



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.10.2016

CORAM:

THE HONOURABLE **MR.JUSTICE M.SATHYANARAYANAN**
and
THE HONOURABLE **MS.JUSTICE J.NISHA BANU**

Writ Petition (MD).No.18719 of 2016
and
W.M.P. (MD).No.13547 of 2016

1. Mrs.Vaila Baby
2. Mr.Rex Henry
3. B.Abish Hentry
4. B.Shekinah

... Petitioners

Vs.

1. The Indian Bank,
represented by its Authorized Officer,
Nagercoil Branch,
Kanyakumari District.
2. The Debts Recovery Tribunal,
represented by its Registrar,
III and IV, Kalyani Towers,
4/162 Madurai - Melur Road,
Uthangudi, Madurai 625 107.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records from the second respondent Tribunal order dated 23.08.2016 in I.A.No.1669 of 2016 in SA:303 of 2016 and quash the same insofar as the conditions imposed on the petitioners to pay a sum of Rs.12,84,000/-.

For Petitioners : Mr.D.Selvanayagam
For R1 : Mr.R.Pandivel

O R D E R

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

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



2. The first petitioner on her behalf and on behalf of her sons and daughter had filed an affidavit stating among other things that her husband Babu Henry John was running a proprietary Firm in the name and style of M/s. Zion Agencies and for the purpose of business, had availed an overdraft facility to the tune of Rs.65,00,000/- on 11.12.2013 and for the repayment of the said loan also created security in the form of mortgage receipt in respect of the property comprised in Survey No.597/1A1A situated in the village of Viyannoor, Kalkulam Taluk, Kanyakumari District. It is further stated by the petitioner that on account of vagaries of business, he could not repay the loan amount and therefore, the first respondent Bank initiated proceedings under the provision of SARFAESI Act in the form of Section 13(2) notice dated 12.10.2015. The husband of the petitioner after receipt of the notice, some time thereafter, passed away on 12.11.2015 and therefore, the petitioner/ wife as well as the sons and daughter are left in lurch and as they are not acquainted with the running of the business.

3. It is also stated by the petitioner that the first respondent Bank proceeded further and also issued possession notice under Section 13(4) of SARFAESI Act on 29.01.2016 and it was also put to challenge by filing an appeal in S.A.No.303 of 2016 on the file of the Debts Recovery Tribunal, Coimbatore, in-charge Debts Recovery Tribunal and pending disposal of the same, also filed an application for interim relief in I.A.No.1669 of 2016. The Debts Recovery Tribunal, Coimbatore vide interim order dated 23.08.2016, directed the petitioner to pay a sum of Rs.12,84,000/- on or before 23.09.2016 as first instalment and to pay a sum of Rs.12,84,000/- on or before 24.10.2016 as second instalment and also with the default class and challenging the legality of the said order, the petitioner had filed this writ petition.

4. The writ petition was listed for admission on 03.10.2016 and on that day, this Court taking note of the difficulties expressed by the petitioners on account of the demise of the Proprietor of the Firm, granted conditional interim order, directing the petitioners to pay a sum of Rs.5 lakhs on or before 17.10.2016. Accordingly, the said order has been complied with and a memorandum dated 18.10.2016 has also been filed to that effect.

5. Mr.D.Selvanayagam, the learned counsel appearing for the petitioners would submit that since onerous condition has been imposed in the form of conditional order, the petitioners are extremely finding difficult to comply with this and prays for modification of the conditional order.

<https://hcservices.ecourts.gov.in/hcservices/>

6. However, the said prayer is strongly opposed by the learned counsel appearing for the first respondent that as on today, the



petitioners are due and payable more than Rs.75 lakhs and the conditional order passed by the Debts Recovery Tribunal is very much on the lower side and since the discretion has been exercised, it cannot be interfered with by exercise of the jurisdiction under Article 226 of the Constitution of India and prayed for dismissal of the writ petition.

7. This Court has considered the rival submissions made by Mr.D.Selvanayagam, the learned counsel appearing for the petitioners and Mr.R.Pandivel, the learned counsel appearing for the first respondent and also perused the typed set of documents.

8. The husband of the petitioner was a sole Proprietor and after availing the loan could not repay the same due to business condition and he suddenly passed away on 12.11.2015. The first petitioner being his wife and petitioners 2 to 4 being the sons and daughter of Late Babu Henry John are not well acquainted as to the running of the business operation and therefore, they are finding it extremely difficult to repay the loan.

9. In the light of the above facts and circumstances, this Court is of the considered view that the conditional impugned order passed by the Debts Recovery Tribunal (In-Charge) requires modification.

10. In the result, the writ petition is disposed of, by modifying the conditional impugned order made in I.A.No.1669 of 2016 in S.A.No.303 of 2016 dated 23.08.2016, directing the petitioner to pay a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) by way of three equated monthly instalments and the first instalment of Rs.5 lakhs shall be paid on or before 30.11.2016, the second instalment of Rs.5 lakhs shall be paid on or before 05.01.2017 and the third instalment of Rs.5 lakhs shall be paid on or before 06.02.2017. If the petitioner fails to pay anyone of the instalments, it is open to the respondent Bank to proceed further in accordance with law. The Debts Recovery Tribunal, Coimbatore, is also directed to dispose of the appeal in S.A.No.303 of 2016 on or before 10.04.2017. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Co)

/True Copy/

Sub Assistant Registrar



To

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+1 cc to MR.D.SELVANAYAGAM, Advocate SR.No.61427

+1 cc to MR.R.Pandivel, Advocate Sr.NO.61037

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SMA/CK/14.11.2016:4P/5C