BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.[MD].No.2355 of 2015

and

M.P.(MD)No.1 of 2015 and C.M.P.(MD).No.3062 of 2016

1.M/s.Prithiyangara Imports Private Ltd.,
No.6, First Floor, "Acharya Apartment"",
15, Second Main Road,
Raja Annamalaipuram, Chennai 600 028.

2.V.Dhandayuthapani
3.V.Janarthana Guptha
4.C.Anandh
5.D.Geetharani
6.J.Geetha : Petitioners

Vs.

1.The Authorized Officer,
The South Indian Bank Ltd.,
Regional Office, "Niagara Apartments",
No.1 Sterling Road, Nungambakkam,
Chennai 600 034.

2.The South Indian Bank Ltd.,
Rep by its Branch Manager,
Kellys Branch, 94, Prince Tower, P.H.Road,
Kellys, Chennai 600 010.

3.The Authorized Officer,
Pegasus Assets Reconstruction Private Limited,
55-56, Fifth Floor, Free Press House,
Nariman Point, Mumbai 400 021. : Respondents
[R-3 impleaded vide order dated 10.11.2016, made in C.M.P.(MD). No.10552 of 2016]

PRAYER: Civil Reivision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 05.10.2015, passed in I.A.No.2039 of 2015 in S.A.No.375 of 2015, on the file of the Debts Recovery Tribunal, Madurai, insofar as it directs the petitioners to make payment of a sum of Rs.86,06,250/- each in four installments and allow the Civil Revision Petition.

For Petitioner : Mr.N.L.Rajah
Senior Counsel
For M/s.Vastlaw Associates
For Respondent Nos.1 and 2 : Mr.A.R.M.Ramesh

O R D E R

[Order of the Court was made by **R.SUBBIAH, J.**]

This Civil Revision Petition has been filed seeking to set aside the order, dated 05.10.2015, made in I.A.No.2039 of 2015 in S.A.No.375 of 2015, on the file of the Debts Recovery Tribunal, Madurai, insofar as it relates to a direction to the petitioners to make payment of a sum of Rs.86,06,250/- each in four equal installments.

2. The brief facts, which are necessary for the disposal of the Civil Revision Petition, are as follows:-

The first petitioner is a Private Limited Company, incorporated under the provisions of the Companies Act, 1956. The first petitioner company is banking with the second respondent bank at their Branch Office, at Chennai Kellys, for the past 17 years. The first petitioner company was enjoying credit facilities with the second respondent bank and the last of such sanction was to the tune of Rs.15 crores in the nature of cash credit of Rs.50 lakhs and Letter Credit [LC] of Rs.14.50 crores. The said facilities were secured by way of hypothecation of the stock of raw materials, work in progress and finished goods, receivables and other current assets. The petitioners 2 to 5 have also mortgaged by way of collateral security, six items of immovable properties owned by them for the said facilities availed from the second respondent. The Edible Oil Industry and the Trade have been going through a difficult phase for the past two years and the first petitioner company was facing a tough situation.

2.2. On account of the above, the first petitioner company requested the second respondent bank to renew the facilities as working capital term loan for existing LC limits in the nature of restructuring of the facilities. However, the said request was unanswered by the second respondent bank. Thereafter, all of a sudden, without any basis, the second respondent bank, by a letter dated 28.01.2015, classified the loan account of the first petitioner company as Non-Performing Asset [NPA], as on 08.01.2015 and sought to enforce the securities. According to the first petitioner company, there is no basis for the second respondent bank to classify the accounts of the first petitioner company as Non-Performing Assets [NPA] and no ground subsists in terms of the guidelines issued by the Reserve Bank of India. The alleged classification of NPA is without any basis and contrary to the guidelines issued by the Reserve Bank of India.

2.3. However, the second respondent bank, even before the issuance of notice, under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, [hereinafter referred to as the "SARFAESI) Act"], by way of a letter dated 28.01.2015, had imposed additional interest. Thereafter, the first respondent, by proceedings dated 15.04.2015, issued a notice under Section 13(2) of the SARFAESI Act, demanding a sum of Rs.13,77,17,353.26. The petitioners, on receipt of the said demand notice, submitted reply/objection, dated 10.06.2015 under Section 13(3A) of the SARFAESI Act stating that the alleged secured assets, which the respondents sought to proceed under the SARFAESI Act, are agricultural properties, which are clearly exempted under Section 31(i) of the SARFAESI Act. In spite of the above, the first respondent bank gave a vague reply, dated 05.06.2015. The petitioners, thereafter, on receipt of the said reply dated 05.06.2015, sent a detailed rejoinder dated 30.06.2015 to the first respondent bank. However, the first respondent bank, without properly considering the reply/objections submitted by the petitioners, the rejoinder and the proposal for One Time Settlement, issued possession notice dated 04.09.2015 in a hasty manner and took symbolic possession of the properties under Section 13(4) of the SARFAESI Act. Hence, being aggrieved by the said possession notice, dated 04.09.2015, the petitioners preferred an appeal in S.A.No.375 of 2015, along with a Stay Petition and also a petition seeking appointment of Advocate Commissioner, under Section 17 of the SARFAESI Act. Since there was no Presiding Officer at the Debts Recovery Tribunal, Madurai, the above appeal was taken up for hearing before the Debts Recovery Tribunal, Coimbatore [in-charge of the Debts Recovery Tribunal, Madurai], on 05.10.2015.

