



WEB COPY



C.R.P.(NPD)No.1064 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P(NPD)No.1064 of 2018

The Official Liquidator,
High Court, Madras as the Liquidator
of M/s.Selvarani Chit Funds (P) Limited
(in liquidation)

.. Petitioner

VS

1.K.Subramaniam (Died)
2.S.Subramaniam
3.P.Thirugnanam
4.R.Thirugnanam
5.Kalamani Subramaniam
6.Gandhimathi Perumal
7.Rajavel Subramaniam

.. Respondents

(1st Respondent died, Respondents 5 to 7 brought on
record as LR's of the deceased R1 viz. K.Subramaniam
vide Court order dated 8.8.2023 made in CMP.Nos.9048,
9051 & 9055 of 2023 in CRP(NPD)No.1064 of 2019.)

Petition filed under Section 115 of the Civil Procedure Code
against the order and decretal order dated 05.12.2016 passed by the
Additional District Judge, Salem (Fast Track Court No.1, Salem in
R.E.P.No.19 of 2009 in O.S.No.159/2005).



WEB COPY



C.R.P.(NPD)No.1064 of 2018

For Petitioner : Mr.B.Dhanraj
for Official Liquidator

For Respondents : R1 – Died

Mr.S.Adarsh (for R2)
for Mr.Anirudh Krishnan

Mr.K.S.Navin Balaji (for R5 to R7)

ORDER

The Official Liquidator attached to this Court has filed the revision against the order of execution in E.P.No.19 of 2009 in O.S.No.159 of 2005 on the file of the Additional District Judge-cum-Fast Track Court No.1, Salem.

2.O.S.No.159 of 2005 was filed by one K.Subramaniam. The defendants in that suit were (i)S.Subramaniam, (ii)R.Thirugnanam and (iii)P.Thirugnanam. O.S.No.159 of 2005 is a suit for specific performance of an agreement of sale. The suit was decreed on 12.02.2008. In pursuance thereof, E.P.No.19 of 2009 was filed.

3.It is the objection of the learned Official Liquidator that the defendants 1 to 3, who are the Directors of one Selvarani Chit Funds has utilised the funds from the said Selvarani Chit Funds (P) Limited and have purchased the property. In other words, the learned Official Liquidator would seek to invoke Section 456 of the Companies Act,



C.R.P.(NPD)No.1064 of 2018

1956 in order to state that the property which 'appears to be' the property of the Company cannot be sold in execution of a decree obtained as against the Directors in their personal capacity.

4. Pending the revision, the first respondent died and his legal heirs were brought on record as respondents 5 to 7. They are represented by Mr.K.S.Naveen Balaji. He would bring to my notice that in the winding up proceedings initiated against the Company in C.P.No.260 of 2004, Mr.S.Subramaniam that is, the second respondent had filed an application stating that the proceedings in E.P. will have to be stayed because the properties are of the Company under liquidation and not properties of the individual judgment debtors concerned.

5. He would draw my attention to paragraph 3 of the order whereunder, this Court had dismissed Company Application in C.A.No.105 of 2017 on 11.08.2017 holding that the property is the individual property of the Directors and not the property of the Company. This order passed under Section 446(1) of the Companies Act operates as *res judicata* in the present proceeding.

6. It is pertinent to point out that the Official Liquidator was the first respondent in C.A.No.105 of 2017 and as against the said finding that the property belongs to the Directors in their individual capacity and



C.R.P.(NPD)No.1064 of 2018

not in the capacity as Directors of the Company, though affecting the interest of the Official Liquidator, was not appealed against. In fact, even a clarification petition was not moved before the learned Judge to permit the Official Liquidator to raise this objection before the appropriate forum. The Company Courts jurisdiction under Section 446 is wide and I am bound by the order passed by the Company Court in Company Application No.105 of 2017 in Company Petition No.260 of 2004 dated 11.08.2017.

7.The finding of this Court is equally binding on the learned II Additional District Judge, Salem and therefore, he rightly ordered the execution of the decree. I cannot find any illegality or irregularity in the order. The civil revision petition deserves only an order of dismissal and accordingly it is dismissed. No costs.

24.08.2023

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

vs

To

The Additional District Judge,
(Fast Track Court No.1), Salem.



WEB COPY



C.R.P.(NPD)No.1064 of 2018

V. LAKSHMINARAYANAN,J.

VS

C.R.P(NPD)No.1064 of 2018

24.08.2023