



W.A.No.1366 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:31.07.2023

Delivered on: 07.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

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and

C.M.P.No.9354 of 2019

Southern Alloy Foundries (P) Ltd.,
A company incorporated under
The Companies Act, 1956 having its
Registered office at 1-B, JVL Towers
117, Nelson Manickam Road
Aminjikarai
Chennai-600 029

.. Appellant

Vs.

1.The Collector of Chennai
Singaravelar Maligai
Rajaji Salai
Chennai-600 001

2.Tahsildar
Egmore-Nungambakkam Taluk
Chetput, Chennai-31



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3.Revenue Inspector-II,
Office of the Tahsildar
Egmore-Nungambakkam Taluk
Chetput, Chennai-600 031

4.Government of Union
Territory of Puducherry
Rep by its Chief Secretary
Pondicherry

5.Pondicherry Industrial Promotion and
Investment Corporation
Rep by its Managing Director
Puducherry

.. Respondents

Prayer:- Appeal filed under Clause 15 of Letter Patent praying to set aside
the order passed by this Court in W.P.No.10154 of 2004 dated 28.01.2019.

For Appellant : Mr.S.Murugaiah

For Respondents : Mrs.Geetha Thamaraiselvan,
Spl.G.P for R1 to 3

Mr.A.Tamilvanan, AGP(P) for R4

Mr.P.Dineshkumar for R5

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The unsuccessful Writ Petitioner is the appellant before us.



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2. The Writ Petition was filed seeking issuance of a Writ of Mandamus to forbear the respondents from taking any distraint action or attaching the immovable properties belonging to the appellant by invoking the provisions of the Tamil Nadu Revenue Recovery Act, 1864.

3. The case of the appellant is that in respect of an immovable property owned by them, a notice dated 23.1.2004 was served on them for an alleged loan amount that was due and payable to the 5th respondent. It is the specific case of the appellant that the impugned notice was in the name of one M/s. Associated Ceramics Industries(P) Ltd and the said notice came to be served on the appellant herein. Contending that the appellant is in no way connected to the term loan granted by the 5th respondent to the said company M/s.Associated Ceramics Industries (P) Ltd, the Writ Petition came to be filed.

4. After hearing the 5th respondent, the Writ Court dismissed the Writ Petition stating that the recovery notice, even if is in no way connected to the appellant, the appellant having not challenged the proceedings issued under the Revenue Recovery Act ought not to have filed a petition seeking



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issuance of a Writ of Mandamus. The Writ Court also took note of the fact that two of the Directors in the appellant's company were also Directors in the company to which the distraint notice had been issued viz., M/s.Associated Ceramics Industries (P) Ltd and that both the said Directors were guarantors and therefore, the Writ Petition was held to be misconceived and consequently the same came to be dismissed.

5. Aggrieved by the said order of dismissal of the Writ Petition, the Writ Petitioner, as appellant has preferred the present Writ Appeal contending that the Writ Court has not followed the principles of limited liability enshrined in the Companies Act; a limited Company is a separate juridical person having a separate legal entity; the property sought to be proceeded against did not belong to the borrower company viz., M/s. Associated Ceramics Industries (P) Ltd and on various other grounds set out in the memorandum of of Writ Appeal.

6. Heard Mr.T.R.Rajagopalan, learned Senior counsel assisted by Mr.S.Murugaiah, learned counsel for the appellant and Mrs.Geetha Thamaraiselvan, learned Special Government Pleader for the respondents 1



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to 3, Mr.A.Tamilvanan, learned Additional Government Pleader (Pondy) for the 4th respondent and Mr.P.Dineshkumar, learned counsel for the 5th respondent. We have also perused the records and also the order of the learned Single Judge.

7. Admittedly, the impugned notice under challenge before the Writ Court was issued to the M/s.Associated Ceramics Industries (P) Ltd. It is also an admitted fact that the property in respect of which proceedings were sought to be taken under the Revenue Recovery Act did not belong to the said company. On the other hand, the said property belongs to the appellant company.

8. The learned Senior counsel for the appellant would therefore, contend that when the appellant company had nothing to do with the borrower company, which was a separate legal entity, it was not necessary for the appellant to challenge the proceedings under the Revenue Recovery Act and therefore, the Writ Court ought to have held that Writ Petition was maintainable and consequently allowed the same.



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9. Per contra, the learned counsel for the respondents would submit that the two companies are only sister companies which is clearly borne out from the fact that two of the Directors are common to both the companies. Infact, according to the respondents both the said Directors viz., Mr.Thiagarajan and Mr.Kandasamy have also given personal guarantee for the loan borrowed by M/s. Associated Ceramics Industries (P)Ltd . Under such circumstances, they cannot shirk their liability under the cover of the appellant company seek issuance of a Writ of Mandamus as prayed for and thereby get away from settling the loan amounts.

10. At the outset, we are unable to accept the contentions advanced by the counsel for the respondents that merely because two of the Directors of the borrower company also happen to be Directors in the appellant company, liability can be saddled on the appellant company and properties of the appellant company be proceeded against. A limited company, registered under the Companies Act is a separate and distinct legal entity, having a common seal and entitled to hold properties, both movable and immovable in its name. The property belonging to the company is not the property of its Directors and therefore applying this fundamental principle,



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the impugned notice issued in the name of the M/s. Associated Ceramics Industries (P) Ltd cannot be enforced against a totally different registered company altogether viz., the appellant company. Even if two of the Directors of the borrower company happened to be Directors of the appellant company as well and they have also given a personal guarantee for the loan borrowed, it would only be open to the respondents to proceed against the said two Directors in their individual capacity and not against a different company where they are Directors.

11. We also find force in the submissions of the learned Senior counsel for the appellant that when the impugned notice has not been served on the appellant and their contentions are clear and definite to the effect that the property sought to be proceeded against belong to them and they have nothing to do with the loan borrowed by M/s. Associated Ceramics Industries (P) Ltd, a Writ of Mandamus to forbear coercive action would certainly be maintainable.

12. However, at the same time it is needless to state that the respondents are always at liberty to proceed against the directors of the



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appellant company who have given personal guarantee to the loan borrowed viz., M/s. Associated Ceramics Industries (P) Ltd, in a manner known to law. However, the action proposed as against the appellant company is wholly unsustainable.

For all the above reasons, Writ Appeal is allowed and the order of the learned Single Judge passed in W.P.No.10154 of 2004 dated 28.01.2019 is set aside, giving liberty to the respondents to proceed against the borrower company and the two Directors who have given personal guarantee, in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J) & (P.B.B.J)
07.08.2023

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No



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D.KRISHNAKUMAR, J.,
and
P.B.BALAJI, J

(kpr)

Pre-delivery judgment in
W.A.No.1366 of 2019

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