BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD).No.23358 of 2016
and
M.P.(MD).Nos.16783 and 16784 of 2016

C.Sundaram ... Petitioner

Vs

1.State of Tamil Nadu,
rep.by its Secretary to Government,
Department of Labour and Employment,
Fort.St.George, Chennai-9.

2.The Commissioner of Labour,
Dept.of Labour and Employment,
Teynampet, Anna Salai, Chennai.

3.The Authorised Officer,
Indian Overseas Bank,
Regional Office, Madurai.

4.Sri Krishnakanth Textiles Pvt.Ltd,
through its Managing Director,
Adiyanooth Village, Sirumalai Road,
Dindigul Taluk, Dinditul District. ... Respondents

This Writ Petition is filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records relating to the impugned e-auction notice issued by the third respondent and published in Daily Thanthi News paper on 25.10.2016 stating that the 4th respondent Mill properties will be sold in public auction on 30.11.2016 between 11.30 to 12.00 a.m at the third respondent office.

For Petitioner : Mr.PT.S.Narendara Vasan
For R.3 : Mr.M.Senthilkumar
For R.1&2 : Mr.D.Muruganandham
Additional Government Pleader

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner is the Secretary of Madurai District Spinning and Weaving Labour H.M.S.Union having office at No.15, Mangammal Salai, Tirunagar, Madurai and in the affidavit filed in support of this Writ Petition, he would aver among other things that there were 93 permanent employees and nearly 40 temporary employees were working in the fourth respondent Mill and out of them, 63 employees were the Members of the petitioner union and most of the employees had put in more than 15 years of service continuously and the fourth respondent, after adhering to the relevant labour laws has also deducted the employees provident fund contribution from their salaries also. The petitioner would further state that without any rhyme or reason, all of a sudden, the fourth respondent Mill had closed the mill on 02.08.2015 and before such closure, salary for the month of July 2015 had not been paid to the employees and bonus for the year 2014-2015 had also not been paid and employees provident fund contribution deducted from the employees salary had also not been remitted to the department concerned. The fourth respondent Mill, all of a sudden had also removed the machineries from their Unit. To the shock and surprise of the petitioner union, they came to know that the third respondent Bank had initiated recovery proceedings and also e-auction against the fourth respondent Mill on 25.10.2016 in *'daily thanthi'* stating that the secured properties of the fourth respondent Mill be brought for auction sale on 30.11.2016 between 11.30 and 12.00 a.m.

3. The grievance expressed by the petitioner is that the fourth respondent is liable to pay nearly Rupees three crores to the employees and without settling the said amount, the auction is conducted and if the movable and immovable assets are sold, there is no protection for the Members of the petitioner unit as well as the other employees of the fourth respondent mill and therefore, came forward to file the present Writ Petition praying for quashment of the impugned e-auction notice dated 25.10.2016.

4. Learned Counsel for the petitioner would submit that admittedly the dues payable to the labourers / employees would have preference even over a secured claim and as such pray for quashment of the impugned notice and with a further direction directing the fourth respondent Mill to settle the dues to the Members of the petitioner Union as well as other employees.

5. Mr.D.Muruganandham, learned Additional Government Pleader accepts notice for the first and the second respondents and Mr.M.Senthil kumar, learned Standing Counsel accepts notice for the third respondent.

6. This Court heard the submissions of Mr.D.Muruganandham, learned Additional Government Pleader and Mr.M.Senthil kumar, learned Standing Counsel appearing for the third respondent bank would submit that the remedy open to the petitioner is to approach the forum constituted under the Industrial Disputes Act,1947 and the bank cannot adjudicate their claim with regard to the arrears of salary to be paid to the petitioner Union, by the fourth respondent mill.

7. Considered the submissions made by the learned Counsel appearing for the respective parties and perused the material available on record.

8. In the considered opinion of the Court, the prayer made by the petitioner Union directing the respondent bank to adjudicate the dispute or in the event of sale being done / settled, some part of the sale profits in the form of arrears or wages liable to the paid to the members of the unit cannot be countenanced on account of the fact that the third respondent union is not the competent forum to adjudicate such type of issue. In the judgment reported in ***2013 (4) CTC 111, Bank of Maharashtra Vs Pandurang Keshav Gorwardkar***, a similar issue came up for consideration as to whether the Debts Recovery Tribunal constituted under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is empowered to determine the claim of workmen. In the said judgment, in paragraph No.72, it goes thus:-

> "(i) If the debtor company is not in liquidation nor any provisional liquidator has been appointed and merely winding up proceedings are pending, there is no question of distribution of sale proceeds among secured creditors in the manner prescribed in Section 19(19) of the 1993 Act.
>
> (ii) Where a company is in liquidation, a statutory charge is created in favour of workmen in respect of their dues over the security of every secured creditor and this charge is pari passu with that of the secured creditor. Such statutory charge is to the extent of workmen's portion in relation to the security held by the secured creditor of the debtor company.
>
> (iii) The above position is equally applicable where the assets of the debtor company have been sold in execution of the recovery certificate obtained by the bank or financial institution against the debtor company when it was not in liquidation but before the proceeds realized from such sale could be fully and finally disbursed, the company had gone into liquidation. In other words, pending final disbursement of the proceeds realized from the sale of security in execution of the recovery certificate issued by the debt recovery tribunal, if debtor company becomes company in winding up, Section

529A read with Section 529(1)(c) proviso come into operation and statutory charge is created in favour of workmen in respect of their dues over such proceeds.

