IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2015

CORAM:
THE HONOURABLE MR.JUSTICE V.DHANAPALAN
AND
THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

W.A.No.308 of 2011

Parkins Textiles Labour Union
Regn. No.F1296
rep. by its General Secretary K.Chandrasekar
T.R.Kandriga, Nagari - 517 590.
... Appellant

vs.

1. The Recovery Officer,
Debts Recovery Tribunal
No.1670, Trichy Road,
Ramanathapuram,
Coimbatore 641 045.

2. The Authorised Officer,
Indian Bank,
Assets Recovery Management Branch,
Coimbatore, Coimbatore District.

3. The Authorised Officer,
Indian Bank, Circle Office,
Seshapeeran Street,
Chittor, Chittoor District,
Andhra Pradesh.

4. The Management of
Parkins Textiles Pvt. Ltd.,
Reg. Office at 6/256,
Avinasi Road, Coimbatore 641 018.
... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 02.09.2010 made in W.P.No.5561 of 2010.

filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 1st respondent to reserve the workmen due amount of Rs.6 crores form the amount whcih may be realized from the proclamation of sale dated 17.3.2008 of the 1st Respondent and pass such other order.

For Appellant : Mr.S.T.Varadarajulu

For R1 : No appearance

For R2 &R3 : Mr.Jayesh B. Dolia

J U D G M E N T

(Judgment of the Court was delivered by V.Dhanapalan,J.)

Heard Mr.S.T.Varadarajulu, learned counsel for the appellant and Mr.Jayesh B. Dolia, learned counsel appearing for respondents 2 and 3.

2. This Writ Appeal is directed against the order dated 02.09.2010 passed by the learned Single Judge in W.P.No.5561 of 2010.

3. According to the appellant/writ petitioner, who is the General Secretary of Parkins Textiles Labour Union, their Management, which is arrayed as 4^{th} respondent in this Appeal, is a Spinning Mill which was running profitably for a decade and due to their family dispute, it faced problems in 2003 which led to lay off in April 2003. About 325 workmen were employed in the said Mill. Though the factory resumed in December 2004, salary was not paid for the illegal lay-off period from April 2003 to December 2004. Before lifting the lay-off, a settlement under Section 18 (1) of the Industrial Disputes Act (in short 'I.D. Act') was arrived and the workmen agreed to resume work. The factory was running between January 2005 and December 2005. The Management proposed to reduce the salary and it was opposed by the Union and the workmen and opposing the same, the workmen went on strike from 14.12.2005, which continued till 31.03.2006. They resumed duty on 01.04.2006 and worked till 26.09.2006, on which date, the Management declared lock-out without prior notice.

4. The Writ Petitioner Union raised an industrial dispute against the above lock-out and other issues before the Conciliation Officer, Kurnool. As no settlement was arrived at in the above issue, the Conciliation Officer gave failure report and the Government referred the dispute to Labour Court, Anantapur and the Labour Court took the said dispute on file in I.D.No.170 of 2007, which is still pending. Though the Management termed as lock-out, it has not settled any legal dues, such as Gratuity,

P.F., Lay off salary and other compensation payable to workmen.

5. It is the further case of the appellant/Writ Petitioner that Indian Bank, Coimbatore (Assistant Recovery Management Branch) would have issued loan to the Management. Since the loan amount was not returned, the Bank approached the Debts Recovery Tribunal (DRT), Coimbatore and obtained an order in their favour. The Recovery Certificate No.49/2007, dated 06.06.2006 was issued in terms of the order dated 02.01.2007 in T.A.462/2002 directing the Tribunal to recover a sum of Rs.3,48,01,609.91. Hence, the Tribunal attached the property of the Management's Mill and proclamation of sale was issued on 17.03.2008 fixing the public auction on 25.04.2008. In the proclamation of sale, the entire property of the Mill attached by the Recovery Officer was put to auction. As the workmen employed or the Union is not a party before the Recovery Tribunal, they could not participate in the proceedings. The workers' dues are to the tune of Rs. 6 crores.

6. The case of the Writ Petitioner is that if the Recovery Officer is allowed to go ahead with auction, the entire property will be adjusted to the dues of the Bank alone. The property in the proclamation of sale is worth about 15 crores and if the auction is held for correct value of the property, the workers' dues also will be settled. Though the dues of workmen are termed as secured credit, still the workmen cannot approach DRT to claim their dues and the only remedy available to them is to approach the Government after adjudication from the Labour Court. Further, as per the Company Act and the ratio laid down by the Apex Court, workers' dues will prevail over other dues to Banks and other financial institutions. As per the proclamation of sale issued by the DRT, an auction was called for on 25.04.2008.

