

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
and
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Writ Petition No.7762 of 2017
and
W.M.P.Nos.8491 & 12886 of 2017

H.Mohamed Ismail ... Petitioner

Vs

The Authorised Officer,
Punjab National Bank,
Asset Recovery Management Branch,
448-A, Dr.Nanjappa Road,
Coimbatore 641 018. ... Respondent

Prayer : Writ petition is filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus to direct the Respondent to defer all further precipitative actions pursuant to the Auction Sale Notice dated 03.03.2017 issued under SARFAESI Act or any further notice, pending disposal of S.A.No.67 of 2017 on the file of DRT, Madurai.

For Petitioner : Mr.E.Om Prakash,
Senior Counsel
for M/s.Ramalingam and Associates

For Respondent : Mr.M.L.Ganesh

ORDER

(Order of the Court was made by Huluvadi G.Ramesh.J.,)

Seeking a direction to the respondent to defer all further precipitative actions pursuant to the Auction Sale Notice dated 03.03.2017 issued under SARFAESI Act or any further notice, pending disposal of S.A.No.67 of 2017 on the file of Debts Recovery Tribunal, Madurai, the petitioner is before this Court with this writ petition.

2.Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3.According to the petitioner, he is one of the partners in M/s.RMB Granite Quarries and M/s.K.S.Granites. The other

partners are the family members of the petitioner and they have been carrying on business in the name and style as stated above thereby complying all statutory regulations. The said firms had availed credit facilities from Punjab National Bank for working capital requirements, against execution of necessary loan documents and creation of securities as stipulated by the Bank. Since the firms, the other partners being the borrowers and the guarantors/mortgagors to the facilities availed from Punjab National Bank have filed S.A.No.67 of 2017 on the file of the Debts Recovery Tribunal, Madurai, aggrieved by the classification of the accounts under SARFAESI Act and the same is pending.

4. In the mean while, the respondent Bank issued an auction sale notice on 03.03.2017. This according to the petitioner amounts to illegal as the matter is pending before the Debts Recovery Tribunal. Hence, the petitioner is before this Court with this writ petition. While issuing notice to the respondent, this Court on 28.03.2017, had granted an order of injunction on condition that the petitioner shall deposit rupees one crore within the stipulated period.

5. On 01.06.2017, this Court has passed the following order in W.P.No.7762 of 2017 and W.M.P.Nos.8491 & 12886 of 2017 :-

"In W.P.No.7762 of 2017 and W.M.P.No.8491 of 2017 by order dated 28.03.2017, this Court has granted interim injunction on condition that the petitioner shall deposit a sum of Rs.1,00,00,000/- (Rupees one crore only), within a period of four weeks from the date of order.

2. Today, the learned counsel for the petitioner submitted that due to financial constraint, the petitioner has paid only a sum of Rs.50,00,000/- (Rupees fifty lakh only), and hence, now, he has come up with W.M.P.No.12886 of 2017, seeking extension of time for payment of the balance amount of Rs.50,00,000/- (Rupees fifty lakh only) to the respondent as per the order of this Court, dated 28.03.2017. To prove his bona fide, the petitioner has also come up with a demand draft for a sum of Rs.50,00,000/- (Rupees fifty lakh only).

3. In view of the above, there shall be an order of interim injunction from today till 06.06.2017, on condition that the petitioner shall deposit the balance amount of Rs.50,00,000/- (Rupees fifty lakh only) on or before 02.06.2017.

Call the matter on 06.06.2017. In the meanwhile, the respondent can file an objection, if any."

6.The respondent Bank has filed a detailed counter affidavit wherein, in paragraph No.18, it has been held as follows:-

"18.I stoutly deny the statement made in the above writ petition that the sale notice dated 03.03.2017 is unjustified which is absolutely misconceived and ill-founded statement. In order to recover the public money, the secured creditor has got every right to issue sale notice as and when necessary. The petitioner cannot preclude the secured creditor from bringing the secured properties for auction just because the S.A is pending on the file of DRT, Madurai which relates to sale notice dated 20.01.2017 and the same had become in-fructuous for want of bidders. In-fact, the sale notice dated 03.03.2017 which is under challenge in the above writ petition has also become in-fructuous for want of bidders due to interim stay granted by this Hon'ble Court."

7.In view of the above position, the petitioner is directed to approach the Debts Recovery Tribunal for further proceeding and the Debts Recovery Tribunal is directed to take into consideration the deposit made by the petitioner as directed by this Court while making final calculation.

8.With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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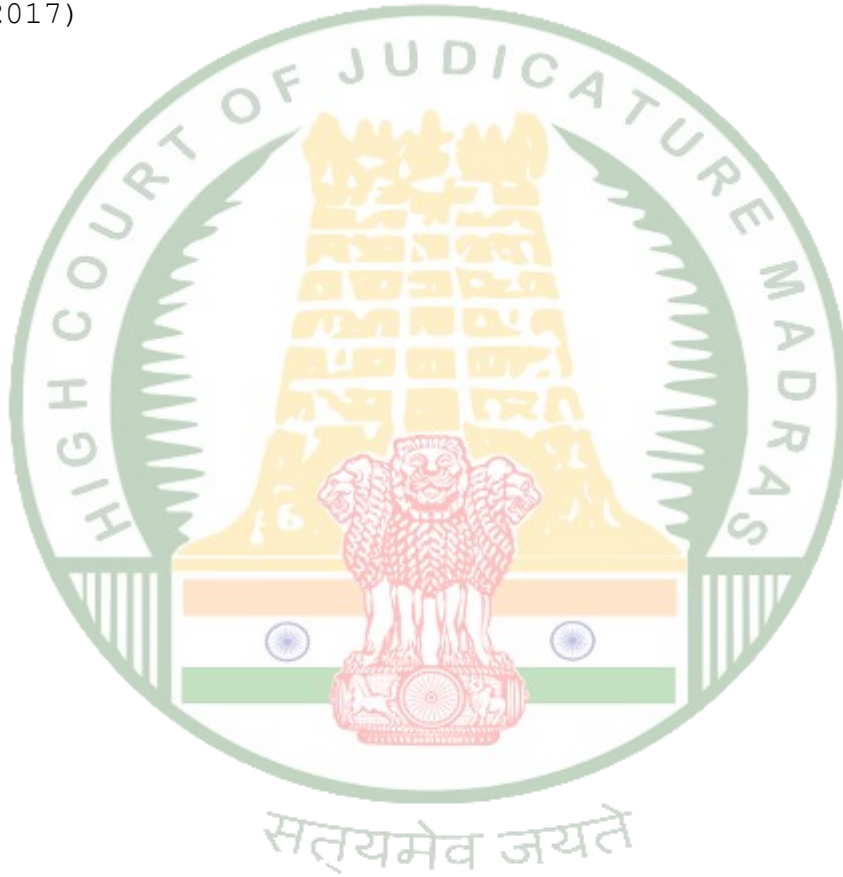
1.The Authorised Officer,
Punjab National Bank,
Asset Recovery Management Branch,
448-A, Dr.Nanjappa Road,
Coimbatore 641 018.

2.The Debts Recovery Tribunal,
Madurai.

+2cc's to M/s.Ramalingam and Associates, Advocate,
S.R.No.40180
+1cc to Mr.M.L.Ganesh, Advocate, S.R.No.40136

W.P.No.7762 of 2017

SS (CO)
CA(04/07/2017)



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