

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4992 OF 2014
(Arising out of SLP (C) No. 34760 of 2011)

M/s SAVORIT LIMITED AND ANR.

APPELLANTS

VERSUS

M/s FIDELITY FINANCE LIMITED AND ORS.

RESPONDENTS

O R D E R

Leave granted.

This appeal has been preferred by the appellants against the judgment dated 18th December, 2009 passed by the High Court of judicature at Madras in O.S.A. No.311 of 2007. By the impugned judgment, the Division Bench affirmed the finding of the learned Single Judge with regard to the effect of the guarantee agreement and remanded the matter back to the Single Judge for the purpose of quantification of the amount due.

The appellant No.1 was the principal borrower and the appellant No.2 was the guarantor in respect of the lease finance facilities given by the Company in Liquidation. A Kirloskar Generator set was purchased in this agreement under invoice dated 17.09.1996 for a value of Rs.25,00,000/-. The period of payment was 5 years and last instalment was payable in September, 2001. The appellant defaulted in payment of instalments giving rise to arrears

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which was to be recovered with interest. In view of the huge amounts outstanding from it, the Company in Liquidation called upon the appellant No.1 to collect the arrears immediately. On 9th November, 2001, a letter was sent by the Company in Liquidation stating therein that the amount outstanding and on the same date, the appellant No.1 sent a

letter referring to discussion took place on 8th November, 2001, agreed to pay a sum of Rs.9,00,000/- as full and final settlement of the lease finance facilities.

The amount

having deposited on the very same date, the Company in Liquidation sent a letter to the appellant No.1 certifying that there was no amount due from the appellant No.1 and the sum of Rs.9,00,000/- deposited.

Subsequently, the official liquidator directed the guarantor-appellant No.2 to pay the rest of the amount i.e. Rs.34,21,813.92 minus Rs.9,00,000/- which was paid by the Company. This was challenged by the appellants before the Single Judge. The Single Judge passed the order and the same was affirmed by the Division Bench while remitting back the matter to quantify the amount.

According to appellants, in terms of one time settlement, the total amount of Rs.9,00,000/- as agreed, has already been paid. On the same very date, the company in liquidation sent a letter to the appellant No.1 certifying that there was no amount due from appellant No.1. Even the

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documents about guarantee given by the appellant No.2 were returned. In view of such one time settlement arrived into between the parties and the amount having settled been paid., there was no occasion for official liquidator to recover any amount from guarantor appellant No.2.

On the other hand, according to the learned counsel for the official liquidator, one time settlement was vitiated by fraud which is evident from the fact that in place of a claim for Rs.34,21,813.92, it was settled for a sum of Rs.9,00,000/-.

On perusal of record, we are of the opinion that if the official liquidator is alleging that the one time settlement was vitiated by fraud, the Company had no jurisdiction to come to determine the same, though it was open to the official liquidator to move before the Court of

For Petitioner(s) Mr. S.Santanam Swaminadhan, Adv.
 Mr. Shagufa Salim, Adv.
 Mr. Govind Chaturvedi, Adv.
 Mr. Anil Kumar Tandale, Adv.

For Respondent(s) Mr. K.K. Mani, Adv.
 Mrs. T. Archana, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.
The appeal is allowed in terms of the Signed Order.

[RAJNI MUKHI]
SR. P.A.

[USHA SHARMA]
COURT MASTER

(Signed Order is placed on the file)