

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2016

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Petition No.25687 of 2016
and
WMP Nos.22005 and 22006 of 2016

M/s.Mohan Breweries and Distilleries Limited
Rep. by its Executive Chairman Mr.M.Nandagopal
South Indian Film Chamber of Commerce
Phase I, 3rd Floor
No.605 & 606, T.R.Sundaram Avenue
Chennai - 600 006 Petitioner

vs.

The Authorised Officer
State Bank of Hyderabad
Main Branch
Ground Floor, 45, II Line Beach
Chennai - 600 001 ... Respondent

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari calling for records relating to exparte order dated 2.3.2016 made in O.A.No.111/2014 and recovery certificate dated 12.4.2016 and consequential demand notice dated 7.6.2016 in DRC No.200/2016 in O.A.No.111/2014 on the file of the respondent and quash the same.

For Petitioner : Mr.U.Karunakaran

For Respondent : Mr.S.Pandurangan

ORDER

(delivered by S.MANIKUMAR, J)

Petitioner, M/s.Mohan Breweries and Distilleries Limited, a Public Limited Company, availed loan facility from State Bank of Hyderabad, Chennai. Bank has declared the loan accounts as NPA. There were several proceedings. On 12.4.2016, in DRC No.200/2016 in Original Application No.111 of 2014, a Recovery Certificate

has been issued by the Presiding Officer, Debts Recovery Tribunal-II, Chennai, as hereunder:

In terms of final order dated 02.03.2016 passed by this Tribunal in the above mentioned case under section 19(1) of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, it is ordered that the Applicant/Certificate Holder is entitled to recover a sum of Rs.51,80,11,852.03 as principal, Rs.2,82,01,637.28 as future interest @ 12% p.a. (simple) from the date of filing of OA i.e. 16.05.2014 till the date of final order and Rs.2,26,500.00 as cost and expenses of Original Application in all totalling to Rs.2,28,11,901.31, after adjusting the amount of Rs.52,36,28,088.00 paid by the defendants, as per the Schedule of Costs annexed hereunder (Annexure-I) and further interest until realisation in full jointly and severally from the defendants No.1 to 7 hereinafter referred to as:

Certificate Debtor No.1	M/s Mohan Breweries Distilleries Limited, Rep. by its Managing Director
Certificate Debtor No.2	M/s Mohan Breweries Distilleries Limited, South Indian Film Chamber of Commerce, Phase-I
Certificate Debtor No.3	Shri M.Nandagopal
Certificate Debtor No.4	Shri Natarajan Nandagopal & Mr.Nate Nandha
Certificate Debtor No.5	Shri Aravind Nandagopal
Certificate Debtor No.6	Shri D.Ramesh Babu
Certificate Debtor No.7	Smt. Sumati Ramesh Babu

In case of failure to pay the aforementioned adjudicated amount within 30 days, the same shall be recovered from the sale of hypothecated/mortgaged properties described in Schedule 'A' to 'D' to the OA (Annexure-II).

The Recovery Officer shall realise the amount as per this Certificate in the manner and move prescribed under Section 25 and 28 of the Recovery of Debts Due to Banks and Financial Institutions Act,

1993 (as amended from time to time) from the above named Certificate Debtors.

This Certificate has been issued under my signature and seal of the Tribunal on this 12th day of April, 2016."

2. Thereafter, a demand notice dated 7.6.2016 has been issued by the Recovery Officer, DRT-III at Chennai, as hereunder:

"DRC No.9/2016 in DRC No.200/2016 (DRT-III)
Dated: 7/06/2016

DEMAND NOTICE

In view of the Recovery Certificate (DRC No.200/2016) issued on 12/4/2016 by the Hon'ble Presiding Officer, Debts Recovery Tribunal No.2, Chennai, under Sub Sections 7 and 22 of Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (Act 51 of 1993) hereinafter referred to as the Act in terms of order dated 02/03/2016 in OA No.111/2014, specifying that an amount of Rs.2,28,11,901.31p (Rupees Two Crore Twenty Eight Lakh Eleven Thousand Nine Hundred and One and Paise Thirty one only) is due/recoverable from you jointly and severally, the details of which are given in the Annexure enclosed.

