



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MS. JUSTICE V.M.VELUMANI

W.P. (MD) No.17243 of 2016
and
WMP (MD) No.12508 of 2016

Mr.S.S.G.Bhaskar Rajhan,
Proprietor,
Sahan Woods,
No.27/1, Mani Naicker Street,
Ganapathypuram,
Chrompet,
Chennai - 600 044.

... Petitioner

Vs.

- 1.The Authorised Officer,
State Bank of India,
SME Branch, 14-B, Distillery Road,
Nagercoil, Kanyakumari District.
- 2.The Asst. General Manager,
Stressed Assets Recovery Branch,
No.8, Dr.Ambedkar Road,
Vinayaganagar Branch,
Madurai - 625 020.
- 3.The Chief Executive Officer,
CGTMSE, 1002, 1003, Naman Centre,
10th Floor, Plot No.C-31, 'G' Block,
Bandha Karta Complex,
Bandra East, Mumbai 400 051.

... Respondents

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India,

(a) To declare that the action of the 1st Respondent is in gross violation of the norms and regulations of Credit Guarantee Fund Trust for Micro and Small Enterprises Scheme (CGTMSE).

(b) to directing the 1st and 2nd respondents to proceed against Primary Security secured with movable assets such as stocks, raw materials, plant & machinery and receivable which are financed

by the Bank to appropriate the sale proceed adjusting with the liability of the petitioner as per letter of Arrangements, dated 22.07.2010, 08.07.2011 and 26.04.2012.

(c) To Directing the 1st & 2nd respondents to adjust the sale proceeds so appropriated by way of sale of movable assets such as stocks, raw materials and plant & Machinery available in the factory premises which are financed by the 1st and 2nd Respondents.

(d) To Directing the 1st and 2nd Respondents to release the original parent documents and Sale deed held in the name of the Petitioner in Document No.4407 of 2009, dated 14.12.2009 registered on the file of Office of SRO, Panakudi in view of letter issued by the 2nd Respondent, dated 17.08.2016.

(e) To Directing the 1st and 2nd Respondents to claim 75% of the amount in default by lodgment of claim before the CGTMSE and adjust the same with the Loan Account of the Petitioner.

(f) To Directing the 1st and 2nd Respondents to claim 25% remaining balance in default by lodgment of claim before the CGTMSE and adjust the balance amount in default on conclusion of recovery proceedings.

For Petitioner : Mr.S.Pon Senthil Kumaran

ORDER

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

The grievance expressed by the petitioner is that, though premium has been collected by the Credit Guarantee Trust for Micro and Small Enterprises (CGTMSE) (set up by Government of India and SIDBI), for covering the debt, the petitioner's asset has been declared as Non- Performing Asset and recovery action has been initiated under the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, was invoked. Subsequently, the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Act, 2002, has been invoked. Challenging the legality of the same, the petitioner has filed an Appeal in S.A.No.114 of 2016, before the Debt Recovery Tribunal, Madurai and the said Tribunal has passed a conditional order, dated 16.03.2016 and the same has not been complied with due to financial difficulty.

2. The learned counsel appearing for the petitioner would submit that despite premium has been collected guaranteeing the loan advanced to the petitioner by the Bank, the Bank has failed to approach the said entity and instead resorting to recovery action under the SARFAESI Act, 2002, against the collateral security also and therefore, such an act on the part of the respondent Bank is unsustainable and also without jurisdiction and prayed for



appropriate orders.

3. This Court has considered the submission made by the learned counsel appearing for the petitioner and also perused the materials placed before it.

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4. The petitioner aggrieved by the action of the respondent Bank in initiating action under the SARFAESI Act, 2002, had filed an Appeal in S.A.No.114 of 2016 before the Debt Recovery Tribunal, Madurai and a perusal of the grounds would disclose that the collection of premium / fee by the Bank from the petitioner and the points urged in this Writ Petition have not been taken as grounds.

5. As the petitioner had already invoked the jurisdiction of the Debt Recovery Tribunal under Section 17 of the said Act, this Court is not in a position to entertain the Writ Petition. However, the petitioner is at liberty to raise additional grounds, as to the points urged by them in this Writ Petition by taking out necessary application and if the papers are otherwise in order, the Tribunal may entertain the same and give a disposal in accordance with law, as expeditiously as possible.

6. In the result, the Writ Petition is dismissed, subject to the above observation. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

mpk

To

1.The Authorised Officer,
State Bank of India,
SME Branch, 14-B, Distillery Road,
Nagercoil, Kanyakumari District.

2.The Asst. General Manager,
Stressed Assets Recovery Branch,
No.8, Dr.Ambedkar Road,
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3.The Chief Executive Officer,
CGTMSE, 1002, 1003, Naman Centre,
10th Floor, Plot No.C-31, 'G' Block,
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Bandra East, Mumbai 400 051.

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+1 cc to Mr.S.Partha Sarathy ,Advocate, Sr.No: 51799

JAM/SKS-RR/28.09.16 /4p-5c

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