7. Since the Recovery Officer valued the property only to the tune of Rs.4 crores, with a plea to appoint an Advocate Commissioner to value the property of their Management/4th respondent herein to the current market value and distribute the amount to the creditors and workers as per law, taking note of the age of the workers and their service to the Management for over two decades, the Writ Petitioner Union approached this Court in W.P.No.5561 of 2010 praying for the issuance of a writ of mandamus directing the 1st respondent/Tribunal to reserve the workmen due amount of Rs.6 crores from the amounts which may be realized from the proclamation of sale dated 17.03.2008 of the Tribunal and this Court, by an order dated 02.09.2010 directed the respondents 1 to 3 to disburse the sale proceeds of the assets belonging to the fourth respondent Management strictly in terms of the provisions of the SARFAESI Act.

8. Relevant portion of the impugned order made in W.P.No.5561 of 2010 would read thus:

"8. That being so, if any amount is recovered by the third respondent, the same can be distributed only in terms of provisions laid down as referred above. In this case admittedly the Company proceeding is still pending as such, the proviso to Sub Section 13(9) is not applicable to the facts of the present case. It is nobody's case that the property is having more than one secured creditor and the facts which remain undisputed would show that the Indian Bank is the only secured creditor, as such the provisions applicable to the present case are Sections 13(7) and 13(10). That being the legal position, any money recovered by the authorised officer can be distributed only in terms of relevant provisions contained in the Act.

9. In the course of hearing, the attention of this Court is also drawn to the decision of the Division Bench of our High Court reported in 2007 (4) MLJ 483 (Coromandel Leather Employees Union vs. Indian Bank), wherein, similar employees Union filed Writ Petition against different branch of the same Bank for identical relief and the writ petition was disposed of by directing the Authorised Officer of the respondent Bank to disburse the amount strictly in terms of the provisions of the Act. In my view, the present Writ Petition can also be disposed of in the same line.

10. In the result, the respondents 1 to 3 are directed to disburse the sale proceeds of the assets belonging to the fourth respondent Management strictly in terms of the provisions of the SARFAESI Act."

Aggrieved by the above order of this Court, the present Appeal is filed.

9. We have given careful consideration to the submissions of the learned counsel on either side and perused the materials available on record.

10. The matter in question comes under the purview of SARFAESI Act and Security Interest (Enforcement) Rules, 2002 (in short 'Rules') as to the question of sale proclamation issued under Rule 6(2) and 8(6) of the said Rules.

11. When the matter came up for hearing on 07.01.2015, learned counsel appearing for respondents 2 to 4 reported that for the very same relief, the appellant Union moved the High Court of

Andhra Pradesh in W.P.No.5785 of 2010 and by an order dated 15.03.2010, the case was dismissed. To produce a copy of the said order and to take instructions, learned counsel sought time and accordingly, this matter came to be listed today under the caption 'for orders'.

12. The crux of the case on hand is payment of debts by the 4th respondent/Management, whose property has gone on public auction and disbursement of sale proceeds among the secured creditors, i.e. the workmen of the 4th respondent/Management. As the Writ Petitioner is a Union having right under the I.D. Act and the assets need to be disbursed to them on priority basis, they prayed for a direction to the 2nd respondent/Indian Bank to reserve a sum of Rs.6 crores due to workmen from the amount which may be realized as sale consideration from the sale in pursuance of Sale Publication Notice dated 16.02.2010 of the 2nd respondent.

13. In the meantime, the appellant Union also moved a Writ Petition before the Andhra Pradesh High Court praying for a mandamus declaring the auction of the 2nd respondent in issuing the Notification dated 16.02.2010 published in the District edition of Chittoor in the Eenadu Daily Newspaper on 16.02.2010 without considering the claim of the petitioner union as per their representations dated 18.01.2007 and 25.03.2008 as illegal, contrary to law and bias under the principles of natural justice and consequently quash the said Notification until an amicable settlement is arrived between the petitioner Union and respondents with regard to the claim of the petitioner Union. For better appreciation of the case, the said order is extracted thus:

> "Heard the learned counsel for the petitioner and Sri.A.Satyanarayana, the learned counsel for the respondent Nos.1 and 2.
>
> The sale proclamation issued under Rule 6(2) and 8(6) of the Security Interest (Enforcement) Rules, 2002 by the 1st respondent notifying sale of the secured asset, an immovable property and the structures therein as well as the stocks, plant and machinery of a mill in T.R.Kandriga Village, Nagari, Puttur Taluk, Chittoor belonging to M/s.Parkins Textiles (P) Limited (the borrower) is assailed by the petitioner, which is a labour union representing the labour working in the mill.
>
> Initially, the 1st respondent-Bank (the secured creditor) had submitted a recovery application before the Debts Recovery Tribunal under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for

short "the 1993 Act"). The Presiding Officer, Debts Recovery Tribunal, Coimbatore issued a recovery certificate in T.A.No.462 of 2002 vide recovery certificate No.DRC 49/07, dated 06.06.2007 for enabling recovery of the dues to the secured creditor in an amount of Rs.3,48,01,609.91. The bank took possession of the secured assets on 09.08.2007 and proceeded to initiate process for sale of the properties.

