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**Saseendran.a. vs Official Liquidator**

**Saseendran.a. vs Official Liquidator**

**SooperKanoon Citation** : sooperkanoon.com/1921815

**Court** : Kerala

**Decided On :** Oct-30-2019

**Judge** : Honourable Mr.Justice K.Vinod Chandran,Honourable Mr.Justice V.G.Arun

**Appeal No.** : Co.Appeal/3/2019

**Appellant** : Saseendran.a.

**Respondent** : Official Liquidator

**Judgement** :

CO.A.2,3,4 & 5/19 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN & THE HONOURABLE MR.JUSTICE V.G.ARUN WEDNESDAY, THE 30TH DAY OF OCTOBER 2019 / 8TH KARTHIKA, 1941 Co.Appeal.No.2 OF 2019 AGAINST THE ORDER/JUDGMENT IN MCA 16/2017 OF HIGH COURT OF KERALA APPELLANT/S: 1 SASEENDRAN.A AGED 66 YEARS ETTAMMAL HOUSE, ERINAV P.O., CHERUKUNNU VIA, KACHERITHARA 2 VIJAYAN C.K., POURNAMI, MOWANCHERRY P.O., MACHERI,KANNUR 3 RAJAN.T., THACHOTH HOUSE,

THILANNUR,KAPPAD P.O., KANNUR-670 4 SURESH BABU M.C., MANDEN HOUSE, PAYYAMBALAM,KANNUR-670 001 BY ADVS. SRI.THOMAS ABRAHAM SMT.MERCIAMMA MATHEW SRI.ASWIN.P.JOHN RESPONDENT/S: OFFICIAL LIQUIDATOR HIGH COURT OF KERALA, ERNAKULAM R1 BY ADV. SRI.K.MONI THIS COMPANY APPEAL HAVING BEEN FINALLY HEARD ON 30.10.2019, ALONG WITH Co.Appeal.3/2019, Co.Appeal.4/2019, Co.Appeal.5/2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN & THE HONOURABLE MR.JUSTICE V.G.ARUN WEDNESDAY, THE 30TH DAY OF OCTOBER 2019 / 8TH KARTHIKA, 1941 Co.Appeal.No.3 OF 2019 APPELLANT/S: 1 SASEENDRAN.A. AGED 65 YEARS ETTAMMAL HOUSE, ERINAV P.O., CHERUKUNNU VIA, KACHERITHARA. 2 VIJAYAN.C.K., POURNAMI, MOWANCHERRY P.O., MACHERI, KANNUR. 3 RAJAN.T., THACHOTH HOUSE, THILANNUR, KAPPAD P.O., KANNUR-670 006. 4 SURESH BABU.M.C. MANDEN HOUSE, PAYYAMBALAM, KANNUR-670 001. BY ADVS. SRI.THOMAS ABRAHAM SMT.MERCIAMMA MATHEW SRI.ASWIN.P.JOHN RESPONDENT/S: 1 OFFICIAL LIQUIDATOR HIGH COURT OF KERALA, ERNAKULAM. 2 DINESHAN.A. S/O.POCKKAN, C H HOUSE, KOTTANICHERI P.O., EACHUR, KANNUR-670 591. R1 BY ADV. SRI.K.MONI R2 BY ADV. SMT.M.R.JAYALATHA THIS COMPANY APPEAL HAVING BEEN FINALLY HEARD ON 30.10.2019, ALONG WITH Co.Appeal.2/2019, Co.Appeal.4/2019, Co.Appeal.5/2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: CO.A.2,3,4 & 5/19 3

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN & THE HONOURABLE MR.JUSTICE V.G.ARUN WEDNESDAY, THE

30TH DAY OF OCTOBER 2019 / 8TH KARTHIKA, 1941 Co.Appeal.No.4 OF 2019 AGAINST THE ORDER/JUDGMENT IN RP 515/2017 OF HIGH COURT OF KERALA APPELLANT/S: 1 SASEENDRAN.A AGED 65 YEARS ETTAMMAL HOUSE, ERINAV P.O, CHERUKUNNU VIA, KACHERITHARA. 2 VIJAYAN C. K. POURNAMI, MOWANCHERRY P.O, MACHERI, KANNUR. 3 RAJAN. T. THACHOTH HOUSE, THILANNUR, KAPPAD P.O, KANNUR - 670 001. 4 SURESH BABU M. C. MANDEN HOUSE, PAYYAMBALAM, KANNUR - 670 001. BY ADVS. SRI.THOMAS ABRAHAM SMT.MERCIAMMA MATHEW SRI.ASWIN.P.JOHN RESPONDENT/S: 1 THE ASSISTANT PROVIDENT FUND COMMISSIONER(L) EMPLOYEES PROVIDENT FUND ORGANISATION, SUB REGIONAL OFFICE, V.K. COMPLEX, FORT ROAD, KANNUR - 670 001. 2 OFFICIAL LIQUIDATOR HIGH COURT OF KERALA, ERNAKULAM. CO.A.2,3,4 & 5/19 4 R1 BY ADV.S.SUJIN R2 BY ADV. SRI.K.MONI THIS COMPANY APPEAL HAVING BEEN FINALLY HEARD ON 30.10.2019, ALONG WITH Co.Appeal.2/2019, Co.Appeal.3/2019, Co.Appeal.5/2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: CO.A.2,3,4 & 5/19 5