2.4. After hearing the submissions made by the learned counsel for the petitioners, the Debts Recovery Tribunal, by order dated 05.10.2015, in I.A.No.2039 of 2015 in S.A.No.375 of 2015, granted ad-interim injunction, till 08.02.2016, subject to payment of Rs.86,06,250/-, before the first respondent bank on or before 05.11.2015, as the first installment, a sum of Rs.86,06,250/- as the second installment, a sum of Rs.86,06,250/- as the third installment and a sum of Rs.86,06,250/- as the fourth installment. Aggrieved over the same, the present Civil Revision Petition has been filed.

3. When the Civil Revision Petition came up for hearing, this Court, by order dated 29.10.2015, granted interim stay, insofar as it relates to a direction to the petitioners to make payment, as ordered by the Debts Recovery Tribunal.

4. It is the submission of the learned Senior Counsel for the petitioners that the subject properties being agricultural in nature, where the agricultural activities are going on, the first respondent bank cannot proceed against the same under the SARFAESI Act. In fact, in this regard, according to the learned Senior Counsel, detailed arguments were advanced before the Debts Recovery Tribunal. The learned Senior Counsel further submitted that the Debts Recovery Tribunal has also come to the conclusion that the country maize is being cultivated in the scheduled property. Thus, according to the learned Senior Counsel, after having made a discussion about the nature of the properties, without rendering a specific finding as to whether the properties in question are agricultural lands, which are exempted under Section 31(i) of the SARFAESI Act, the Debts Recovery Tribunal, granted ad-interim injunction, on condition that the petitioners should make payment, as stated above, in four equal installments.

5. The learned Senior Counsel has also invited the attention of this Court to the Judgment rendered by the Andhra Pradesh High Court in Neel Madhav Mining Private Limited, Vs. Union Bank of India reported in III (2006) BC 311, wherein, in Paragraph Nos.14 to 16, it has been held as follows:-

> "14. It is a settled principle Of law that the existence of an alternative remedy is not a bar for exercise of jurisdiction under Article 226 of the Constitution of India, but it is only one of the relevant considerations, which should guide the Court while exercising jurisdiction under Article 226 of the Constitution. In a case like the one before us, where the question is principally about the legality and the jurisdiction of the authority, which initiated action against the petitioners, this Court would not normally be reluctant to deny the access to the Petitioners to, invoke jurisdiction under Article 226 of the Constitution, more particularly where the interpretation of the enactments, which are of recent origin; is involved, and where the precedents are lacking to guide the statutory tribunal constituted under the Act. We, therefore, reject the submission. of learned Counsel for the respondent-Bank based on the availability of an alternative remedy.
>
> 15. Coming to the main question whether the condition such as the one imposed by the impugned order is an irrational one, we accept the submission made by learned Senior Counsel for the Petitioners. The principal question in the appeal before the Debts Recovery Tribunal, which

incidentally is also relevant for the purpose of deciding the interlocutory application as to whether the action of the respondent Bank in invoking Section 13(4) of the Act and-proposing to take possession of the land in dispute is legal and within the jurisdiction of the Bank?. No doubt, Section 13(4)(a) of the Act authorizes the creditor such as the respondent-Bank to take possession of the secured assets of the borrowers. But by virtue of the declaration made under Section 31 of the Act, the provisions of the Act do not apply to "any security interest, Created in agricultural land". Therefore, the expression "secured assets": occurring Under Section 13(4)(a) of the Act must necessarily be interpreted as an asset other than agricultural land. The question; -of course, whether the land in question is an agricultural land or not, requires-to be decided on the basis o appropriate- evidence to be led in the appeal. But, at the stage of considering the interlocutory applications, the Tribunal; while deciding the question whether the creditor can be permitted to take possession of agricultural land or not, cannot totally ignore the plea of the debtor that the 'land is an 'agricultural land and impose a condition such as the one imposed in the impugned order. In our view, such a - condition tantamounts to placing a premium on the constitutional right of the petitioners under Article 300A of the Constitution; Any person, who is not in a position to comply with such an onerous condition would, in effect be deprived of his right to the enjoyment of the property, i.e., agricultural land, a-consequence which is not intended under the scheme of the Act. In the circumstances We are of the opinion that the order under appeal in so far as it granted interim stay of taking of possession of the property in dispute on a condition that the petitioners deposit an amount of Rs.20 lakhs, is an order passed in exercise of the discretion, no doubt, vested in the Tribunal, but We must conclude that such a discretion was exercised irrationally.

