



A.No.3208 of 2024
in
E.P.No.75 of 2018

MASTER
17.10.2025

ORDER

1. This is an application filed by the applicant decree holder company seeking amendment of the cause title in the execution petition by substituting the name of Russle Credit Ltd., 37 J.L Nehru Road, Kolkatta 700 071 West Bengal in the place of BFIL Finance Limited (formerly known as ITC Badrachalam Finance and Investments Limited) 817 Tulsiani Chambers, Nariman Point, Mumbai 400 021.

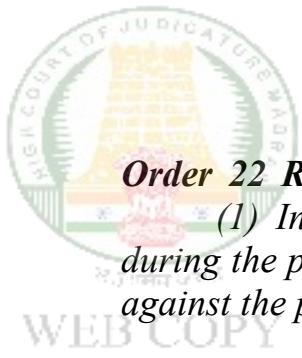
2. Heard both side counsels and materials on record perused. The learned counsel for applicant submitted that pursuant to a scheme of amalgamation sanctioned by the Honourable High Court of Bombay by an order dated 04.05.2016 in C.P.No.132 of 2016, the applicant decree holder company BFIL Finance Limited (formerly known as ITC Badrachalam Finance and Investments Limited) has merged with Russell Credit Ltd and all assets and liabilities proceedings of the applicant Transferor Company transferred to the Russle Credit Limited transferee company in terms of the amalgamation scheme. The amalgamation was effective from 04.05.2016. The learned counsel for the applicant further submitted that the respondent has partly complied with the order of this Court dated 26.09.2019 by making payment to Russell Credit Ltd and at no point of time, till filing of the above application choose to question the maintainability of the execution petition or the status of the applicant and so now he cannot contend that he is not aware of the amalgamation of the applicant company with Russell Credit Ltd.

3. The counsel for the Judgment Debtor has objected to the present application contending that since the Execution Petition was filed in the year 2017 in the name of BFIL Finance Limited (formerly known as ITC Badrachalam Finance and Investments Limited) which had already ceased to exist, the very filing of E.P itself is not maintainable.

4. Before going into the merits of the case it would be appropriate to extract the relevant provision of Code of Civil Procedure:

Order 6 Rule 17

Section 146 Proceedings by or against representatives - Save as otherwise provided by this court or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.



Order 22 Rule 10 Procedure in case of assignment before final order in suit –

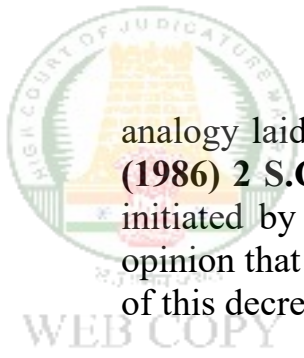
(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devoid.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of Sub Rule (1).

5. On consideration of the submission made by the learned counsel for the applicant and perusal of the copy of order dated 04.05.2016 in C.P.No.132 of 2016 it is seen that under the scheme of amalgamation sanctioned by the Hon'ble High Court of Bombay Russell Credit Limited has become the successor in interest of BFIL Finance Limited (formerly known as ITC Badrachalam Finance and Investments Limited) and all rights under the decree stand vested in Russell Credit Limited in terms of Sec.146 C.P.C and Order 22, Rule 10 C.P.C Execution Petition can be continued by a successor or a person claiming under the applicant decree holder.

6. The objection raised by the Judgment Debtor that the very initial filing of E.P itself is a nullity is not sustainable under law. The filing of the E.P in the name of the transferor company is at best a misdescription, which is a curable defect. This Court obliges to refer the decision in **M/s. General Radio & Appliances Co. Ltd.-vs.-M. A. Khader (dead) by L. Rs., AIR 1986 SC 1218**, wherein the Hon'ble Apex Court upheld the decree passed by the Hon'ble High of Andhra Pradesh and observed that “the appellant no. 1 was a tenant under the respondent in respect of the premises in question. The tenancy agreement contained a clause prohibiting the tenant from subletting the premises or any portion thereof to anyone without the written consent of the landlord. The Bombay High Court sanctioned a scheme of amalgamation under Sec. 394 of the Companies Act, 1956 by virtue whereof the appellant no. 1 stood merged with the appellant no. 2 company. Under the scheme of amalgamation, the undertaking and all the property, rights, powers of every description including all leases and tenancy rights of the appellant no. 1 stood transferred and vested in the appellant no. 2. The landlord filed a suit for eviction and recovery of possession of the premises in question, inter alia, on the ground of unlawful subletting/transfer of tenancy. The matter have been carried to the Hon'ble Apex Court, it was held that the appellant no. 1 had lost its independent identity having stood amalgamated with the appellant no. 2 and this amounted to transfer of tenancy to the appellant no. 2 which was a separate legal entity, without the consent of the landlord.”

7. Similarly, our Hon'ble High Court have consistently taken the view that the execution proceedings are not to be defeated by technicalities, if the rights have vested in the amalgamated company, amendment should be permitted. Following the



analogy laid down in the case of **General Radio and Appliances Vs. M.A.Kannai** (1986) 2 S.C.C 656, that the transferee company is entitled to continue proceedings initiated by the amalgamating company, in the case on hand also this court is of opinion that the amendment sought for is necessary for proper and effective execution of this decree.

8. In the result, the application is allowed in the interest of justice. No cost.

MASTER