BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.03.2015

CORAM:

HONOURABLE DR.JUSTICE S.TAMILVANAN
and
HONOURABLE MR.JUSTICE V.S.RAVI

W.P.(MD)Nos.2606, 2612 of 2015
and 14651 of 2014

1) WP(MD).No. 2606 of 2015

M/s.Sankaralingam Chettiar
Sole proprietor
Shri.S.Senthilathiban .. Petitioner

-Vs-

1.The Presiding Officer,
Debts Recovery Tribunal,
Madurai.

2.Indian Bank,
rep. by its Chief Manager/
Authorized Officer,
137, Pandalgudi,
Aruppukkottai,
Virudhunagar District.

3.The United India Insurance
Company Limited.,
KPV Complex, Pandalgudi,
Aruppukkottai,
Virudhunagar District.

4. Mrs. S.Jayalakshmi
W/o.S.Senthilathiban .. Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records relating to the 'e' auction notice dated 05.02.2015 and quash the same consequently forbearing the second respondent from taking any action under SARFAESI Act without complying with the requirement of Section 19 (1)(c) proviso of DRT Act.

2) WP(MD).No.2612 of 2015

Mrs. S.Jayalakshmi
W/o.S.Senthilathiban .. Petitioner

-Vs-

1.The Presiding Officer,
Debts Recovery Tribunal,
Madurai.

2.Indian Bank,
rep. by its Chief Manager/
Authorized Officer,
137, Pandalgudi,
Aruppukkottai,
Virudhunagar District.

3.The United India Insurance
Company Limited.,
KPV Complex, Pandalgudi,
Aruppukkottai,
Virudhunagar District.

4.M/s.Sankaralingam Chettiar
Sole Prop. Shri S.Senthilathiban .. Respondents

Prayer:-Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus forbearing the second respondent from proceeding in any manner against this petitioner / Guarantor under SARFAESI Act in furtherance of proceedings against the Principal Debtor without preceded by proceedings contemplated under Section 19 of DRT Act.

3)WP(MD).No.14651 of 2014

Mrs. S.Jayalakshmi
W/o.S.Senthilathiban .. Petitioner

-Vs-

1.The Presiding Officer,
Debt Recovery Tribunal,
Madurai.

2.Indian Bank,
rep. by its Zonal Manager,
137, Pandalgudi,
Aruppukkottai,
Virudhunagar District.

3.The United India Insurance
Company Limited.,
KPV Complex, Pandalgudi,
Aruppukkottai,
Virudhunagar District.

4.M/s.Sankaralingam Chettiar
Sole Prop. Shri S.Senthilathiban .. Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus forbearing the first respondent from disposing the T.A.593 of 2007 (Old Original Application No.28 of 1999) filed by the second respondent pending on the file of the first respondent before the adjudication of the Insurance claim pending before the third respondent.

For Petitioners : Mr.K.M.Vijayan,Senior Advocate,
Assisted by Mr..B.Saravanan,Advocate
(in W.P.2606/2015

Mr.S.Mahesh, Advocate
(in W.P.2612/2015 & W.P.14651/2014)

For 1st Respondent : Debt Recovery Tribunal
(in all W.Ps)

For 2nd Respondent : Mr.S.Suresh, Advocate
for M/s Aiyar & Dolia
(in all W.Ps)

For 3rd Respondent : Mr.G.Prabhu Rajadurai, Advocate
(in all W.Ps)

For 4th Respondent : Mr.S.Mahesh, Advocate
(in W.P.2606/2015)

Mr.B.Saravanan, Advocate
(in W.P.2612/2015 & W.P.14651/2014)

Case reserved on : 5.3.2015
Pronounced on : 31.3.2015

COMMON ORDER

The writ petitioner in W.P (MD).No.2612 of 2015 viz., Mrs.S.Jayalakshmi, wife of S.Senthilathiban has clearly admitted in the affidavit dated 24.2.2015 that her husband, the said Senthilathiban is the owner of M/s.Sankaralingam Chettiar, a Waste Cotton Mill Unit, and he has availed financial assistance from the second respondent Bank and she is the guarantor for the loan and the said Mill has been insured with the third respondent United India Insurance Company since its inception.