16. The object of authorizing the creditors to take possession of the assets of the debtors appears to be to safeguard the interests of the creditors in the event of successful culmination of the proceedings under the Act or under the proceedings before the-Debt Recovery Tribunal. The object could still be achieved by injuncting the

petitioners from alienating the property in -dispute or from creating any. encumbrance in the property or altering its nature or-by ordering both particularly, when the dispute is whether the asset is amenable to the jurisdiction under Section 13(4) of the Act or not".

6. Thus, by relying on the said Judgment, the learned Senior Counsel for the petitioners submitted that before granting the interim injunction with condition, the Debts Recovery Tribunal ought to have rendered a specific finding as to whether the creditor can be permitted to take possession of the agricultural lands or not. However, without rendering a specific finding on this aspect, the Debts Recovery Tribunal, has granted interim injunction by imposing conditions. In this regard, the learned Senior Counsel has relied on an order dated 04.09.2015, made in S.A.No.337 of 2015, passed by the same Presiding Officer of the Debts Recovery Tribunal, wherein, the Presiding Officer, having accepted the submission made by the learned counsel for the petitioner therein that the properties in question are agricultural properties, which are exempted under Section 31(i) of the SARFAESI Act, directed the parties to maintain status-quo.

7. Relying on the said order, the learned Senior Counsel submitted that when the same Presiding Officer had chosen to decide the question as to whether the properties in question are agricultural properties, which are exempted under Section 31(i) of the SARFAESI Act, it is not known as to why such a different yardstick has been followed in the case on hand. Thus, according to the learned Senior Counsel, a similar yardstick has to be applied to the case of the petitioners also. Thus, the learned Senior Counsel sought for remanding the matter back to the Debts Recovery Tribunal for fresh disposal.

8. The respondents bank filed a Miscellaneous Petition in C.M.P.(MD).No.3062 of 2016, seeking to vacate the interim stay granted by this Court. The learned counsel for the respondents bank submitted that at the time when the loan application was processed, the petitioners emphasized that the lands offered as security are vacant lands with prospects of being laid out into plots. Moreover, the sanction letter dated 12.04.2013 issued by the respondents bank refers to the nature of the collateral securities, which clearly shows that the petitioners had separately given agricultural land as also vacant lands as collateral securities and what is of importance is to note that the respondents bank had proceeded only against the vacant lands and not against the agricultural lands. Therefore, according to the learned counsel, there is no infirmity in the order passed by the Debts Recovery Tribunal.

9. We have considered the above submissions made on either side and we have gone through the materials available on record carefully.

10. Irrespective of the submissions made on either side, this Court is of the considered view that before granting an order of interim injunction, the Debts Recovery Tribunal ought to have rendered a specific finding as to whether the properties in questions are agricultural lands, which are exempted under Section 31(i) of the SARFAESI Act. On a perusal of the order passed by the Debts Recovery Tribunal, it is seen that no such finding was rendered by the Tribunal. Therefore, we are of the considered view that the order passed by the Debts Recovery Tribunal is to be set aside and the matter is remitted back to the Tribunal for fresh disposal.

11. In the result, the order dated 05.10.2015, made in I.A.No.2039 of 2015 in S.A.No.375 of 2015, on the file of the Debts Recovery Tribunal, Madurai, is set aside and the matter is remitted back to the Tribunal with a direction to the Tribunal to render a specific finding as to whether the properties in question are agricultural lands, which are exempted under Section 31(i) of the SARFAESI Act or not. It is made clear that this Court has not expressed any opinion on the merits of the case and it is for the Debts Recovery Tribunal to decide the issue purely on merits and pass appropriate orders. Such exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

12. The Civil Revision Petition is allowed to the extent indicated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

The Presiding Officer,
Debts Recovery Tribunal, Madurai.

+1cc to M/S.Vastlaw Associates in SR No.81766
+1cc to M/s.A.R.M.Ramesh, Advocate in SR No.81582

ORDER MADE IN
C.R.P.[MD].No.2355 of 2015
16.12.2016

nb
msk/gsv-pm/11.01.2017/7p/4c