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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.2826-2834/2008

MUNNANGI SANDEEP & ORS.

Appellant(s)

VERSUS

VUMMIDI RAMAIIH CHETTY & ORS.

Respondent(s)

O R D E R

These appeals arise out of the order of the High Court of Judicature at Madras in Original Side Appeal Nos.20 to 24 & 42 to 45 of 2002 dated 18.02.2002 affirming the order of the Learned Single Judge and thereby holding that by filing a memo, it is not open to a party to seek for the modification of the terms of the earlier consent order passed on 19.11.2001.

The appellants herein deposited certain amounts with the respondents to be repaid on maturity. After the deposits matured, payment of matured amount was delayed by the respondents. Respondent No.3 filed a comprehensive scheme suit being C.S. No.296/87 where he disclosed the names of the parties from whom the respondent borrowed. The creditors filed an insolvency petition being I.P. No.69/1988 under Section 9 of the Presidency Towns Insolvency Act, 1909. By an order dated 12.07.1993, the High Court appointed an Official Assignee. On appointment of the Official Assignee, the insolvency petition was dismissed on 15.03.1995, as the respondents represented that dues of all the creditors were

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settled. Some creditors filed applications in insolvency Petition No.68/1988 before the High Court to seek substitution in place of petitioning creditors. In their counter affidavit, the respondents stated that the applicants had not submitted the deposit receipts and their debt was not proved. The High Court revoked its order dated 15.03.1995 and held that it was not necessary to bring on record all the applicants for procedural convenience. The Official Assignee was re-appointed as the Interim Receiver.

The appellants being the creditors filed substitution applications being Application Nos.466-474 of 2001 in I.P. No.69 of 1988 on 01.09.2001. The Learned Single Judge of the High Court passed a consent order dated 19.11.2001 directing the creditors to file their respective claims before the Interim Receiver with original documents.

Thereafter the appellants herein/substituting creditors filed a memo on 30.11.2001 seeking clarification in the order dated 19.11.2001 and also seeking amendment in Clause 2 of the consent order which required the creditors to produce the original documents in support of their claims, stating that due to efflux of time, the original documents were not readily available and that they are in possession of the photocopies of the deposit receipts/vouchers in support of their claims and the debt payable and hence liberty was sought to file their claim petition on that basis, with liberty to file the original documents at a later point of time to prove their claims.

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By the order dated 03.12.2001, the Learned Single Judge rejected the same on the ground that the filing of a memo was not at all maintainable to review an earlier order and it was held that in case the applicants were not in possession of the original documents, no claim could be maintained, more so when it was a consent order.

Being aggrieved by the dismissal of the memo, the appellants herein preferred an appeal before the Division Bench of the High Court. The Division Bench vide its final judgment and order dated 18.02.2002 in O.S.A. Nos.20 to 24 and 42 to 45 of 2002 dismissed the appeals holding that it

was not open to the parties to seek for the modification of the terms of an earlier consent order and it was held that the Learned Single Judge was justified in rejecting the memo. However, the Division Bench observed that if any requirement arises, it is open to the parties to file review application to modify the terms of the consent order and in the said petition also it was open to the parties to agree for such modification or for another consent order. Being aggrieved, the appellants are before us. We have heard learned counsel for the appellants as well as learned Senior counsel appearing for the respondents. Placing reliance upon the judgments of this Court reported as Sardar Amarjit Singh Kalra (Dead) By LRs. v. Pramod Gupta (Smt.) (Dead) by LRs and ORs. - (2003) 3 SCC 272 and Banwari Lal (Dead) by LRs & Anr. v. Balbir Singh - (2016) 1 SCC 607, learned counsel for the appellants submitted that

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the laws and procedures are meant to regulate, assist and aid the object of doing substantial and real justice and the High Court ought not have deprived the appellants of the opportunity to make their claim by producing the photocopies of the receipts/vouchers to file their claim petition before the Official Assignee. Learned counsel further submitted that the memo ought to have been entertained by the High Court to amend Clause 2 of the consent order dated 19.11.2001. Per contra, learned counsel appearing for the respondents submitted that pursuant to the observations made by the Division Bench, the appellants did in fact file the review petitions and after hearing the parties, the review petitions were dismissed by the learned Single Judge by the order dated 12.07.2002 which were not challenged by the appellants and it was not open to the appellants to seek for amendment in Clause 2 of the consent order at a later point of time. It was further submitted that the Official Assignee had already filed the report before the High Court (In Insolvency Petition) and the Division Bench had also recorded the Report that the claims of all the creditors had been satisfied and discharged with the insolvents which is recorded in the order dated 28.11.2002 in O.S.A. No.384 & 404 of 2002. A perusal of the order dated 19.11.2001 shows that the said order was a consent order. The appellants herein were also before the Court at the time when the consent order was passed. Having been represented in the proceedings when the

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consent order was being passed, the appellants could not have filed the memo for amending Clause 2 of the consent order. Furthermore, as observed by the Division Bench, the appellants did in fact file review petitions to review the said consent order dated 19.11.2001 which was rejected by the Learned Single Judge by the order dated 12.07.2002 which was not challenged by the appellants. Having heard learned counsel for the parties and having perused record, in the facts and circumstances of the case, we are not inclined to interfere with the impugned order passed by the High Court. The appeals are dismissed.
â- |J.
[R.K. AGRAWAL]
â- |J.
[R. BANUMATHI]
December 07, 2016;
New Delhi.

