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O.S.A.Nos.92 to 101 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

CORAM :

THE HON'BLE MR.JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE C.KUMARAPPAN

O.S.A.Nos.92 to 101 of 2014

1. Dr.(Mrs.)Rajam Sethuraman
2. J.Mohammed Nazir
3. M.Rabia Banu .. Appellants in all the O.S.As.

v.

01. "Maha Seman Trust"
A Public Charitable Trust
having its Registered Office at
No.4, Dr.Natesan Road
Ashok Nagar
Chennai 600 083

02. Dr.N.Sethuraman
03. Mr.N.Rajagopal
04. H.Sivananthan
05. V.Sathiyarayanan
06. M.Saibaba
07. P.Lakshmi
08. D.Usha Devi



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09. M/s S.M.I.L.E Microfinance Ltd.,
through its Managing Director
(Formerly Semam Micro Finance Investment
Literacy and Empowerment Ltd., a Company
registered under the Indian Companies Act, 1956
and having its registered office at
No.4, Dr.Natesan Road
Ashok Nagar, Chennai 600 083
represented by its Chairman Dr.N.Sethuraman

- 10. M.Sathiya Moorthy
- 11. Dr.S.Brathibha
- 12. C.Ponnuchamy
- 13. N.Bhuvaneswari
- 14. A.Tamilarason
- 15. J.Bradley Swanson
- 16. Aleem Remtula
- 17. Indrani Singh

18. Madurai Power Trust
represented by its Managing Trustee
S.Ramesh at 4/126A, Lake Area
Melur Road, Uthangudi
Madurai 625 107

19. Madurai Power Women's Empowerment Trust
represented by its Managing Trustee
Dr.N.Sethuraman at No.2/47B, Melur Road
Uthangudi, Madurai 625 107

20. Meenakshi Hotels and Entertainment Pvt.Ltd.,
represented by its Managing Director S.Ramesh
at No.44/1, G.N.Chetty Road, T.Nagar
Chennai 600 017



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21. Fathi Software Pvt.Ltd.,
represented by its Director Dr.S.Brathiba
at No.434, Mosque Street
Anna Nagar, Madurai-20

22. ICICI Bank, a Banking Company registered
under the Banking Companies Act,
at No.7, Bazullah Road, T.Nagar
Chennai 600 017 represented by
its Branch Manager

23. Indian Bank, a Nationalized Bank
registered under the Banking Companies Act
at No.69, First Avenue, Ashok Nagar
Ashok Pillar, Chennai 600 083 .. Respondents in OSA Nos.92 to
94 & 98 to 101/2014

J.Bradley Swanson .. Respondent in OSA No.95/2014
Aleem Rentula .. Respondent in OSA No.96/2014
Indrani Singh .. Respondent in OSA No.97/2014

Memorandum of Grounds of Original Side Appeals under Order XXXVI, Rule 1 of the Madras High Court Original Side Rules read with Clause 15 of the Letters Patent, against the common order of the learned single Judge dated 19.12.2013 passed in C.S.No.143 of 2012; Application No.1183 of 2012 in C.S.No.143 of 2012; O.A.No.694 of 2012 in C.S.No.143 of 2012; Application No.2927 of 2012 in C.S.No.143 of 2012; Application No.2928 of 2012 in C.S.No.143 of 2012; Application No.2929 of 2012 in C.S.No.143 of 2012; Application No.3572 of 2012 in C.S.No.143 of 2012; Application No.3573 of 2012 in C.S.No.143 of 2012; Application No.3574 of 2012 in C.S.No.143 of 2012; O.A.No.520 of 2013 in C.S.No.143 of 2012 respectively, on the file of this Court.



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For Appellants :: Mr.A.K.Sriram
Senior Counsel for
Mr.Javid Khan in all the OSAs

For Respondents :: Mr.P.S.Raman
Senior Counsel for
M/s Raman & Associates for R9
in OSA Nos.92 to 94 &
98 to 101/2014

R1 - No such company

No appearance for R2 to R8,
R15 to R19, R21 to R23

R10 to R14 – Job resigned
R20 – Shifted
in OSA Nos.92 to 94 & 98 to 101/14

No appearance for respondent in
OSA Nos.95 & 97/2014
Service awaited for respondent in
OSA No.96/2014

COMMON JUDGMENT

(Judgment of the Court was made by S.S.SUNDAR,J.)

All these original side appeals are directed against the common order passed by the learned single Judge of this Court dated 19.12.2013 made in O.A.Nos.694 of 2012, 520 of 2013 in C.S.No.143 of 2012 and in Application Nos.1183, 2927 to 2929, 3572 to 3574 of 2012 in C.S.No.143



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of 2012, respectively. It appears that O.S.A.No.92 of 2014 has been filed by the appellants aggrieved by the findings of the learned single Judge in paragraphs 50 & 51 of the order dated 19.12.2013.

2. This Court, on an earlier occasion, while disposing of the interlocutory applications filed in C.M.P.Nos.7981, 13117 of 2022, 2508 & 2495 of 2023 in O.S.A.No.101 of 2014 by the appellants 2 & 3 and the contesting 9th respondent, by order dated 09.03.2023, referring to the order of the learned single Judge dated 19.12.2013 recording a finding that the suit against the 1st respondent/1st defendant Trust is not maintainable, as the suit against the 1st respondent was filed giving a false address and that the suit against the other defendants may not survive, on hearing the arguments of the learned counsels on either side and considering the prima facie case and balance of convenience in favour of the 9th respondent, declined to extend the order of status quo any further.