The petitioner filed W.P.No.9585 of 2008 before the Madras High Court against the respondents Nos.3

and 4 herein and that Court passed an interim order on 21.04.2008 directing that the auction proposed (under the DRT Act) can go on but the confirmation of any sale shall be stayed until further orders (para. 4 of the writ petition).

It would appear from the impugned proceedings of sale dated 16.02.2010 that thereafter the secured creditor initiated proceedings under the Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (for short "the 2002 Act"). After the preliminary process of notice under Section 13(2) of the 2002 Act, the secured creditor took possession of the property under the provisions of Section 13(4) of the 2002 Act and issued the impugned sale notification, notifying sale of the secured assets.

It is pleaded by the petitioner and strenuously reiterated by the learned counsel for the petitioner that the members of the petitioner-union are workmen of M/s.Parkins Textiles (P) Limited, have been subjected to illegal lockout of the factory premises, there are substantial dues payable by the management and that these dues, in view of the provisions of the Industrial Disputes Act, 1947 and Section 529-A of the Companies Act, 1956 have to be treated as prioritized liabilities of the management or at least should rank pari passu with the liability of the borrower-industry to the secured creditor Bank.

It is the admitted and demonstrable scenario that no liquidation proceedings have been initiated against the borrower-M/s.Parkins Textiles (P) Limited and therefore the provisions of Section 529-A of the Companies Act, 1956 have no application, though the second proviso to Section 13(9) of the 2002 Act enables the secured creditor, when a company that is being wound up to retain the sale proceedings of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of Section 529-A of the Companies Act, 1956, if the secured creditor instead of his relinquishing his security and proving his debt under proviso to sub-section (1) of Section 529 of the Companies Act, 1956 opts to realise his security under the provisions of the 2002 Act. The liability, if any owed by the management to its workmen under the provisions of the Industrial Disputes Act, 1947 (as claimed by the petitioner) are not enjoined to be a prioritized liability on the borrower (secured assets) under the provisions of the 2002 Act.

On the aforesaid analysis, none of the contentions urged by the petitioner merit acceptance by this Court, nor has the petitioner put forth any substantial or legal submission, which warrants interdiction of the impugned proceedings for proclamation of sale of the secured assets, which are mortgaged towards the loan availed by M/s.Parkins Textiles (P) Limited from the 1st respondent-Bank.

There are no merits. The writ petition is accordingly dismissed at the stage of admission. No orders as to costs. "

14. From the above order, it is clear that the claim of the Writ Petitioner as to the disbursement of dues to the workmen has been considered at length in the light of the petition under the I.D. Act as also under Section 529-A of the Companies Act and that in the absence of any liquidation, no question of applying Section 529-A of the Companies Act would arise and therefore, the Court of Andhra Pradesh held that it has no application and that the liability, if any, owed by the management to its workmen under the provisions of the I.D. Act are not enjoined to be a prioritised liability of the borrower under the provisions of the 2002 Act.

15. Taking note of the ratio laid down by the Division Bench of the Andhra Pradesh High Court on the subject matter in question, this Court is of the view that the appellant/writ petitioner, having chosen to approach the Andhra Pradesh High Court on the issue in question, cannot agitate the same before this Court and argue the Writ Appeal.

16. In view of the above, this Writ Appeal deserves no merit consideration and the same is dismissed in terms of the order dated 15.03.2010 passed in W.P.No.5785 of 2010 by the Andhra Pradesh High Court. No costs. Consequently, connected M.P.No.1 of 2014 is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To:

1. The Recovery Officer,
Debts Recovery Tribunal
No.1670, Trichy Road,
Ramanathapuram,
Coimbatore 641 045.

2. The Authorised Officer,
Indian Bank,
Assets Recovery Management Branch,
Coimbatore, Coimbatore District.

3. The Authorised Officer,
Indian Bank, Circle Office,
Seshapeeran Street,
Chittor, Chittoor District,
Andhra Pradesh.

1 cc to Mr.S.T. Varadarajulu, Advocate, sr. 3355

W.A.No.308 of 2011

TS (CO)
kk 25/2