they filed an application before the authority contrary to the undertaking given before this Court and claiming the penal interest and others to the tune of Rs.1,18,25,098/- is not sustainable and the said undertaken before this Court is not properly considered by the authority under the Act. Hence, the order passed by the authority is liable to be interfered with. Hence, in order to settle the issue in between the first appellant and the respondent, this Court is inclined to award simple interest as against the loan

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obtained by the first appellant oil mill.

7. In order to strike balance between the parties and as per the undertaken given by the respondent before this Court in the above said writ petition, the first appellant is directed to pay a sum of Rs.57,39,607/- (Rupees Fifty Seven Lakhs Thirty Nine Thousand Six Hundred and Seven only) to the respondent, within a period of four (4) weeks from the date of receipt of a copy of this judgment, filing which, the respondent is at liberty to brought the property under public auction in the manner known to law and recover the same as ordered by this Court and appropriate the amount and the balance amount if any, may be repaid to the first appellant.

8. With the above terms, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

12.10.2023

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

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Neutral Citation Case : Yes / No
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To

1.The Principal District Court,
Coimbatore.

2.The Section Officer,
V.R.Section,
High Court, Madras.

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M.DHANDAPANI, J.,

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