

BEFORE THE ADDITIONAL MASTER-III
HIGH COURT, MADRAS.

Comp.A.No.339 OF 2018
IN
C.P.No.255 of 2014

Date: 26.11.2024

Time: 12.35 P.M.

Name : Mr. V.Sambu (PW1)

Cross examination by Mr. P.Raja, learned counsel for Respondent.

Solemnly affirmed:

Q1: As per your statement of affairs and proof affidavit the Ex- Directors of the company filed statement of affairs along with list of borrowers on 21.08.2014. Only there after the Official Liquidator got the statement of accounts of the borrowers. Is it correct?

A: Yes.

Q2: You have not filed the statement dated 21.08.2014 before this Court which was filed before Official Liquidator. Is it correct?

A: Yes.

Q3: You have not filed any details before this Hon'ble Court with regard to taking over of office assets of the company liquidation. Is it correct?

A: There is no need because the court itself by its order dated 31.07.2014 in Company Petition No. 255/2014 has directed the Official Liquidator to take charge of all the assets of the company under liquidation.

Q4: Is it correct that you have stated that there are two agreements in your proof

affidavit but you have not produced Agreement No. 1 stated in Pg.No.2 of your proof affidavit?

A: Yes. Witness adds: Because the payment made by the respondent was adjusted for first agreement and the outstanding dues was shown for the 2nd agreement. Hence, the copy of the 2nd agreement was filed before this Court.

Q5: Have you sent any letter to the respondent prior to 01.11.2009 of adjusting to any other payments towards the Agreement No.1?

A: No.

Q6: I state that the statement of accounts have been created by you after you have been engaged at the office of the Official Liquidator in order to show some dues against the respondent even though all the payments were paid and adjusted and the agreements is closed.

A: No, it has not been created by me. It was taken out from the books and records of the company liquidation which has been taken charge by the official liquidator as per the Hon'ble High Court order dated 31.07.2014 in Company Petition No.255/2015.

Q7: Each and every agreement on the date of signing the company used to receive the post dated cheques for the entire installment. Is it correct?

A: Yes.

Q8: Is it not the duty of the company to inform the debtor after the entire installment period is over to give statement of accounts to inform if the lease period is over and if there is any pending dues?

A: No, it is not the duty of the company. Witness adds: For that it is the respondent's duty to make the request as and when the tenure of agreements got over for issue of No Due Certificate.

Q9: Has the company issued No Due Certificate for the Agreement No. 1 stated in the Pg.No.2 of your proof affidavit?

A: That has to be verified with books and records of the company liquidation. If required

the same will be produced before the Court.

Q10: I state that you have arrived a accounts statement without even looking into the real statement, therefore you are not able to state the real facts before this Hon'ble Court.

A: No. Witness adds: I have thoroughly verified the statement of accounts and stated the real fact.

Q11: The company used to maintain accounts for each of the agreement separately whereas in order to show some dues you have combined the accounts. After the company has gone into the liquidation you have shown that the company was maintaining accounts for all the agreements together. Is it correct?

A: No. Witness adds: The company needs to maintain only one statement irrespective of number of agreements and it was the company's internal procedure.

Q12: As per the answer to the Q.No.11 you state that if it were to maintain a single account the agreements stated in A.No.273/2018 also would have been added as a single account. This itself shows that you have manipulated the accounts.

A: I do not agree. Witness adds: The assets purchased by the respondent was xerox machine and terms and condition of the agreement in A.No.339/2018 is different and hence, the statement was maintained separately for that agreement.

Q13: Can you show a single communication or indication to the respondent having been made by the company for having the accounts were combined together prior to 2014 from any of the records?

A: I have to verify the books and records taken under the custody of Official Liquidator.

Q14: I state that Ex-Directors of the company in order to escape from prosecution have created records or you have aided in creating the accounts to show that the company have maintained a combined statement in order to show some dues as against the respondents. Is it correct?

A: No, I do not agree. Witness adds: It has to be verified with the Ex-Managing Director of the company liquidation and the management.

Q15: As and when there is a change in SBI rate of interest will the company inform the respondent about the change of installments and communicate the same. Is it correct?

A: Yes. Witness adds: The company used to issue debit note if there is any increase in SBI PLR rate or rate in Sales Tax and issue credit note if there is any decrease in SBI PLR rate or rate in Sales Tax and the same is reflected in statement of accounts (Ex.A12) for which the payment was also made by the respondent.

Q16: You have not produced any communication for the issue of debit note and credit note to the respondent company. Is it correct?

A: Yes.

Q17: You have not produced any communication to the respondent company of any change in the installment secured by cheques after that change in the rate of interest in SBI PLR rate or rate in Sales Tax. Is it correct?

A: No. Witness adds: Because, the debit note or credit note are reflected in the statement of accounts (Ex.A12) for which the payment was also made by the respondent moreover the transaction which took place prior liquidation and if required the same will be produced before the Hon'ble High Court, Madras.

Q18: How often the company in liquidation used to send the statement of accounts to the respondent company?

A: The statement of accounts will be issued at the written request by the respondent and confirmation of balance will be sent to the respondent at the end of every financial year.

Q19: You have not produced any document to show that confirmation of balance have been given by respondent company every year post 2010. Is it correct?

A: Yes.

Q20: You have not produced any document to show that you have communicated the

confirmation of balance have been given by respondent company. Is it correct?

A: Yes.

Q21: You have not produced any document to show that you have paid the service tax to the government. Is it correct?

A: Yes.

Q22: I put it to you that you have created a notional accounting system in order to claim some dues from the respondent.

A: I deny. Witness adds: It has been generated as per the normal accounting standard.

Q23: Each and every agreement with the respondent is covered with post dated cheque for the entire installment period. Have you produce any document to show that installment cheques have been dishonoured and they have not been made good. Is it correct?

A: No. Witness adds: It has been shown in the Ex.A12 the statement of account of the respondent.

Q24: I put it to you that each and every agreement is maintained separately as per the accounting procedure and all the post dated cheques have been honoured, accounts cleared in order to escape from criminal liability S12 Directors have created some account showing some dues as against the respondent belatedly and you are endorsing the same.

A: No. Witness adds: All the cheques has been honoured by the respondent and the outstanding dues is due to increase in SBI PLR which has been included in the bill as per Clause 36 (c) of the Lease Agreement which has been agreed, accepted and signed by the respondent.

Q25: You have not given any communication to show that there was a demand for change of interest payment from the respondent. Is it correct?

A: No. Witness adds: It has been shown in Ex.A12.

Q26: I put it to you that Ex.A12 was not shared with the respondent periodically.

A: I have to check. Witness adds: But there is no any clause in the agreement wherein the statement has to be sent to the respondent periodically.

Q27: I state that the respondents have honoured all the cheques issued to the company and there was no demand from the company for any of the agreements produced herein. During the period when they were due and the erstwhile Directors cooked up the accounting to suit their convenience to show some dues which is being canvassed by the Official Liquidator.

A: No, it is not true. Witness adds: The outstanding dues are shown in the monthly rental bill wherein the company used to send every month.

Q28: I put it to you that you have not produced any document to show that the bill was send to the respondent company.

A: Yes.

Q29: Similarly, I put it to you that you have not produced any document to show that you have communicated to the respondent as and when there is a change in SBI PLR.

A: Yes.

Time : 01.00 P.M.

Taken down in open Court, read over and explained to the witness and the same is admitted by the witness to be correct and signed before me.

ADDITIONAL MASTER-III