2. You are hereby called upon to deposit the above sum within 15 days of the receipt of the notice to the applicant bank, failing which the recovery shall be made as per rules.

3. In additions to the sum aforesaid you will be liable to pay:

(a) Such interest as is payable for the period commencing immediately after this notice of the execution proceedings.

(b) All costs, charges and expenses incurred in respect of the service of this notice and other process that may be taken for recovering the amount due.

3. Both the above proceedings, are put to challenge in the instant writ petition and the petitioner has sought for a writ of certiorari, to quash the same. However, on this day, when the matter came up for hearing, Mr.U.Karunakaran, learned counsel for the petitioner, submitted that a sum of Rs.2,28,11,901.31P mentioned in the above impugned proceedings, has been paid.

4. On the payment made, he has sought for a direction to the respondent bank to return the documents pertaining to the subject property. However, the same is objected to by the bank by filing a counter affidavit to the effect that the total outstanding as per the Books of Accounts is Rs.4,19,87,066/- including interest up to 9.8.2016, applying interest at the rate of 14.9% per annum. Bank has contended that, after deducting a sum of Rs.2,28,11,901.31p, for effecting a full and final settlement of the accounts of the petitioner, balance amount payable is Rs.1,91,75,165/-. In addition to the above, Mr.S.Pandurangan, learned counsel for the bank submitted that, as against the reduction of rate of interest from 14.9% to 12% per annum simple, made in O.A.No.111/2014 dated 2.3.2016 on the file of the Debts Recovery Tribunal-II, Chennai, bank has filed an appeal to the Debts Recovery Appellate Tribunal and that the same is numbered. At this juncture, we deem it fit to extract the prayer made in the writ petition:

" For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue in the nature of Writ of Certiorari or any other appropriate writs or direction in the nature of Writ and calling for records relating to exparte order dated 02.03.2016 made in O.A.No.111/2014 and recovery certificate dated 12.04.2016 and consequential demand notice dated 07.06.2016 in DRC No.200/2016 in O.A.No.111/2014 on the file of the respondent and quash the same and pass such further or other orders that this Hon'ble Court deem fit and proper in the facts and circumstances of this case and thus render justice."

5. Prayer sought for in the writ petition cannot be granted, in view of what the petitioner at paragraph 17 of the supporting affidavit to the writ petition, himself has admitted and stated that a sum of Rs.2,28,11,901.31, being part of the interest is payable and due as on the date of swearing this supporting affidavit. Paragraph 17 is extracted here under:

" 17. I respectfully state that the Hon'ble Court has directed to pay a sum of Rs.23,47,08,980/- i.e. 50% of the amount claimed under possession notice dated 11.06.2014. As on this day the petitioner company not only complied the conditional order passed by this Hon'ble court and also has paid the remaining 50% of the total loan amount except a sum of Rs.2,28,11,901.31 being the part of interest payable to the Bank. The petitioner company has paid Rs.52,36,28,088/- to the respondent bank as admitted

by the respondent bank. However there is a default to the tune of Rs.2,28,11,901.31 towards the part payment of the interest alone is due as on this day."

6. Having admitted in the supporting affidavit and paid the above said amount, it is not open to the petitioner to challenge the impugned notices dated 12.04.2016 and 7.6.2016. Relief sought for cannot be granted.

7. Insofar as return of document is concerned, there is a dispute. However, there are no averments in the supporting affidavit regarding the return of documents and prayer. In such view of the matter, the oral request made, in the nature of a writ of mandamus, cannot be granted. Writ petition is dismissed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Registrar,
The Debts Recovery Appellate Tribunal-II
Chennai-2.
- 2.The registrar,
Debts Recovery Tribunal-II,
Chennai-2.

+1cc to Mr.S.Pandurangan, Advocate Sr.55032

W.P.No.25687 of 2016

pvs[col]
srg 03/11/2016

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