2. Further, as per the typed set filed by the writ petitioner viz., S.Jayalakshmi in W.P(MD).No.14651 of 2014, it is seen that possession notice has been issued and published in Dinathanthi on 1.5.1997 and rejoinder notice has been issued by the second respondent Bank as per the details enclosed in page No.2 of the typed set. In the said rejoinder notice itself, it is clearly pointed out by the second respondent Bank that though demand notice has been issued, the said Senthilathiban has failed to repay the amount due to the bank. Further, the second respondent-bank has clearly pointed out that as per the “e” auction notice dated 5.2.2015 enclosed at page No.23 of the typed set filed by the petitioner, a huge amount of Rs.13,67,97,367/- (Rupees Thirteen Crores Sixty Seven Lakhs Ninety Seven Thousand Three Hundred and Sixty Seven) is due as on 31.1.2015 to the second respondent-bank from the petitioner. Further, as per the details enclosed at page No.2 of the typed set filed by the second respondent-bank, the United India Insurance Company has repudiated the claim made by the said Senthilathiban as the claim cannot be entertained. Further in the Interlocutory Application filed by Senthilathiban before the Debts Recovery Tribunal, Madurai as per the details enclosed at page No.10 of the typed set, the said Senthilathiban has clearly stated that he is ready to settle the loan as on 31.1.2015 as one time settlement. Further, in the writ petition in WP(MD). No.23786 of 2002 filed by S.Sankaralingam Chettiar, at page No.19 of the typed set filed by second respondent-bank, the High Court has clearly pointed out as under:-

> “8. In the above scenario, since too many facts have to be unraveled in order to arrive at a decision as to the genuineness of the case registered and the contentions of the petitioner to his innocence which could either be feasible in this writ petition or is it necessary on the part of the Court to go into such details of facts. Unless any illegality is involved regarding vital aspects such as errors apparent on the face of the records or the order, or for lack of opportunity or procedural failure leading to failure of Justice and such other legal infirmities and inconsistencies, this Court of Judicial review is not normally expected to cause interference into any other proceedings such as one impugned herein in O.A.No.676 of 2001 with the third respondent.
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> 9. It is not the case of the petitioner that in the proceeding of the third respondent in the conduct of the case in O.A.N0.676 of 2001, any legal error or irregularity has occurred so as to give jurisdiction to this Court to

interfere with and therefore, in the above circumstances, it is quite undesirable on the part of this Court to cause interference, so far as the case pending before it cited supra and the only course left with this Court is to dismiss the above writ petition as without merit."

3. Further, the Debts Recovery Tribunal at Madurai, by its order dated 29.5.2012 has dismissed S.A.No.86/2008 filed by the said S.Senthilathiban challenging the action taken by the second respondent-Bank under the provisions of SARFAESI Act. In the said order itself, the Debts Recovery Tribunal has rightly pointed out that as per the Judgment of the Honourable Supreme Court in Transcore Vs Union of India & Another reported in 2006(5) CTC 753 the doctrine of election-simultaneous proceedings permissible and the Honourable Apex Court has held as under:-

"Doctrine of Election would come into play only when there are two or more co-existent remedies available to litigants at time of election which are repugnant and inconsistent - Remedy available to Bank/Financial Institution for recovering debt by filing Claim Petition before DRT and for securitizing its asset by having recourse to Securitisation Act together constitute one remedy-Remedies available under Recovery of Debts Due to Banks and Financial Institutions Act and Securitisation Act to Banks and Financial Institutions are not repugnant to each other and there are no repugnancies between them-Doctrine of Election does not apply."

Further, the SARFAESI Act has been enacted with an object to effect recovery of debts categorized as NPAs by the banks and financial institutions without the intervention of courts, making the recovery process simpler and easier. Further more, the SARFAESI Act has been enacted with a view to provide a special procedure for recovery of debts due to banks and financial institutions and this fast track procedures cannot be allowed to be derailed by entertaining the petitions, filed by the petitioners herein at this stage, for the above mentioned reasons.

4. Further, in the High Court's decision of "Division case" (M/s.Digivision Electronics Limited Vs. Indian Bank) reported in 2005(3) CTC 513 = 2005(3) Law Weekly 269 at para 44 & 45, it is held by the Division Bench of Madras High Court as follows:-

" 44. Before parting with these cases, we may mention that there is no equity in favour of the petitioners. The petitioners have borrowed money, and hence they have to return the same with interest. As Honourable man repays his debts instead of raising all kinds of technical objections when the time comes for repayment.

45. Banks and Financial Institutions are badly affected by non-recovery of dues. After availing the facility of financial assistance quite often the borrowers hardly show interest in re-payment of the loans which keep on accumulating as a result of which, it becomes difficult for the Financial Institutions to give financial assistance to deserving parties due to heavy blockade of money stuck in with erring borrowers."

In this case also, it is found that the petitioner has filed these petitions with only object of delaying and dragging the proceedings."

