



W.P.No.23939 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.23939 of 2024

and

W.M.P.No.26190 of 2024

Syed Abbas

... Petitioner

Vs.

1.The Sub- Registrar
Madukkarai, Coimbatore- 641 105.

2.M/S.Sujay Alloy Castings Limited
Rep By Its Managing Director,
P.R.Sundharam, Old No.1279,
New No.235-A, Mettupalayam Road,
Home Science College Post, Coimbatore-641 043.

3.M/S.Energo Engineering Projects Limited
Rep By Its Liquidator Reg Office At No.302-A,
Pal Mohan Plaza, Deshbandhu Gupta Road,
Koral Bagh, New Delhi-110 005.

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India



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praying for issuance of a writ of Certiorarified Mandamus, to call for the records culminated in issuance of impugned refusal order dated 06.08.2024 vide RFL / Madukkarai /20/ 2024 by the first respondent and quash the same as ultra- vires, against the rule of law, principles of natural justice and consequently direct the first respondent to register the sale deed presented by the petitioner notwithstanding the attachment obtained by the second respondent.

For Petitioner : M/s.M.L.Ganesh

For Respondents : M/s.C.Meera Arumugam, AGP
for R.1
: M/s.S.V.Pravin Rathinam
for R.2.
: M/s.V.Paul Das
for R3.

ORDER

Challenging the refusal check slip issued by the 1st respondent 06.08.2024, the petitioner is before this Court.

2. The petitioner's contention is that one M/s.Levcon Pvt. Ltd.

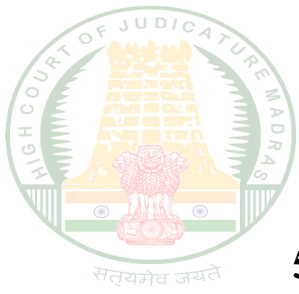


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had initiated a Corporate Insolvency Resolution Process (CIRP) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as the “IBC”) against the 3rd respondent herein. The said application was allowed on 05.09.2017.

3. The petitioner would contend that as per Section 14 of the IBC, 2016 once a corporate debtor company is admittedly into Corporate Insolvency Resolution Process (in short "CIRP"), there is a moratorium in operation and no suits or continuation of pending suits or any other proceedings can be initiated or continued against the corporate debtor including execution of the judgment decree or order of the Court.

4. It appears that the 2nd respondent had filed an application before the MSME Facilitation Council for recovery of a sum of Rs.50,71,476/- together with interest for pending bills against the 3rd respondent and the said application was allowed on 04.12.2017.



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5. A Resolution Professional has been appointed by the Hon'ble NCLT, New Delhi for the corporate debtor/3rd respondent company vide order dated 04.12.2017. After the appointment, the Resolution Professional had collated all the claims submitted by financial debtors, operational creditor, secured and unsecured creditors as per the provision of Section 18 of IBC, 2016.

6. The 2nd respondent is an unsecured creditor and as per Section 53 of the IBC, 2016 would come under the water-fall mechanism. According to this mechanism, the first priority in the distribution of assets would be given to the CIRP and the liquidation costs, followed by financial creditors, EPF, and workers' dues. After satisfying these categories of claimants, the claims of the unsecured creditors will be considered.

7. The petitioner would submit that the Resolution Professional convened meetings on various dates to discuss a resolution plan. However, despite wide publicity, the resolution professional did not



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receive proposals from third parties. Therefore, it was recommended to liquidate the 3rd respondent company and the Resolution Professional had filed CA No. 756 (PB) of 2018 for the liquidation of the 3rd respondent company. This application was allowed on 21.08.2018. Thereafter, the liquidator of the 3rd respondent company had issued a sale notice on 25.09.2022 to bring the secured asset for e-auction. In the said notice, the e-auction was scheduled for 20.10.2020.

8. In the said e-auction, the petitioner had expressed his desire and intention to purchase one of the assets situate at Coimbatore for a consideration of Rs.9,39,30,000/-. The petitioner was declared the successful bidder and a letter of intent was given by the liquidator of the 3rd respondent company on 22.10.2020. After the receipt of the entire sale consideration, the liquidator of the 3rd respondent company had issued a sale certificate on 16.04.2021. By reason of the sale certification, the petitioner became the absolute owner of the property in question.

