

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition No.17904 of 2016
and WMP.No.15601 of 2016
and WMP.No.16065 of 2016

Kotak Mahindra Bank Ltd
Plot NO.12, S.No.98, Bharathi Street
Alagapuram, Salem-636 004
Rep. by its Authorised OfficerPetitioner

Vs.

- 1 M/s.Nandhi Dall Mills
A Partnership Firm Rep. by Mr.S.A.Kumar
No.270, Narashimman Road, Salem-636 002
- 2 Mr.S.A.Kumar
- 3 Mrs.K.Jayanthi
- 4 Mr.S.K.Arun
- 5 The Registrar, Debts Recovery Tribunal, Madurai
- 6 The Registrar, Debts Recovery Appellate Tribunal
Egmore, Chennai-600 008
- 7 The Secretary to Government
Ministry of Finance, Union of India
Jeevan Deep Building, Parliament Street
New Delhi-1.
- 8 The Secretary to Government
Ministry of Law, Union of India, New Delhi.

..Respondents

(Respondent Nos.7 and 8 are Suo-motu
impleaded as per Order dated:11/05/2016 in
WP.17904/2016 and WMP.15601/2016)

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 to 4 not to seek for implementation of the order dated 01.03.2016 passed in I.A.No. 235/2016 in S.A.No. 163/2013 on the file of the fifth respondent as against the petitioner and its officials by staying the operation of the same till the

appeal in M.A. (SA) No. 29 of 2016 on the file of the sixth respondent is heard and necessary protective order is obtained by the petitioner.

For Petitioner : Mr.Om Prakash for
M/s.Ramalingam and Associates

For Respondents : Mr.S.Parthasarathy, Senior Counsel
for Mr.P.Dinesh Kumar for R1 to R4
Mr.V.P.Sengottuvel for R7 & R8
R5 & R6- Tribunal

O R D E R

(Order of the Court was made by HULUVADI G. RAMESH,J.)

Heard the learned counsel for the respective parties.

2. The Writ Petitioner is the Kotak Mahindra Bank Ltd., and the prayer sought herein is for a direction to respondents 1 to 4 not to seek for implementation of the order dated 01.03.2016 passed in I.A.No.235/2016 in S.A.No. 163/2013 on the file of the 5th respondent as against the petitioner and its officials by staying the operation of the same till the appeal in M.A. (SA) No. 29 of 2016 on the file of the 6th respondent is heard and necessary protective order is obtained by the petitioner on the ground that there is no Chairperson for the Appellate Tribunal as on date.

3. It appears that respondents 1 to 4 had availed financial assistance in the nature of Short Term Loan from the Petitioner Bank to the tune of Rs.15 crores and the respondents 1 to 4 as the borrower and the guarantors created mortgage by way of deposit of title deeds in respect of the immovable properties. Subsequently, on account of default in repayment of the dues, the Petitioner-Bank as the secured creditor has invoked measures under SARFAESI Act against respondents 1 to 4 for recovery of the dues; issued Demand Notice dated 08.04.2013 calling upon to repay a sum of Rs.2,93,41,763.14/; and as the demand was not complied with and dues not paid, the Petitioner-Bank invoked further measures under Section 13(4) of the SARFAESI Act, by issuing Possession Notice dated 25.06.2013. The Respondents 1 to 4, challenged the said Possession Notice dated 25.06.2013 by filing S.A.No.163 of 2013 before the DRT at Madurai and also filed I.A.No.235 of 2016 seeking direction to the Petitioner-Bank for release of the title deeds of one mortgaged property, on the ground that the other security is sufficiently valued. The said I.A.No.235 of 2016 was ordered on 01.03.2016. Challenging the same, the Petitioner-Bank has filed MA(SA).No.29 of 2016 before the 6th respondent and the same is yet to be heard as there is no Chairperson in the DRAT, Chennai.

4. The Petitioner-Bank, aggrieved by the order passed by the DRT, Madurai, in favour of respondents 1 to 4 for release of the title deeds of one mortgaged property, is before this Court.

5. On the submission made by the learned Senior Counsel appearing for borrowers that respondents 1 to 4 have made substantial payments towards penal interest levied by the Bank, the same was disputed by the learned counsel appearing for the Petitioner-Bank stating that the Bank never capitalized the interest at any point of time in violation of the circulars issued by the RBI and never charged any excess interest. Thus, both sides are not agreeable on the point of amounts paid towards repayment of dues.

