

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.01.2015

DATE OF DECISION: 28.01.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P. No.28232 of 2014 and M.P. No.1 of 2014
&
W.P. No.35156 of 2014 and M.P. No.1 of 2014

W.P. No.28232 of 2014:

Prasanthi Cashew Company Pvt. Ltd.
(formerly known as Prasanthi Cashew Pvt. Ltd.)
represented by its Managing Director
Mr. Mohanchandran Nair
No.21, Prasanthi Nagar
Managad, Kollam 691 015

Petitioner

vs.

1 A. Abdul Salam

2 South Indian Bank Ltd.
Chinnakakada Branch
Bishop Jerome Nagar
Commercial Complex
Chinnakakada, Kollam
represented by its Branch Manager

3 The Authorised Officer and Chief Manager
M/s.South Indian Bank Ltd.
Regional Officer
Thiruvananthapuram

Respondents

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W.P. No.35156 of 2014:

A. Abdul Salam

Petitioner

vs.

- 1 Prasanthi Cashew Company Pvt. Ltd.
(formerly known as Prasanthi Cashew Pvt. Ltd)
represented by its Managing Director
Mr. Mohanchandran Nair
No.21, Prasanthi Nagar
Managad
Kollam 691 015
- 2 South Indian Bank Ltd.
Chinnakakada Branch
Bisho Jerome Nagar
Commercial Complex
Chinnakakada, Kollam
represented by its Branch manager
- 3 The Authorised Officer and Chief Manager
M/s.South Indian Bank Ltd.
Regional Office
Thiruvananthapuram
- 4 The Hon'ble Debts Recovery Appellate Tribunal
through its Registrar
Indian Bank Building
IV Floor
Egmore, Chennai 600 008

Respondents

Prayer in W.P. No.28232 of 2014:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari, calling for the records in respect to the passing of the order dated 07.04.2014 in I.A. No.452 of 2014 in AIR (S.A.) No.141/2014 by the Debt Recovery Appellate Tribunal, Chennai and quash the same.

Prayer in W.P. No.35156 of 2014:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the fourth respondent herein to dispose of the interim applications bearing Nos.453 of 2014 to 455 of 2014 and AIR (SA No.141 of 2014 now, renumbered as RA(SA) No.50 of 2014 pending before it within the time limit as may be prescribed by this Court and in the meanwhile to forbear the first respondent herein from creating any encumbrance over the property or acting in any way to diminish the value of the property or alter the nature of the property morefully described in the Schedule to the

petition.

SCHEDULE

All that part and parcel of land measuring 9 hectares and 87 acres 65 sq. mts. Situated under Re-Sy. No.622, 624/10, 624/11, 646/17 and 646/18 of Perinad Village, Kollam Taluk, Kollam District, owned by Mr. Abdul Salam, which is bounded on the North by Kaithakodi Road, South by properties of Avarachan, Kunju Kunju and Gopala Pillai, East by Ashtamudi Lake and West by road, more particularly described in Schedule to Document No.1356/05 of Kundara SRO.

W.P. No.28232 of 2014:

For petitioner Mr. S.R. Rajagopal
for Mr. P. Vasanthakumar
For R1 Mr. F.B. Benjamin George
For RR 2 & 3 Mr. V. Girish Kumar

W.P. No.35156 of 2014:

For petitioner Mr. F.B. Benjamin George
For R1 Mr. S.R. Rajagopal
for Mr. P. Vasanthakumar
For RR 2 & 3 Mr. V. Girishkumar
R4 Tribunal

COMMON ORDER

SATISH K. AGNIHOTRI, J.

The petitioner company in W.P. No.28232 of 2014, stating to be the owner of the land in R.S. No.622, 624/10, 924/11, 646/17 and 646/18 at Perinadu Village, Kollam Taluk, Kollam District, Kerala, has come up with the said writ petition, questioning the legality and validity of the order dated 07.04.2014 passed in I.A. No.452 of 2014 in AIR (S.A.) No. 141 of 2014 by the Debts Recovery Appellate Tribunal, Chennai (for short "the Appellate Tribunal").

2 The brief facts relevant for adjudication of the dispute, as projected by the petitioner are that the petitioner has purchased the aforestated land in question on auction held by the respondent bank on 19.08.2011 to recover the secured amount against the said property which was mortgaged by the first respondent for the purpose of obtaining financial loan from the respondent bank. Needless to state that the legal requirement of issuance of demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act) and thereafter, consequential measures under Section 13

(4) of the SARFAESI Act were taken before the land in question was put on auction by the respondent bank.

3 The case has a chequered history as the parties have travelled from one Court to other Court, upto the Supreme Court against several interim orders passed by the Debts Recovery Tribunal. The said proceedings are not relevant for the adjudication of the present dispute before us. Thus, we are not setting out the details of the said proceedings.

