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W.P. No.6604 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-12-2024

CORAM:

THE HONOURABLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P. No.6604 of 2024 and W.M.P. No.7328 of 2024

1. R.MADHAN
2. P. KARTHIKEYAN

PETITIONERS

VS.

THE AUTHORISED OFFICER
HOUSING DEVELOPMENT FINANCE CORPORATION
FIRST FLOOR, ITC CENTRE
HDFC BANK LTD.
NO.760, ANNA SALAI
CHENNAI-600 002

RESPONDENT

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondent to repay the bid/deposited amount of a sum of Rs.20,10,000/- (Rupees Twenty Lakhs Ten Thousand only) with interest @ 18% from 06.02.2019 till date along with compensation of a sum of Rs.2,00,000 (Rupees Two Lakhs only).

For petitioners Mr. L. Thiyaigaiya

For respondent Mr. K.J. Parthasarathy

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ORDER

(made by the Hon'ble The Chief Justice)

Respondent has filed a memo dated 04.12.2024 stating that the respondent, viz., Housing Development Finance Corporation Ltd. has merged with HDFC Bank Ltd. pursuant to scheme of amalgamation approved by National Company Law Tribunal, Mumbai, on 17.03.2023.

2. Counsel for petitioner seeks leave to amend petition. Leave granted. Amendment to be carried out during the course of the day. Re-verification dispensed with.

3. Counsel for petitioner states that copy of the petition was served on respondent in July 2024.

4. Counsel for respondent states that he was informed by the respondent about this development only last week and he promptly has filed a memo.



5. Respondent has a huge legal team and it ought to have promptly informed petitioner about the amalgamation. Respondent did not. For the delay in communicating, we impose costs of Rs.25,000/- on respondent. The amount shall be paid within a week to the Madras High Court Legal Services Authority. Time starts from today even if the order is not uploaded.

6. After the petition was heard for sometime, counsel sought leave of the Court to withdraw the petition with liberty to file a suit to claim damages from respondent/return of the amount paid and for such other reliefs, as may be advised. Counsel also requested that the time spent in pursuing this petition, *i.e.*, from the date of lodging this petition till today, be excluded.

7. We have to note that petitioners have diligently pursued this petition and the time spent in prosecuting this petition has to be excluded in calculating the limitation. We find support for this view in the judgment of a Coordinate Bench of the Bombay High Court in ***Maharashtra State Farming Corporation Limited v. Belapur Sugar & Allied Industries Ltd.*** [(2004) 3 Bom CR 480]. Paragraphs 12, 13, 16, 17 and 18 of the said judgment read as under:

“12. Is the defence of the company claiming rent of their properties in possession of the Corporation from the year 1964 legally sustainable? It is not in dispute that the claim of rent is unconnected



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with the claim of the Corporation against the Company for non-payment of the sugarcane supplied during the seasons 1985-86 and 1986-87. The legal position is well settled that a plea in the nature of equitable set off is not available when the cross demands do not arise out of the same transaction. The law recognises the right of equitable set off provided the claim arises out of the same transaction which is the foundation of plaintiff's claim and so long as it has not become time barred; the underlying principle being that it would be inequitable to drive the defendant to separate suit for the purpose. In the present case, the condition precedent from claiming equitable set off is not made out and cannot be said to be available as the cross demands do not arise out of the same transaction. The learned counsel for the company sought to urge that in so far as the proceedings for winding up of the company is concerned, if a plea of equitable set off is raised by the company, that would furnish the reasonable excuse for non-payment and the company cannot be said to have neglected to pay the debt due to the petitioner despite service of the statutory notice. He placed reliance on C.A. Galiakotwala & Co. (P.) Ltd., In re (1984) 55 Comp Cas 746 (Bom.). The learned counsel for the Company would also urge that Section 3 of the Limitation Act only bars the remedy but does not destroy the right and therefore, it is lawful for the company to adjust even time barred claim of rent against the Corporation and thus, there was valid defence in opposition to the petition for winding up of the company.

In this regard, the learned counsel placed reliance on the judgment of the Supreme Court in Punjab National Bank v. Surendra Prasad Sinha.

