C.M.P.Nos.5613, 5615, 5351 and 5354 of 2022
in OSA.Nos.295 and 301 of 2019

R.SUBRAMANIAN, J.
and
R.SAKTHIVEL, J.

The parties have settled the matter. A Memorandum of Settlement has been filed before this Court and the same is recorded by the order of the Division Bench on 01.04.2021, in and by the said Memorandum of Settlement, the appellant had agreed to pay a sum of Rs.18,00,000/- in full and final settlement of the claims to the creditors. The creditors have also agreed to receive the said sum of Rs.18,00,000/- in full and final settlement of all the claims.

2. The said amount as per the Memorandum of Settlement was to be paid on or before 31.05.2021. The amount was not paid by the said date. Hence, CMP.Nos.5613 and 5351 of 2022 have been filed by the appellant seeking extension of time to pay the sum of Rs.18,00,000/-. This application was adjourned at the request of the parties to have the matter finally resolved.

3. Today when the matter is taken up both Mr.J.Balagopal, learned counsel appearing for the appellant and Mr.A.Babu, learned counsel appearing for the creditor would submit that they have arrived at a settlement and the creditors have agreed to receive Rs.25,00,000/- in full quits of their claims. Two demand drafts for Rs.25,00,000/- in the name of the learned Official Assignee have been produced before us. The said drafts are handed over to the learned Official Assignee. The learned Official Assignee shall apportion the amount amongst the two creditors as follows:-

A.N.Srinivasan (IP.No.134 of 1999) - Rs.14,43,400/-

M.V.Loganathan (IP.No.115 of 1999) - Rs.10,56,600/-

4. The learned Official Assignee would however claim that he is entitled to deduct 7% commission payable to the Government. The said request has been made before the Division Bench and it has been specifically rejected in the order dated 01.04.2021. Paragraph No.8 of the order of the Division Bench reads as follows:-

> *8. Though the Official Assignee made a claim for 7% commission, taking into consideration, that the matter has been settled through Court, it may not be appropriate for the Official Assignee to charge 7% commission. Moreover, a Division Bench of this Court in* ***O.S.A.Nos.26 to 28 and 183 of 2017 dated 06.10.2017 [K.Dhanalakshmi Ammal and Another V. T.Radha and Another]*** *has negatived the claim of*

the Official Assignee for commission on the ground that the matter has been settled through Court. Following the said judgment, the claim of the Official Assignee for 7% commission is rejected. However, it is made clear that in the event the appellant fails to make the payment of Rs.18 lakhs and the property is brought for sale, then the Official Assignee would be entitled to 7% commission.

5. In view of the above dictum, we do not think we can permit the Official Assignee to deduct 7% as Government Commission. The request of the Official Assignee is rejected. The Official Assignee shall disburse the amount within a period of three weeks from today.

6. Accordingly, these petitions are disposed of.

(R.S.M., J.) (R.S.V., J.)
05.03.2024

dsa

R.SUBRAMANIAN, J.
and
R.SAKTHIVEL, J.

dsa

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