



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P (MD) No.13540 of 2016

and

W.M.P (MD) No.10100 of 2016

1.M/s.KMB Marbles and Granites India Private Ltd.,
4/59, Bharathi Street, Swarnapuri, Five Roads,
Salem - 636 004. represented by its
Managing Director,
K.Yusuf Basha

2.M/s.KMB Granite Enterprises Private Ltd.,
4/59, Bharathi Street, Swarnapuri, Five Roads,
Salem - 636 004. represented by its
Managing Director,
K.Yusuf Basha.

3.K.Yusuff Basha

4.K.Shanawaz

5.K.Haneef Basha

6.K.Sowkath Ali

7.H.Mohamed Ismail

8.H.Mohamed Yasmeen

9.Y.Faheemajan

...Petitioners

Vs.

1.The Debt Recovery Tribunal,
Madurai Bench,
4/162, Kalyani Towers,
Melur Road, Madurai.

2.The Authorised Officer/Chief Manager (Adv.),
Region IV, Coimbatore, State Bank of Travancore,
Avarampalayam Road, New Siddhapudur,
Coimbatore - 641 044.
and Interalia its Branch at
No.9, Rajaji Road, Hasthampatty Post,
Salem - 636 007.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent in issuing the impugned notice dated 13.07.2016 and quash the same for the reasons stated above

and consequently, direct the second respondent not to proceed under the SARFAESI Act pending disposal of the SARFAESI Application No.451 of 2015.

[Prayer amended vide Court order dated 02.08.2016 in W.M.P(MD) No.10249 of 2016]

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For Petitioners : Mr.Akhil Akbar Ali
for M/s.Akhil Akbar Ali Associates
For Respondents : Mr.R.Pandivel for R.2
R.1 - Tribunal

ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J.)

By consent, the writ petition is taken up for final disposal.

2. The petitioners 1 and 2 are collectively engaged in the business of preparing, mining, cutting, polishing, processing, etc., of all types of Marbles, Granites, Laterite, Limestones, etc., and for that purpose, it availed two loans to the tune of Rs.16.89 Crores and Rs.8.50 Crores respectively and on account of vagaries of business conditions, they started incurring loss. Therefore, the second respondent had initiated recovery proceedings under Section 13(2) of the SARFAESI Act and subsequently, appointed the recovery agents to recover the same and since they resorted to unlawful methods, the fourth petitioner herein filed the suit in O.S.No.238 of 2015 on the file of the III Additional District Judge, Salem, for interim temporary injunction restraining the respondent therein and their men from interfering with his possession except under due process of law and interim order was also granted. Subsequently, the second respondent has issued a notice under Section 13(4) of the SARFAESI Act on 06.10.2015. Challenging the legality of the same, the petitioners invoked the jurisdiction of the Debts Recovery Tribunal, Madurai, by filing S.A.No.451 of 2015 and on account of the fact that onerous conditions were imposed, the petitioner was not able to comply with the part of the conditional order.

3. It is further stated by the petitioners that the first sale notice under Rule 8(6) of the Security Interest Enforcement Rules, 2002, was issued by the second respondent and for want of bidders, no further proceedings took place. Thereafter, the second sale notice dated 27.05.2016 was issued and once again, the petitioners had approached the Debts Recovery Tribunal, Coimbatore, by filing S.A.No.259 of 2016 and pending disposal of the appeal, I.A.No.1413 of 2016 was filed for interim orders and the Tribunal, vide interim order dated 04.07.2016, has granted the conditional order directing the bank not to confirm the sale till 06.09.2016, subject to payment of Rs.3,37,50,000/- directly before the respondent bank on or before 04.08.2016 towards the first



installment and another sum of Rs.3,37,50,000/- directly before the respondent bank on or before 05.09.2016 by way of second installment and in the event of compliance of the order, directed the bank to defer the confirmation till 06.09.2016. The Debts Recovery Tribunal further directed that in the event of failure to pay a single payment, it is open to the bank to proceed further in accordance with law.

4. The grievance expressed by the petitioners is that though the Tribunal has fixed the time till 04.08.2016 and 05.09.2016 respectively to comply with the said conditional orders, the third sale notice dated 13.07.2016 came to be issued prior to the payment of first installment and therefore, the petitioners originally filed this writ petition praying for issuance of a writ of Mandamus and subsequently, the prayer got amended.

5. Mr.Akhil Akbar Ali, learned Counsel for the petitioners would submit that the second respondent bank has failed to exhibit any fairness and despite time granted by the Debts Recovery Tribunal to comply with the conditional order, it has issued the impugned sale notice and every time, the petitioners have to approach the Debts Recovery Tribunal in the form of appeal and it is causing them innumerable hardships and prays for setting aside the impugned third sale notice.

6. Per contra, the learned Counsel for the second respondent bank would contend that on account of the interim order granted by this Court on 05.08.2016, the impugned sale notice worked out itself and the period got expired and they have to issue a fresh sale notice for auctioning the property. It is the further submission of the learned Counsel for the second respondent bank that admittedly, the petitioners did not comply with the conditional orders passed in S.A.No.451 of 2015 and therefore, in all probabilities, they would not have complied with the conditional order in S.A.No.259 of 2016 and in order to avoid the effective alternative remedy available to them, they have approached this Court and it is nothing but abuse of process of law.

7. Alternately, it is contended by the learned Counsel for the second respondent that since time fixed got expired, nothing survives for adjudication in this matter and it may be dismissed.

8. This Court has carefully considered the rival submissions and perused the materials available on record.

9. The learned Counsel for the petitioners was right to a certain extent for the reason that the Debts Recovery Tribunal while passing the conditional order in I.A.No.1413 of 2016 in <https://hcresolutions.gov.in/hcresolutions> 25.09.2016, has granted time till 04.08.2016 to make the first installment of Rs.3,37,50,000/-, with a further direction to deposit further sum of Rs.3,37,50,000/- on or before 05.09.2016



and even before the expiry of the time granted for payment of first installment, the impugned notice came to be issued.

10. In the considered opinion of this Court, the said procedure adopted by the second respondent *prima facie* appears to be unreasonable. Be that as it may, by virtue of the interim order granted by this Court, the impugned third sale notice worked out itself and therefore, as on today, nothing survives for adjudication in this writ petition.

11. Accordingly, this writ petition is closed. No costs. Consequently, the interim order granted by this Court on 05.08.2016 is vacated and W.M.P(MD)No.10100 of 2016 is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To
The Debt Recovery Tribunal, Madurai Bench,
4/162, Kalyani Towers, Melur Road, Madurai.

+1cc to M/s.Pandivel, Advocate in SR.51417

W.P(MD)No.13540 of 2016
and

W.M.P(MD)No.10100 of 2016
09.09.2016

rsb

PBK/PV 22/09/2016 ::4P-3C: