



OSA.No.233/2012

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE P.B.BALAJI

OSA.No.233/2012 & MP.No.1/2012

Indbank Housing Limited
Chennai Branch
480, Anna Salai, Nanadanam
Chennai 600 035.

.. Appellant

Vs.

1.Happy Home Profin Ltd
rep.by Official Liquidator.

2.Mr.M.Saravana
3.Mrs.S.Alagammal
4.Mr.B.Muthu
5.Shristi Estates and Investments [P] Ltd
66, West Church Road, Mylapore
Chennai -4, rep.by its Managing Director
V.Subbaiah

.. Respondents

****R1 cause title substituted vide order
of Court dated 30.11.2011 made in MP.No.2/2011
in OSA.SR.70614/2016.**



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**R5 implemented vide order dated 24.01.2017
made in CMP.No.1/2013 in OSA.No.233/2012**

Prayer:- Original Side Appeal filed under Order 36 Rule 9 of Original Side Rules read with Clause 15 of the Letter Patent against the common decree and judgment dated 05.12.2003 passed by a learned Single Judge in CA.No.842/2002 in CP.No.454/2000 on the file of the Original Side of this Court.

For Appellant	:	M/s.J.N.Preethi for M/s.King & Patridge
For R1	:	Mr.S.R.Sundar
For RR 2 to 5	:	No appearance

JUDGMENT

[Judgment of the Court was delivered by S.S.SUNDAR, J.,]

- (1) This appeal is directed against the order passed by a learned Single Judge in Company Application in Comp.A.No.842/2002 in CP.No.454/2000 in the matter of M/s. Happy Home Profin Limited.



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(2) Brief facts that are necessary for the disposal of this Original Side Appeal are as follows:-

(3) The appellant is a third party either to the proceedings in Company Petition in CP.No.454/2000 or in the Company Application in Comp.A.No.842/2002. The appellant known as IndBank Housing Limited is a subsidiary of Indian Bank. The 1st respondent is a Financial Institution which is engaged in advancing loan / financing against properties. Respondents 2 and 3 appears to have entered into an Agreement of Sale in respect of a flat developed by the 5th respondent. It is admitted that the 5th respondent, a private Developer constructed several flats by executing project conceived by it with the financial assistance of the appellant. It is stated that the entire project undertaken by the 5th respondent for development was pursuant to a in respect of the lands under development mortgage in favour of the appellant. Respondents 2 and 3 appears to have approached the 5th respondent to buy a flat in the project executed by the 5th respondent. They also approached the 1st respondent for seeking financial assistance to purchase the



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property. It is admitted that respondents 2 and 3 availed a loan from the 1st respondent and the said loan was secured by the property which was purchased by respondents 2 and 3 from the 5th respondent. The 4th respondent is a guarantor who has given guarantee to the 1st respondent for the loan advanced to respondents 2 and 3.

- (4) CP.No.454/2000 was filed by one K.S.Raja for winding up of the 1st respondent Company. When the petition in CP.No.454/2000 was pending, the 1st respondent has filed Company Application in Comp.A.No.842/2002 against respondents 2 to 4 herein praying for issuing notice to respondents 2 to 4 to settle the entire dues to the 1st respondent Company amounting to Rs.16,22,763/- as on 30.06.2002 and for other consequential reliefs. The said application was ordered by a learned Single Judge of this Court.
- (5) For convenience, the operative portion of the impugned order dated 05.12.2003 passed by the learned Single Judge is extracted hereunder:-



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"5.Hence, the following direction is issued. The 1st respondent in each of the application shall pay the balance directly to the Official Liquidator with the following schedule of payments:-

- i. The 1st respondent in each of the application is permitted to pay the above amount in three equal monthly instalments.*
- ii. The 1st instalment of each transaction has to be paid on or before 15.12.2003. The balance two instalments have to be paid on or before 15th of successive two months.*
- iii. The amount shall carry interest at the rate of 12% per annum. Penal interest at the rate of 15% per annum should be paid for any belated payment.*
- iv. If the 1st respondent in each case commits any default for two successive months, it is open to the Official Liquidator to recover the entire balance amount along with the interest and penal interest as stated in Condition No.[iii].*

6.At the request of the parties, the Ind Bank is also hereby directed to grant necessary 'No Objection Certificate' in respect of these two transactions."



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- (6) Aggrieved by the same, the appellants has preferred the above Original Side Appeal.
- (7) Learned counsel for the appellant submitted that the appellant was not made as a party. Surprisingly, this Court has noticed that neither the appellant nor the 5th respondent who has now been impleaded as a party to this Appeal, was not a party before the learned Single Judge. In the absence of the proper and necessary parties, namely, the appellant and the 5th respondent, the learned Single Judge has proceeded to dispose of the applications unmindful of the legal consequences that may follow thereof.
- (8) Learned counsel for the appellant submitted that the learned Single Judge has erred in directing the appellant to grant No Objection Certificate to the respondents even though the entire property as such is mortgaged with the appellant and that the appellant is not liable to release any property without receiving any money corresponding to the security. Learned counsel also submitted that the learned Single Judge has travelled beyond the scope of the proceedings and has directed the appellant to issue No Objection



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Certificate without even a prayer in the application and without hearing the appellant and the same is against the principles of natural justice apart from being arbitrary and irrational. It is true that the order impugned reads as if the Court heard the submission of a the learned counsel for the appellant. But it is admitted that the appellant is neither a party nor heard before the learned Single Judge.

- (9) This Court is of the firm view that the order of the learned Single Judge is liable to be set aside. The learned counsel appearing for the Official Liquidator pointed out that the application was filed at the instance of the Administrator and thereafter, he was discharged and the Official Liquidator has been appointed by orders of Court. The learned counsel further stated that at the time of hearing, Mr.P.L.Narayanan, learned counsel for respondents 2 to 4 submitted that respondents 2 to 4 came forward to settle the dues. It is the grievance of the learned counsel appearing for the Official Liquidator that respondents 2 to 4 have not paid any amount thereafter and therefore, the 1st respondent is now unable to recover



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the amount from the borrowers.

- (10) This Court is not concerned with the grievance of the 1st respondent for the moment in this appeal as the appeal is directed against the order affecting the security interest of the appellant without even impleading the appellant or hearing the appellant before the order is passed.
- (11) Therefore, the above Original Side Appeal is **allowed** and the impugned order dated 05.12.2003 passed by the learned Single Judge in CA.No.842/2002 in CP.No.454/2000 is **set aside**.
- (12) This Court is of the view that the 1st respondent is supposed to know that the entire project undertaken by the 5th respondent herein is by availing financial assistance from the appellant by mortgaging the property and therefore, the appellant is entitled to hold the property as security till the entire loan is fully discharged.
- (13) While giving liberty to the appellant to initiate appropriate proceedings against the 5th respondent, this Court also reserves the right of the Official Liquidator to implead the appellant and the 5th respondent as party to the company application in



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Comp.A.No.842/2002 and proceed against the borrowers in the presence of the proper and necessary parties including the appellant and the 5th respondent. No costs. Consequently, connected MP is closed.

[SSSRJ] [PBBJ]
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AND

P.B.BALAJI, J.

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