6. Regarding the demand claimed by the Petitioner-Bank and regarding the adjudication before the DRAT, Chennai, it is to be noted that the Appellate Authority, viz., DRAT is not functioning for want of Chairperson and hence, the Petitioner-Bank is before this Court with the above stated relief.

7. The learned Senior counsel appearing for Borrowers submitted that Respondents 1 to 4 are ready to pay a sum of Rs.79 lakhs towards the claim of the Bank, but the Petitioner-Bank is demanding exorbitant amount to release one of the title deeds of the valuable properties, which was given as security, which is valued around Rs.40 crores. Thus, the learned Senior counsel prayed for a suitable direction to be passed in the present Writ Petition.

8. After considering all the above facts and circumstances of the case, we direct the Parties herein to go for One Time Settlement (OTS) for the remaining dues or else the Petitioner-Bank shall accept Rs.79 lakhs to release one of the title deeds of the mortgaged properties, pending disposal of the Main Application before the DRAT. It is made clear that One Time Settlement shall be worked out by the Parties in respect of settling the dues, after receipt of the Auditor Report by the Petitioner-Bank.

9. The Writ Petition is disposed of with the above observation. No costs. Consequently, connected MPs are closed.
nvsri

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1 The Registrar, Debts Recovery Tribunal, Madurai.

2 The Registrar, Debts Recovery Appellate Tribunal
Egmore, Chennai-600 008.

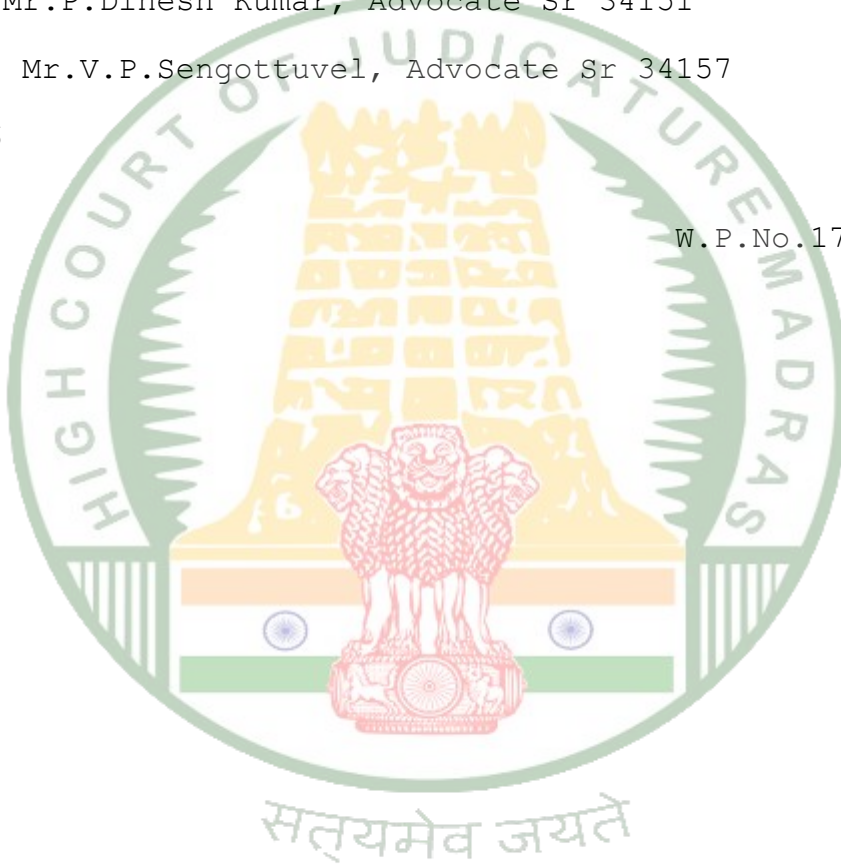
+ 2 ccs to M/s.Ramalingam and Associates, Advocate Sr 34418

+ 1 cc to Mr.P.Dinesh Kumar, Advocate Sr 34151

+ 1 cc to Mr.V.P.Sengottuvel, Advocate Sr 34157

KR/12/7/16

W.P.No.17904 of 2016



WEB COPY