4 The prime and precise contention of the petitioner before us is that the Appellate Tribunal, while considering the application for waiver filed by the first respondent in appeal preferred against the order dated 15.01.2014 passed by the Debts Recovery Tribunal, Ernakulam in S.A. No.272 of 2011, passed the order to give up the petitioner herein who was the third respondent therein. Thereafter, the Appellate Tribunal proceeded to pass an ex parte order against the petitioner restraining the petitioner from encumbering or alienating or dealing with the property in any way till 21.04.2014. Thus, it is urged before us that the Appellate Tribunal committed an error in passing the restraint order against the petitioner, after giving up the petitioner from the proceedings. It is further contended that though it appears that the petitioner, being the third respondent was given up in the application for waiver, however, the restraint order was passed in the same application and as such, the impugned order is arbitrary, unreasonable and contrary to the principles of natural justice.

5 On the other hand, Mr. F.B. Benjamin George, learned counsel for the first respondent/appellant before the Appellate Tribunal, would submit that the waiver application before the Appellate Tribunal involved adjudication between the Court and the appellant therein. The petitioner herein who was the third respondent therein had nothing to do in the matter and as such, the third respondent was given up. The petitioner herein had sufficient opportunity to contest the matter of grant of interim restraint pursuant to the notice and as such, there is no illegality or irregularity in the order sought to be impugned in this writ petition.

6 Mr. V. Girishkumar, learned counsel appearing for the respondents 2 and 3/bank contends in support of the order sought to be impugned in this writ petition.

7 We have heard the learned counsel for the parties and examined the rival contentions carefully.

8 On a bare perusal of the impugned order passed by the Appellate Tribunal, it appears that the writ petitioner was given up while passing the order in I.A. No.452 of 2014, i.e., the application for waiver. However, in continuation, another order was passed by

the Appellate Tribunal restraining the petitioner herein from alienating or encumbering or dealing with the property in any way till 21.04.2014. We are informed that the petitioner herein / auction purchaser has partaken in the proceedings thereafter.

9 We may not be agreeable with the contention urged by the learned counsel for the first respondent that the issue of considering the waiver application is between the Court and the appellant. If the third respondent before the Appellate Tribunal was a party respondent, being the auction purchaser of the secured asset, i.e., the property in question, it is not proper to give up the auction purchaser, viz., the petitioner herein, even in the waiver application. However, it seems that the petitioner herein is basically aggrieved by the ex parte order passed by the Appellate Tribunal restraining the petitioner herein from alienating or encumbering or dealing with the property, in any way, till 21.04.2014, without hearing him.

10 The law in this respect is well settled. The Supreme Court, in Industrial Credit and Investment Corporation of India Ltd. vs. Grapco Industries Ltd. and others, [(1999) 4 SCC 710], held as under:

"12. x x x x x x x Further, when power is given to the Tribunal to make an interim order by way of an injunction or a stay, it inheres in it the power to grant that order even ex parte, if it is so in the interest of justice and as per the requirements as spelt out in the judgment of this Court in Morgan case, which has been quoted above."

11 The aforesaid ratio laid down by the Supreme Court still holds water. Thus, so far as the power of the Appellate Tribunal to pass an ex parte order is concerned, there is no infirmity in the same. However, since the ex parte order is only for a short a duration and it is normally granted to safeguard the interest of the applicant, it is necessary that all the parties, including the petitioner herein, be heard before affirming the ex parte order.

12 As we are informed that all the parties, including the writ petitioner/auction purchaser are before the Appellate Tribunal, we are not inclined to pass any order on merits of this case. However, we direct the Appellate Tribunal to consider the case on merits and in accordance with law, after hearing all the parties, including the auction purchaser, who is the petitioner before us, as expeditiously as possible.

13 We expect that the parties to the proceedings will not seek adjournment on frivolous grounds and will cooperate with the Appellate Tribunal for taking decision on merits and in accordance

with law, at the earliest.

14 Resultantly, W.P. No.28232 of 2014 stands disposed of accordingly. Costs made easy. Connected Miscellaneous Petition is closed.

15 In view of the aforesaid order passed in W.P. No.28232 of 2014, nothing survives for adjudication in W.P. No.35156 of 2014 which is filed by the borrower.

16 As a sequel, W.P. No.35156 of 2014 also stands disposed of. Costs made easy. Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

cad
To

- 1 The Branch Manager
South Indian Bank Ltd.
Chinnakakada Branch
Bishop Jerome Nagar
Commercial Complex
Chinnakakada
Kollam
- 2 The Authorised Officer and Chief Manager
M/s.South Indian Bank Ltd.
Regional Officer
Thiruvananthapuram.
3. The Registrar
The Debts Recovery Appellate Tribunal
Indian Bank Building
IV Floor
Egmore, Chennai 600 008

2 cc to Mr. P. Vasanthakumar, Advocate, SR.No. 4480, 4481
2 cc to Mr.V. Girishkumar ,Advocate, SR.No.4273, 4272
2 cc to Mr.F.B. Benjamin George ,Advocate, SR.No.4226, 4227

W.P. 28232 and 35156 of 2014

sv(co)
pmk.3.2.2015