(iv) The relevant date for arriving at the ratio at which the sale proceeds are to be distributed amongst workmen and secured creditors of the debtor company is the date of the winding up order and not the date of sale.

(v) The conclusions (ii) to (iv) shall be *mutatis mutandis* applicable where provisional liquidator has been appointed in respect of the debtor company.

(vi) Where the winding up petition against the debtor company is pending but no order of winding up has been passed nor any provisional liquidator has been appointed in respect of such company at the time of order of sale by DRT and the properties of the debtor company have been sold in execution of the recovery certificate and proceeds of sale realized and full disbursement of the sale proceeds has been made to the concerned bank or financial institution, the subsequent event of the debtor company going into liquidation is no ground for reopening disbursement by the DRT.

(vii) However, before full and final disbursement of sale proceeds, if the debtor company has gone into liquidation and a liquidator is appointed, disbursement of undisbursed proceeds by DRT can only be done after notice to the liquidator and after hearing him. In that situation if there is claim of workmen's dues, the DRT has two options available with it. One, the bank or financial institution which made an application before DRT for recovery of debt from the debtor company may be paid the undisbursed amount against due debt as per the recovery certificate after securing an indemnity bond of restitution of the amount to the extent of workmen's dues as may be finally determined by the liquidator of the debtor company and payable to workmen in the proportion set out in the illustration appended to Section 529(3)(c) of the Companies Act. The other, DRT may set apart tentatively portion of the undisbursed amount towards workmen's dues in the ratio as per the illustration following Section 529(3)(c) and disburse the balance amount to the applicant bank or financial institution subject to an undertaking by such bank or financial institution to restitute the amount to the extent workmen's dues as may be finally determined by the liquidator, falls short of the amount which may be distributable to the workmen as per the above illustration. The amount so set apart may be disbursed to the liquidator towards workmen's dues on ad hoc basis subject to adjustment on final determination of the workmen's dues by the liquidator.

(viii) The first option must be exercised by DRT only in a situation where no application for distribution towards workmen's dues against the debtor company has been made by the liquidator or the workmen before the DRT.

(ix) Where the sale of security has been effected in execution of recovery certificate issued by the DRT under the 1993 Act, the distribution of sale proceeds has to be made by the DRT alone in accordance with Section 529A of the Companies Act and by no other forum or authority.

(x) The workmen of the company in winding up acquire the standing of the secured creditors on and from the date of winding up order (or where provisional liquidator has been appointed, from the date of such appointment) and they become entitled to the distribution of sale proceeds in the ratio as explained in the illustration appended to Section 529(3)(c) of the Companies Act.

(xi) Section 19(19) of the 1993 Act does not clothe DRT with jurisdiction to determine the workmen's claim against the debtor company.

The adjudication of workmen's dues against the debtor company in liquidation has to be made by the liquidator. In other words, once the company is in winding up the only competent authority to determine the workmen's dues is the liquidator who obviously has to act under the supervision of the company court and by no other authority.

(xii) Section 19 (19) is attracted only where a debtor company is in winding up or a provisional liquidator has been appointed in respect of such company. If the debtor company is not in liquidation or if in respect of such company no order of appointment of provisional liquidator has been made and merely winding up proceedings are pending, the question of distribution of sale proceeds among secured creditors in the manner prescribed in Section19(19) of the 1993 Act does not arise.”

9. In the light of the said Supreme Court judgment and in the event of liquidation of Company, the claims of workmen to be treated as *pari pasu* and as such, the prayer sought for by the petitioner cannot be granted. However, the petitioner union has submitted a representation dated 23.11.2016 to the Senior Regional Manager, Zonal Office, Madurai-20 and this Court, in the light of the reasons assigned above and also taking into consideration the facts and circumstances, directs the said official to consider and dispose of the representation of the petitioner, dated 23.11.2016, on merits and in accordance with law and pass appropriate orders, within a period of four weeks from the date of receipt of a copy of this order and the said decision taken by the respondent shall be communicated to the petitioner, as expeditiously as possible.

10. This Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
State of Tamil Nadu,
Department of Labour and Employment,
Fort.St.George, Chennai-9.

2.The Commissioner of Labour,
Dept.of Labour and Employment,
Teynampet, Anna Salai, Chennai.

3.The Authorised Officer,
Indian Overseas Bank,
Regional Office, Madurai.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 78122
+ 1 CC TO Mr.M.SENTHILKUMAR, ADVOCATE IN SR No. 74944

SSM
TE/GSV-PM : 04/01/2017 : 6P/6C

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