13. When the claim of equitable set off does not arise out of the same transaction on which the Corporation's claim is founded, the prerequisite condition of equitable set off is not made out and such plea cannot be considered to be the plea of valid set off; much less in the facts and circumstances of the present case the plea of equitable set off can be said to be a bona fide defence to constitute reasonable excuse for nonpayment by the company in opposition to the petition for winding up. In this view of the matter the observation made by the learned Company Judge that the company has a plausible defence insofar as their counterclaim of rental charges for three years prior to the filing of the company petition was not justified. However, the fact of the matter is that the learned Company Judge has held in an unequivocal terms that the company has no valid defence against the Corporation in respect of the claim of Rs. 59,73,348.75 and Rs.



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22,35,251.28. As regards the Corporation's claim in the sum of Rs. 11,32,974.97 in respect of the sugarcane supplied for the season 1985-86, the learned Company Judge cannot be said to have erred in observing that there was genuine dispute. The learned Company Judge in his order observed thus-

“It is the specific case of the Company that they had paid the said amount to the Petitioners under two separate cheques. It is not disputed by the petitioners that they had received the payment towards their bills dated December 16, 1986 and December 30, 1986. However, the Petitioners say that the said amount was appropriated by them towards their earlier bills and this was done with the consent of Mr. Maheshwari, Director of the Respondent Company. On perusal of the correspondence between the parties, it is clearly seen that by their letter dated January 20, 1987, the Respondent Company categorically disputed the case of adjustment sought to be made out by the petitioners. It was specifically averred in the said letter that Mr. Maheshwari has never agreed to such adjustment. In my opinion, the dispute raised by the Petitioners in that behalf cannot be said to be frivolous or without any substance.”

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16. In Rameshwarlal's case (supra), the Supreme Court held thus-

“2. It is not necessary for us go into the question of the legality of the order of the High Court in refusing to grant the relief. It is axiomatic that the exercise of the power under Article 226 being discretionary, the learned Single Judge as well as the Division Bench have not exercised the same to direct the respondent to pay the alleged arrears of salary alleged to be due and payable to the petitioner. Under these circumstances, the only remedy open to the petitioner is to avail of the action in the suit. Since the limitation has run out to file a civil suit by now, which was not so on the date of the filing of the writ petition, the civil court is required to exclude, under Section 14 of the Limitation Act, 1963, the entire time taken by the High Court in disposing of the matter from



the date of the institution of the writ petition.

3. Normally for application of Section 14, the court dealing with the matter in the first instance, which is the subject of the issue in the later case, must be found to have lack of jurisdiction or other cause of like nature to entertain the matter. However, since the High Court expressly declined to grant relief relegating the petitioner to a suit in the civil court, the petitioner cannot be left remediless. Accordingly, the time taken in prosecuting the proceedings before the High Court and this Court, obviously pursued diligently and bona fide, needs to be excluded. The petitioner is permitted to issue notice to the Municipality within four weeks from today. After expiry thereof, he could file suit within two months thereafter. The trial court would consider and dispose of the matter in accordance with law on merits.” (p. 100)

17. We are of the view that the Corporation having pursued winding up petitions and appeals before this court diligently and bona fide, the time taken in the said proceedings needs to be excluded.

18. Resultantly we dispose of the four appeals by the following order: The Maharashtra State Farming Corporation Ltd. is granted two months’ time to file the suit for recovery of the due amount against the Company viz. Belapur Sugar & Allied Industries Ltd. The time taken by the Maharashtra State Farming Corporation Ltd. in prosecuting the winding up petition and the appeals before this court shall be excluded under Section 14 of the Limitation Act, 1963. The company, if advised and legally available, may also pursue appropriate remedy for its claim against the Corporation. Obviously claim of the parties shall be considered in accordance with law. For a period of two months, the Government guarantee furnished by the Maharashtra State Farming Corporation Ltd. shall remain operative and thereafter, the said Government guarantee shall stand discharged unless ordered otherwise.”



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8. Therefore, the time taken by petitioners in prosecuting this petition shall be excluded under Section 14 of the Limitation Act, 1963.

9. Petition is dismissed as withdrawn with liberty as prayed for. W.M.P.No.7328 of 2024 filed to permit petitioners to file a single writ petition stands ordered.

(K.R.SHRIRAM, C.J.)

(SENTHILKUMARRAMAMOORTHY, J.)

04-12-2024

Index : Yes/No
Neutral citation : Yes/No
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W.P. No.6604 of 2024

THE HON'BLE CHIEF JUSTICE

and

SENTHILKUMARRAMAMOORTHY, J.

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To

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