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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Petition (MD) No.23637 of 2015

and

M.P(MD)Nos.1 and 2 of 2015

M/s.Nandhi Dall Mills,
A partnership firm rep by
S.A.Kumar,
No.270, Narashimman Road,
Salem 636 002

... Petitioner

Vs.

1.The Deputy General Manager,
Kotak Mahindra Bank,
No.17, Fort Main Road,
Shevapet, Salem 636 002.

2.The Authorized Officer,
Kotak Mahindra Bank Limited,
Plot No.12, S.No.98,
Bharathi Street,
Alagapuram, Salem 636 004.

3.The Branch Manager,
Kotak Mahindra Bank Limited,
Plot No.12, S.No.98,
Bharathi Street,
Alagapuram, Salem 636 004.

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

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, declaring the action of the 1st and 2nd respondent in imposing penal interest and compounding of interest as illegal null and void and direct the 1st and 2nd respondent to drop all further proceedings against the petitioners and follow the ratio laid down by the Apex Court in Central Bank of India Vs. Ravindra (AIR 2001 SC 3095).

For Petitioner : Mr.M.Vallinayagam, S.C
for Mr.M.Arun Murugan

ORDER

(Order of the Court was made by V.RAMASUBRAMANIAN,J.)

The petitioner who is a borrower has come up with the above writ petition seeking the issue of a writ of mandamus to declare the action of the respondent bank in imposing penal interest and compounding interest as illegal and null and void.



2. Heard Mr.M.Vallinayagam, learned Senior Counsel for the petitioner.

3. The petitioner borrowed working capital loan from the respondent bank. According to the petitioner, they have discharged the entire loan. Yet criminal proceedings were initiated by the bank under Section 138 of the Negotiable Instruments Act, 1881 in C.C.No.18 of 2014.

4. Thereafter, the respondent bank also issued a possession notice under Section 13(4) of the SARFAESI Act, 2002. Challenging the action, the petitioner filed S.A.No.163 of 2013 on the file of the Debts Recovery Tribunal, Madurai. In the said proceedings, the Debts Recovery Tribunal, Madurai granted a conditional order of stay. The same was complied with. The petitioner also filed a quash petition and got a stay of the criminal complaint under Section 138.

5. In the meantime, the petitioner appears to have appointed their own Auditor and obtained a statement to the effect that the interest charged was exorbitant and penal in nature. On the basis of the self-serving statement of the Auditor, the petitioner claims that the amount payable by them as on date is only Rs.79,70,500/-. The balance claim of the bank, according to the petitioner, is illegal and that is why the petitioner has come up with the above writ petition seeking a declaration.

6. However, admittedly, an application under Section 17 of the SARFAESI Act, is pending before the Debts Recovery Tribunal in S.A.No.163 of 2013. The petitioner has also taken out an application in the main application seeking a direction to the bank to release the secured assets upon payment of the balance of Rs.79,70,500/-. The petitioner has also filed another interlocutory application before the Debts Recovery Tribunal in I.A.No.2261 of 2015 claiming compensation from the bank. Both the applications are now pending before the Debts Recovery Tribunal.

7. In other words, if the application filed by the petitioner before the Debts Recovery Tribunal seeking release of the secured assets upon payment of the amount of Rs.79,70,500/- is decided by the Debts Recovery Tribunal, the prayer in the present writ petition will automatically become infructuous. It means the petitioner is actually seeking the very same relief but in a different language before this Court when his application is pending before the Debts Recovery Tribunal.

8. In view of the above, the writ petition is not maintainable. Hence, it is dismissed. However, the Debts Recovery Tribunal is directed to dispose of the interlocutory applications filed by the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, M.P(MD)Nos.1 and 2 of 2015 are closed.

Sd/-

Assistant Registrar (CO)

/True copy/



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To
The Registrar,
Debts Recovery Tribunal, Madurai.

WEB COPY +1 CC to Mr.Arun Murugan, Advocate, SR No.565

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and
M.P(MD)Nos.1 and 2 of 2015
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