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN & THE HONOURABLE MR.JUSTICE V.G.ARUN WEDNESDAY, THE 30TH DAY OF OCTOBER 2019 / 8TH KARTHIKA, 1941 Co.Appeal.No.5 OF 2019 AGAINST THE ORDER/JUDGMENT IN RP 318/2018 OF HIGH COURT OF KERALA AGAINST THE ORDER/JUDGMENT IN CP 33/2001 OF HIGH COURT OF KERALA APPELLANT/S: 1 SASEENDRAN.A AGED 65 YEARS ETTAMMAL HOUSE,ERINAV.P.O,CHERUKUNNU VIA,KACHERITHARA. 2 VIJAYAN.C.K, AGED 32 YEARS MOWANCHERRY.P.O,MACHERI,KANNUR. 3 RAJAN.T, AGED 23 YEARS THACHOTH HOUSE,THILANNUR,KAPPAD.P.O, KANNUR-

670006. 4 SURESH BABU.M.C, AGED 25 YEARS MANDEN HOUSE,PAYYAMBALAM, KANNUR-670001. BY ADVS. SRI.THOMAS ABRAHAM SMT.MERCIAMMA MATHEW SRI.ASWIN.P.JOHN RESPONDENT/S: 1 SATHEESH BABU.M KAKKATTUCHALIL HOUSE,THOTTADA.P.O, KANNUR-670007. CO.A.2,3,4 & 5/19 6 2 OFFICIAL LIQUIDATOR, HIGH COURT OF KERALA,ERNAKULAM. R1 BY ADV.M.R.JAYALATHA R2 BY ADV. SRI.K.MONI THIS COMPANY APPEAL HAVING BEEN FINALLY HEARD ON 30.10.2019, ALONG WITH Co.Appeal.2/2019, Co.Appeal.3/2019, Co.Appeal.4/2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: CO.A.2,3,4 & 5/19 7 K.VINOD CHANDRAN &

**V.G.ARUN, JJ.**

---------- Company Appeal Nos.2, 3, 4 and 5 of 2019 ---------- Dated this the 30th day of October, 2019

## JUDGMENT

**Vinod Chandran, J.**

C.P.No.33 of 2001 was filed for liquidation of a Company;

M/s.Thiruvepathi Mills Private Limited. Official Liquidator was appointed for the purpose of carrying out winding up of the Company. Official Liquidator invited applications from the creditors. The badali workers approached the Official Liquidator in which, orders were passed determining the amounts due to them. There were a number of Company Adjudication Appeals filed by each of the badali workers. It is submitted by the learned counsel appearing for the appellants herein, who claim to be permanent workers that the badali workers filed Company Adjudication Appeals twice earlier, which were rejected by the Company Court. Later, a third set of Adjudication Appeals were filed in which an order was passed on 19.3.2018, photo copy of which is produced along with Company Appeal No.3

of 2019.

2. Later, the permanent workers filed Review Petitions against the

**order dated 19.3.2018 and also one another order which considered**

the dues of the Company to the Provident Fund Organisation (for

CO.A.2,3,4 & 5/19 8 brevity 'PFO'). R.P.Nos. 318, 337 and 390 of 2018 were filed by the permanent workers against the order dated 19.3.2018. R.P.No.515 of 2017 again was filed by permanent workers against the order which considered the dues to the PFO. R.P.No.701 of 2017 was another review petition filed by the badali workers against the order which quantified the dues to the PFO. All these reviews were heard together and a common order was passed which is impugned in the present appeals.

3. We notice that the appellants have filed only appeals as

against R.P.Nos. 318, 337, 515, and 390 of 2018. No appeal is filed from R.P.No.701 of 2017 by the badali workers. However, we find that the dues with respect to the PFO was not at all dealt with in the impugned order. This would have to be considered afresh by the Company Court.

4. We also notice that there are a number of Company

Adjudication Appeals filed before the Company Court in which an interim order was passed directing release of 50% of the amounts ordered in favour of the badali workers. It is only against three of those Company Adjudication Appeals, there are appeals filed before this Court which cannot be entertained, since the claims raised by the appellants are similar to that of the other appellants in the adjudication appeals. The appellants here do not point out any distinction with respect to the claim or the nature of employment of

CO.A.2,3,4 & 5/19 9 the appellants in the adjudication appeals. We hence find the reviews filed in three appeals to be incompetent, especially since the Adjudication

Appeals were filed by similarly situated persons before the Company Court.

5. We hence set aside the impugned order passed, making it

clear that R.P.Nos.318, 337 and 390 of 2018 cannot be considered in isolation, since these appeals arise from a common order in Company Adjudication Appeals filed by similarly situated persons; as seen from Company Appeal No.3 of 2019, wherein the earlier order dated 19.3.2018 is produced. As far as R.P.Nos.515 and 701 of 2017, the same has to be

considered afresh by the Company Court since the specific contention raised has not been dealt with. We hence allow the Company Appeals to the limited extent, leaving the original order in the M.C.A to be considered in the review petitions and also making it very clear that the observations here would not regulate the merits when it is adjudicated before the Company Court.

Sd/- K.VINOD CHANDRAN JUDGE Sd/- V.G.ARUN JUDGE vgsx

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