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

VERSUS

VUMMIDI RAMAIIH CHETTY & ORS.

Respondent(s)

O R D E R

These appeals arise out of the order of the High Court of Judicature at Madras passed in common final judgment and order dated 28.11.2002 in O.S.A. No.384 of 2002 and O.S.A. No.404 of 2002 whereby the High Court affirmed the order passed by the Learned Single Judge awarding interest at the rate of 10 per cent per annum on the principal amount deposited by the appellant with the respondents.

On various dates between 07.02.1980 and 11.12.1981, the appellant deposited various sums with the respondents and the said sums were to be repaid by the respondents/debtors at the rate of 18 per cent interest on the maturity of the amount at the end of five years. The deposits made by the appellant had matured; but the payment of the same was delayed by the respondents.

Respondent No.3, V. Sudhakar filed a comprehensive and consolidated Scheme Suit in C.S. No.296/1987 wherein he disclosed the names of the parties from whom this respondent had borrowed. On 05.10.1988 some of the creditors filed insolvency petitions under Sections 9(2), 10, 11 and 12 of

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the Presidency Towns Insolvency Act, 1909 against the respondents in I.P.No.69/1988. By order dated 05.07.1993, the High Court appointed Official Assignee as the Interim Receiver in the insolvency proceedings. Accordingly, the Official Assignee took charge of the properties of the respondents. After the respondents represented that dues of all the creditors had been settled, the insolvency petition was dismissed as withdrawn on 15.03.1995. The appellant herein filed applications in the Insolvency Petition No.69/1988 and prayed for setting aside the order dated 15.03.1995 and also seeking the substitution in the place of the petitioning creditors in I.P. No.69/1988 as also praying for directions to the respondents to file a complete list of their assets and liabilities. The High Court vide order dated 18.03.1996 revoked its order dated 15.03.1995 and reappointed the Official Assignee as the Interim Receiver and directed him to take charge of the estate of the insolvents. Pursuant to the consent order passed on 19.11.2001, the appellant filed his claim against the respondents before the Interim Receiver being Claim No.13/2001. The appellant also submitted the fixed deposit receipts along with the claim. The Interim Receiver considered the claims of the appellants and vide order dated 20.02.2002 allowed six of the fourteen claims raised by the appellant and at the same time rejected eight claims as being time-barred. On the claims allowed, the Interim Receiver granted 10 per cent interest per annum as against the

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contractual rate of interest of 18 per cent per annum. Being aggrieved by the order dated 20.02.2002 passed by the Interim Receiver, the appellant filed the appeal before the Learned Single Judge. By order dated 22.07.2002, the Learned Single Judge affirmed the order passed by the Interim Receiver on payment of six claims out of the fourteen claims and the rate of interest at 10 per cent on the principal amount in respect of the claims allowed by the Interim Receiver.

Being aggrieved by the order passed by the Learned Single Judge, the appellant preferred appeal before the Division Bench which came to be dismissed by the impugned order.

Learned counsel for the appellant submitted that the

appellant is entitled for payment of all the claims and on the claims allowed interest at the rate of 18 per cent per annum and there was no justification for reducing the rate of interest.

We have heard learned counsel appearing for the appellant as also for the respondents.

Insofar as the grievance of the appellant regarding non-payment of all the claims is concerned, both the learned Single Judge as well as the Division Bench held that some of the claims of the appellant were time-barred and no material had been produced for us to take a different view. Insofar as the rate of interest awarded at the rate of 10 per cent per annum is concerned, as rightly observed by the Division

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Bench, the rate of interest awarded on the principal amount in respect of the claims allowed and payable to the appellants is also reasonable.

Accordingly, the appeals are bereft of merits and are liable to be dismissed and are accordingly dismissed.

â- |.....J.

[R.K. AGRAWAL]

â- |.....J.

[R. BANUMATHI]

December 07, 2016;

New Delhi.

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ITEM NO.107

COURT NO.11

SECTION XII

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Civil Appeal Nos.2826-2834/2008

MUNNANGI SANDEEP & ORS.

Appellant(s)

VERSUS

VUMMIDI RAMAIIH CHETTY & ORS.

Respondent(s)

WITH

C.A. Nos. 2824-2825/2008

Date : 07/12/2016 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.K. AGRAWAL

HON'BLE MRS. JUSTICE R. BANUMATHI

For Appellant(s) Mr. Manish Singhvi, Adv.

Mr. Joseph Pookkatt, Adv.

Mr. Prashant Kumar, Adv.

Mr. Dhawesh Pahuja, Adv.

For Respondent(s) Mr. P.B. Suresh, Adv.

Mr. Vipin Nair, Adv.

Mr. Abhay Pratap Singh, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The appeals are dismissed in terms of the signed orders.

(ASHAÂ SUNDRIYAL)

COURTÂ MASTER (TAPANÂ KR.Â CHAKRABORTY)

COURTÂ MASTER

(Two separate signed orders are placed on the file)