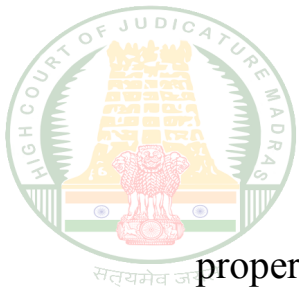


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9. While so, it appears that the 2nd respondent had filed EP.No.36 of 2019 against the 3rd respondent while the proceedings were pending before the NCLT, New Delhi. Section 14 of the IBC, 2016 bars persons from initiating legal proceedings against the corporate debtor, in the instant case, the 3rd respondent. The pendency of the execution proceedings was not brought to the notice of the NLCT, New Delhi.

10. The petitioner would submit that in terms of Section 53 of IBC, 2016, the 2nd respondent ought to have submitted his case to the resolution professional or the liquidator of the 3rd respondent company. However, suppressing the above facts and taking note of the fact that the petitioner was developing the property in question, the 2nd respondent had filed a suit O.S.No.603 of 2024, on the file of the IV Additional District Court, Coimbatore for a permanent injunction restraining the petitioner from alienating or encumbering the suit

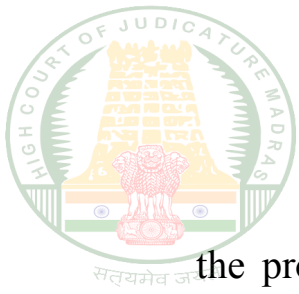


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property. They have also obtained an attachment order in EP.No.36 of 2019. The attachment is effected as security for an outstanding amount of Rs.50,71,746/-.

11. The petitioner would submit that when the sale certificate was presented for registration before the 1st respondent it was returned on the grounds that an attachment order has been obtained in the year 2019. Aggrieved by the same, the petitioner is before this Court.

12. The 2nd respondent had filed a counter inter alia contending that the 2nd respondent had obtained an arbitration award as early as on 01.06.2017 and the 2nd respondent had also filed EP.No.436 of 2019 on the file of the, District Court, Coimbatore to enforce the the said arbitration award. Thereafter, the property was attached on 13.08.2019 and this attachment is reflected in the encumbrance certificate. The 3rd respondent had filed the Insolvency proceedings thereafter and despite the orders of attachment the liquidator had sold

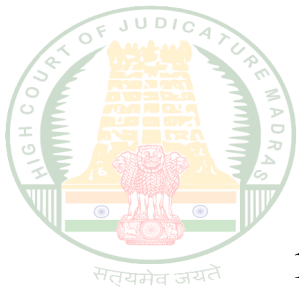


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the property. They would further contend that they had filed a suit O.S.No.603 of 2024 on the file of the IV Additional District Judge, Coimbatore seeking a permanent injunction restraining the petitioner from alienating or encumbering the suit property overlooking the attachment order passed in EP.No.39 of 2019. In the above matter, the Hon'ble IV Additional District Judge, by order dated 13.06.2024 in IA.No.1 of 2024 granted status quo restraining the 1st respondent from registering the sale deeds pertaining to the suit property.

13. The 2nd respondent would submit that the order of attachment had been obtained by them way back on 13.08.2019 and therefore the sale would not bind the 2nd respondent. In short the 2nd respondent would contend that by reason of the subsistence of the attachment order and the status quo order the sale certificate cannot be registered.

14. Heard the counsel on either side.

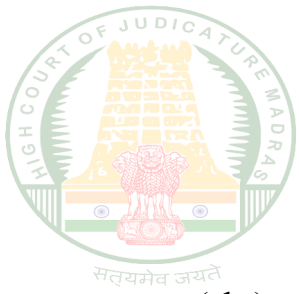


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15. The petitioner has been put on notice about the order of attachment in the suit O.S.No.603 of 2024 wherein the petitioner has been arrayed as the 2nd defendant. The attachment order has been passed in the year 2019 prior to the purchase of the property by the petitioner in the year 2021. Apart from this, there is a status quo order preventing the 1st respondent from registering the sale deeds pertaining to the suit property.

16. Therefore, unless the order of status quo is modified, revised and the attachment order raised there is a fetter placed upon the Registering Authority to register the document. It is also seen that for over two years the petitioner has not taken steps to either raise the attachment or to modify the status quo order. Therefore, the Writ Petition is dismissed. However, once the status quo order is modified/attachment is raised, the petitioner can get the sale certificate registered. No costs. Consequently, the connected Miscellaneous Petition is closed.



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(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To

1.The Sub- Registrar

Madukkarai, Coimbatore- 641 105.

P.T. ASHA. J.,

(shr)



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