5. Further, the Insurance Company has clearly pointed out in the counter affidavit that writ of mandamus will not lie without proper representation and the petitioner has already filed the similar writ petition No.2736 of 2004 and the same has been dismissed and thereafter, the petitioner cannot re-agitate the same to stall the recovery proceedings taken by the second respondent-bank. Further, the Insurance Company has clearly pointed out in the counter affidavit that as against the order of dismissal made by the State Consumer Commission, Chennai in O.P.No.125/1998, the said Senthilathiban has not filed any appeal and the said order has become final as the said Senthilathiban has not chosen to file any appeal against the Insurance Company. Further in the counter affidavit, the second respondent bank has clearly pointed out that the amount due and payable and the loan amount payable by Senthilathiban as on 5.2.2015 is Rs.13,67,97,367/- (Rupees Thirteen Crores Sixty Seven Lakhs Ninety Seven Thousand Three Hundred and Sixty Seven only) and Senthilathiban and his wife are colluding with each other and adopting various methods to drag on the proceedings with regard to repayment of loan amount due to the 2nd respondent bank.

6. Further, the withdrawal of OA before taking action under SARFAESI Act has to be treated as directory and not mandatory as the word used in the amendment has to be interpreted as 'may' only and not as "shall" as it is usually used to connote a mandatory requirement. Furthermore, in view of the decision of the Honourable Supreme Court in Transcore Vs Union of India & Another reported in 2006(5) CTC 753, it is clear that the bank may apply for leave or not, under the provisions of RDDBFI Act. Even if the second respondent bank has availed the remedy under RDDBFI Act, nothing prevents them from invoking the provisions of SARFAESI Act, as per

the guidelines given in the decision of the Honourable Supreme Court in Transcore Vs Union of India & Another reported in 2006(5) CTC 753 would apply. Further, it is held in the decision of the Honourable Supreme Court in Transcore Vs. Union of India & Another reported in 2006(5) CTC 753, that with regard to the invoking the provisions of SARFAESI Act, alternative remedy is available and the writ petitioner has also invoked the alternative remedy and challenged the measures taken under SARFAESI Act.

7. Further, it is well settled law that sufficient cause has to be given a meaning to embrace all relevant circumstances having the bearing on the point in issue. Further, a bear perusal of the entire materials on record, before this Court, would show that the petitioners are initiating litigations one after another only to thwart the on going legal proceedings against them and it is also seen that there are collusiveness among the said S.Senthilathiban and his wife S.Jayalakshmi to thwart the recovery proceedings initiated by the respondent Bank.

8. Further, the main intention for taking proceedings under the SARFAESI Act is, to make borrowers / guarantors to repay the loan with the proper interest in a legal manner to the respondent Banks. Further, for the purpose of granting relief to the writ petitioners herein, with regard to the proceedings initiated by the respondent Bank, merely, establishing a material irregularity will not be sufficient and the petitioners must go further and establish to the satisfaction of the Court that material irregularity has resulted in substantial injury to the petitioners herein. Further, in the case of Union Bank of India V. Satyavati Tandon reported in (2010 8 SCC 110), it is clearly held by the Hon'ble Apex Court as follows:-

> " The High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. While dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves in as much as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing the remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute. " (para 43)

Admittedly, in this matter, the Writ petitioners herein have already approached the Debts Recovery Tribunal challenging the proceedings initiated by the respondent Bank, to recover the amounts, due to the Bank.

9. Further, on a perusal of entire material records of the matter, this Court is not satisfied to grant the above mentioned Writ Petition relief to the petitioners, as the petitioners have not established, any material illegally committed by the respondent bank, to realize the amount, due to the Bank from the petitioners herein. On the other hand, it is seen that the huge amount of Rs. 13,67,97,367/- (Rupees Thirteen Crores Sixty Seven Lakhs Ninety Seven Thousand Three Hundred and Sixty Seven only) as on 05.02.2015, is due to the respondent Bank and recovery proceedings have been initiated by the respondent Bank to realise the said huge amounts from the petitioners.

10. For the above mentioned reasons, these Writ Petitions are dismissed. No costs . Consequently, connected M.Ps are closed.

Sd/-
Assistant Registrar(Writ)

/True copy/

Sub Assistant Registrar

vks /pmu

To

1.The Presiding Officer,
Debt Recovery Tribunal, Madurai.

2. Chief Manager/
Authorized Officer,
Indian Bank,
137, Pandalgudi,
Aruppukkottai,
Virudhunagar District.

3.The United India Insurance
Company Limited.,
KPV Complex, Pandalgudi,
Aruppukkottai,
Virudhunagar District.

+1cc to M/S.AIYAR & DOLIA, ADVOCATE IN SR NO.17010
+1cc to MR.B.SARAVANAN, ADVOCATE IN SR NO.16977
+1cc to MR.G.PRABHU RAJADURAI, ADVOCATE IN SR NO.16277

Common Order
made in
W.P.(MD)Nos.2606, 2612 of 2015
and 14651 of 2014
31.03.2015

rg.02.06.2015 8p.7c.