3. When all the appeals were taken up for hearing, the learned Senior



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Counsel appearing for the appellants was unable to convince this Court that the suit is maintainable without obtaining leave against the 1st respondent/1st defendant. However, the learned Senior Counsel appearing for the appellants submitted that the appellants will be in a position to let in more evidence to show how the suit is maintainable before High Court if they are given an opportunity. This Court by a common order dated 09.03.2023 vacated the interim order granted in C.M.P.No.7981 of 2022 and allowed C.M.P.No.13117 of 2022. This Court also while passing orders doubted the bonafides of the litigation and expressed its opinion regarding probable collusion. It is now admitted that the Special Leave Petitions filed against the order of this Court are also dismissed. In such circumstances, the counsel for the appellants appears to be convinced that an early disposal of suit instead of keeping these appeals without interim order will be in the best interest of appellants. Therefore, the learned Senior Counsel appearing for the appellants agree for the closure of all appeals with a liberty to conduct the trial and get a disposal of suit on merits uninfluenced by any findings or observations made in the order of learned single Judge and by this Court



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earlier in the interlocutory applications.

4. The learned Senior Counsel appearing for the contesting 9th respondent has no objection for this course. However, the learned Senior Counsel for the contesting respondent (9th respondent) requested this Court to give liberty to the 9th respondent either to file an application under Order VII, Rule 11 of the Civil Procedure Code or to raise preliminary objections as regards the maintainability of the suit.

5. Having heard the learned Senior Counsels appearing on either side, even though we are prima facie convinced with the findings rendered by the learned single Judge with regard to the maintainability of the suit, we dismiss all the original side appeals preserving the liberty of the appellants/plaintiffs and the 9th respondent/9th defendant to prosecute and/or defend the suit accordingly based on evidence that may be let in by both sides. Learned single Judge of this Court is directed to dispose of the suit based on evidence, on merits uninfluenced by any of the observations made



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in the impugned common order dated 19.12.2013 or in the order passed by this Court earlier. It is made clear that those findings will not operate as res judicata when the Court decides the suit purely on merits after giving opportunity of hearing to both sides and to lead evidence on each and every issue framed. Consequently, M.P.No.1 of 2014 in each of the appeals is also dismissed.

6. C.M.P.Nos.11609, 11610, 11604, 11606 of 2023 in O.S.A.Nos.92 and 101 of 2014 are filed by the petitioners/appellants to implead the Reserve Bank of India, Department of Non Banking Financial Company, Centralized Receipt Processing Centre, Chandigarh and the Company known as Northern Arc Capital Limited, Tharamani, Chennai as party respondents in the appeals. Since this Court, taking into account the interest of the parties, has dismissed all the original side appeals granting liberty to the appellants and the 9th respondent to conduct the suit and get a decision on merits, these civil miscellaneous petitions are dismissed. It is for the petitioners/appellants to move appropriate application before the learned



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single Judge seeking to implead the above parties, if necessary. If any application is filed for impleadment, it is open to the learned single Judge to dispose of the same on merits uninfluenced by the summary dismissal of these petitions by this Court at this stage.

7. C.M.P.No.11612 of 2023 in O.S.A.No.92 of 2014 is filed by the petitioners/appellants to take on record the additional documents A – W described in the Judges summons. Since the main appeals have been disposed of by this Court, the civil miscellaneous petition is dismissed. The petitioners are permitted to renew their prayer before the learned single Judge at the time of trial, if so advised. Similarly, in view of the order passed in the main appeals, C.M.P.No.11629 of 2023 in O.S.A.No.92 of 2014 filed by the petitioners/appellants seeking to order substituted service through paper publication in respect of respondent Nos.1, 11 & 20 is also dismissed as not necessary.

8. C.M.P.No.4331 of 2019 in O.S.A.No.92 of 2014 is filed by the



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petitioners/appellants to appoint a Receiver/Administrator in respect of the 1st respondent Trust and its properties. C.M.P.No.2503 of 2023 in O.S.A.No.101 of 2014 is filed to pass an order initiating appropriate proceeding including contempt proceeding against the 9th respondent and its Board of Directors for having violated the order of status quo passed by this Court in C.M.P.No.7981 of 2022 in O.S.A.No.101 of 2014 dated 28.4.2022 as well as the order passed by the Hon'ble Supreme Court dated 23.09.2022 in S.L.P.(C)No.16303-16304 of 2022. However, in view of the endorsement made by the learned counsel on record for the petitioners to the effect that these petitions are not pressed, the above miscellaneous petitions are also closed as not pressed. Liberty is given to the 9th respondent to file a petition under Order XVII, Rule 11 of the Civil Procedure Code to reject the plaint or to raise preliminary objection on the maintainability of suit. All these appeals are dismissed, however, subject to the liberty given to both sides as indicated earlier. No costs.

Index : yes/no
Neutral citation : yes/no
SS

(S.S.S.R.,J.) (C.K.,J.)
20.06.2023



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To
The Sub Assistant Registrar (O.S.)
High Court, Madras



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S.S.SUNDAR, J.
AND
C.KUMARAPPAN, J.

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