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O.S.A.No.233 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

O.S.A.No.233 of 2024

and

C.M.P.No.27379 of 2024

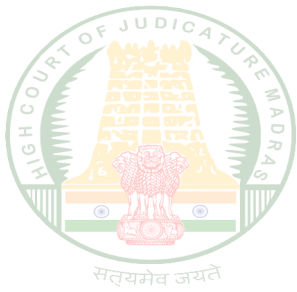
Anjani Associates
Palaniappa Complex 2nd Floor,
No.41, 140/2, Old No.1273,
Mettur Road, EVN Road,
Erode.
Presently at
No.76, Perundurai Road,
Second Floor, above Easybuy Showroom,
Collectorate Bus Stop,
Erode – 638 011.

... Appellant

Vs.

Dhandapani Spinning Mills Limited,
Registered Office :
17F, Rajaji Road,
Salem – 636 007.

... Respondent



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Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules and Clause 15 of the Letters Patent against the order dated 15.11.2024 in Company Application No.422 of 2024 in Company Petition No.254 of 2012 on the file of this Court.

For Appellant : Mr.K.P.Prabu raj
for M/s.AK Mylsamy and Associates

For Respondent : Mr.P.H.Arvinth Pandian
Senior Counsel
for Mr.Sandeep Kumar Ambalavanan

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

This Original Side Appeal is directed against the order of the learned Single Judge dated 15.11.2024 in Comp.A.Nos.422 and 443 of 2024 in C.P.No.254 of 2012.

2.The appellant claims to be a person who is entitled to recover a huge sum of money to the tune of Rs.1,25,43,414/- from the respondent Company. He is the petitioner in Company Petition in C.P.No.254 of 2012



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for winding up under Section 433(1)(e) & 433(1)(f) r/w. 434 of the Companies Act, 1956, alleging that the Company is unable to pay its dues.

Originally, a learned Single Judge by order dated 29.10.2013, refused to admit the Company Petition on the ground that the petition for winding up the Company is not warranted and the real cause for the petition was due to the matrimonial discord between the petitioner in the Company Petition and the sister of the Managing Director of the respondent Company. This Court, on appeal preferred by the appellant in O.S.A.No.75 of 2014, set aside the order and directed the Company Court to proceed further with the Company Petition in accordance with law. However, all defences including the question of enforceability of the debt at present are left open. Thereafter, during the pendency of the Company Petition, an *ex parte* order dated 08.03.2024 was passed to effect paper publication with a further direction restraining the Company from alienating the properties of the respondent. It is the case of the appellant that the respondent, despite the order of injunction passed by this Court, alienated some of the properties of the Company. Later, the respondent filed a Company Application in Comp.A.No.422 of 2024 to set aside the order dated 08.03.2024 in

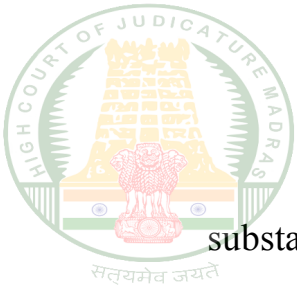


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C.P.No.254 of 2012 stating that the Company is willing to secure the claim of the appellant with a Bank Guarantee. Thereafter, a third party filed a Company Application in Comp.A.No.443 of 2024 to implead themselves in the Company Petition. The learned Single Judge, by common order dated 15.11.2024, dismissed the impleading application in Comp.A.No.443 of 2024 and allowed the application in Comp.A.No.422 of 2024 with a condition directing the respondent to furnish the Bank Guarantee for a sum of Rs.1,25,43,414/- in favour of the Registrar General of this Court to the credit of C.P.No.254 of 2012 on or before 29.11.2024. Liberty was granted to the appellant to file contempt petition against the respondent Company for the alleged disobedience of the order dated 08.03.2024. The said sum represent the actual amount claimed by the appellant from the respondent Company when the Company Petition was filed. Against the said order in Comp.A.No.422 of 2024, the present Appeal is preferred by the petitioner in the Company Petition.

3.Sum and substance, the learned counsel appearing for the appellant submitted that the respondent Company executed sale deed and sold



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substantial properties of the Company for a consideration of Rs.3 Crores and odd by document dated 28.03.2024 and that the respondent, thereafter, filed the application in Comp.A.No.422 of 2024 with a *mala fide* intention to circumvent or invalidate the earlier order dated 08.03.2024 in C.P.No.254 of 2012. Learned counsel also submitted that the application filed by the respondent to set aside the order dated 08.03.2024 is not maintainable in law, as the same is contrary to the earlier order of Division Bench admitting the Company Petition.

4.This Court is unable to accept the contention of the respondent. The cause of action for filing the Company Petition is on the premise that the Company is unable to pay the substantial amount due to the appellant and that therefore, the Company should be wound up. It is admitted that no separate proceeding was initiated for recovery of money due. In such circumstances, when the amount alleged to have been recovered from the Company has now been protected in the form of Bank Guarantee, the original cause for filing Company Petition itself does not survive. This Court is unable to find any legal injury to the appellant. The learned Single



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Judge, while passing orders, has protected the right of the appellant to proceed against the respondent by prosecuting the contempt petition for violation of order of Court. The appellant has not expressed any grievance in the manner in which the entitlement to recover is protected. In view of the fact that the appellant's interest is fully protected and the very purpose and object of Company Petition is fulfilled by securing the amount due to the appellant from the respondent Company, this Court finds no *bona fides* in this litigation.

5. Accordingly, this Original Side Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

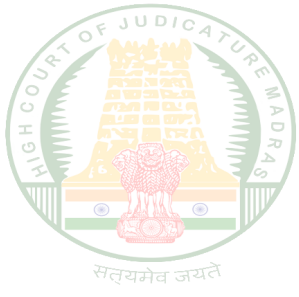
(S.S.S.R., J.) (R.S.V., J.)
29.11.2024

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Neutral Citation : Yes



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and
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