

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2007

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.Nos.14827 and 14828 of 2015
and

M.P.Nos.1 of 2015

M/s.Arunachala Agro Products (P) Ltd.,
Represented by its Managing Director,
V.Vediappan
Kavandanoor Village & Post
Mathur, Dharmapuri District .. Petitioner in
W.P.No.14827/2015

M/s.Karpagam Agro Hi-Techs
India (P) Ltd.,
Represented by its Managing Director,
V.Vediappan
Kavandanoor Village & Post
Mathur, Dharmapuri District .. Petitioner in
W.P.No.14828/2015

versus

1.The Authorised Officer,
State Bank of India,
Stressed Assets Recovery Branch
No.32, Montieth Road, 2nd Floor
Chennai - 8

2.The Senior Manager
State Bank of India
Palacode Branch
Palacode, Dharmapuri District .. Respondents in both the
Writ Petitions

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of declaration declaring the proceedings initiated in pursuance of the Possession Notice dated 11.01.2012 by the 1st respondent pertaining to the sale notice dated 11.05.15 published in New Indian Express, Coimbatore Edition dated 11.05.15 relating to the secured asset of the petitioner is nonest in the eye of law.

For Petitioner in both : Mr.S.Gowrishankar
writ petitions

For Respondents in both : Mr.P.Elaya Rajkumar
writ petitions for Ramalingam Associates

O R D E R
(made by S.MANIKUMAR, J.)

M/s.Arunachala Agro Products, petitioner in W.P.No.14827/2015 and M/s.Karpagam Agro Hi-Techs India (P) Ltd., petitioner in W.P.No.14828/2015, firms represented by its Managing Director Mr.V.Vediappan, have sought for a writ of mandamus declaring the proceedings initiated in pursuance of the Possession Notice dated 11.01.2012 by the Authorised Officer, State Bank of India, Stressed Assets Recovery Branch, Chennai/1st respondent pertaining to the sale notice dated 11.05.15, published in New Indian Express, Coimbatore Edition dated 11.05.15, relating to the secured asset of the petitioners as nonest in the eye of law, on the grounds inter alia that, no sooner the bank has issued a notice dated 04.11.2011 under Section 13(2) of the SARFAESI Act, 2002, a reply dated Nil under Section 13(3-A) of the said Act, was sent by the borrowers, and that the same was acknowledged by the bank on 17.12.2011. Though the bank is statutorily obligated to consider such representation or objection and send a reply within 15 days from the date of receipt of representation/objection, and whether such representation or objection, is acceptable or not with reasons, the bank has proceeded under Section 13(4) of the Act on 11.01.2012 and that therefore, the whole proceedings initiated under the SARFAESI Act, 2002 are vitiated and therefore, the borrowers have prayed to issue a writ of declaration, as stated supra. In support of their contention, the petitioners have place reliance on an order of the Hon'ble Division Bench of this court in IFCI v. DRAT & Others reported in 2011 CIJ 287 CLJ.

2. Per contra, Mr.P.Elaya Rajkumar, learned counsel for the respondent bank, submitted that earlier when M/s.Arunachala Agro Products (P) Ltd., and M/s.Karpagam Agro Hi-Techs India (P) Ltd., filed writ petitions in W.P.Nos.18120 and 18121 of 2012 respectively, for a mandamus directing the bank to consider and pass orders on the representations submitted by the petitioners dated 14.05.2012, 15.05.2012 and 22.05.2012, in accordance with Section 13(3-A) of the SARFAESI Act, 2002. Vide common order dated 16.07.2012 in the said writ petitions, this court, after considering the prayer sought for and the submissions made by the parties, permitted the petitioners therein, to raise the said grounds of challenge to the subsequent proceedings, which the petitioners are entitled by way of an application under

Section 17 of the SARFAESI Act, 2002. While doing so, the Hon'ble Division Bench of this court, has observed that, as the petitioners had approached this court, after the subsequent proceedings have taken place, which had gone up to the stage of issuance of Sale Notice, the relief sought for in the above writ petitions, cannot be granted. Accordingly, the Hon'ble Division Bench of this court, has dismissed both the writ petitions, without prejudice to the rights of the petitioners to raise all the contentions before the appropriate forum.

3. Material on record discloses that, there after, the petitioners, have filed SARFAESI Appeals in S.A.Nos.235 and 236 of 2012, before the Debts Recovery Tribunal - III, Chennai to set aside the alleged sale notice dated 30.06.2012 issued by the respondent bank and published in "Dina Thanthi" daily issue (Krishnagiri District) dated 30.06.2012, fixing the date of auction sale on 30.07.2012, in respect of the schedule mentioned properties and prayed for other reliefs.

4. Admittedly, in S.A.Nos.235 and 236/2012, the petitioners, have raised the ground of non-consideration of representations/objections, stated to have been made under Section 13(3-A) of the SARFAESI Act, 2002.

5. Material on record discloses that S.A.No.235/2012 has been dismissed on 26.03.2014. S.A.No.236/2012 was also dismissed on the same day. Applications M.A.No.104/2014 in S.A.No.235/2012 has been filed by M/s.Arunachala Agro Products (P) Ltd and I.A.No.708/2014 in M.A.No.105/2014 in S.A.No.236/2012, has been filed by M/s.Karpagam's Agro Hi-Techs India Pvt Ltd. & two others, to restore, S.A.No.235/2012 and S.A.No.236/2012 respectively.

6. Material on record discloses that when the above said Miscellaneous Applications were posted for hearing on 27.04.2014, there was no representation on behalf of the writ petitioners/applicants. Extract of the proceedings dated 27.08.2015 in M.A.No.104/2014 in S.A.No.235/2012 is reproduced hereunder:

" DEBTS RECOVERY TRIBUNAL - III
CHENNAI
SA 235/2012
Matter between

Mr.Arunachala Agro Products (P) Ltd
& 2 Others ... Applicants

Vs

A.O. State Bank of India,
Palacode Branch,
Dharmapuri Dist.

... Respondent

TRUE EXTRACT OF PROCEEDING DATED 27.08.2015

MA No.104/2014 in SA No.235/2012
27.08.2015

This petition is filed to restore the SA challenging the sale notice which is dismissed on 23.6.2014 as infructuous in view of the sale not being held on scheduled date. It is the case of the applicants that they ought to have been heard before passing nay orders and despite the orders from the Hon'ble High Court in the writ petition filed by them and the reasons stated in the affidavit further goes to say that the petitioner/Managing Director of the first applicant firm has made with a series of accidents and therefore could not appear before this Tribunal on 23.6.2014 for prosecuting the dismissed SA and therefore could not avail the opportunity of making final submissions to this Tribunal. However, it is observed that it is the counsel who has to present the case and not the petitioner himself when the matter is dismissed as infructuous. Even in the application to restore the said SA, no additional grounds are raised, but the grounds that are raised in the SA are only requested to consider as the grounds that they wish to urge, for which appropriate counter has already been filed by the respondent bank, which is not rebutted by the applicants. Notwithstanding the above factual matrix there is no representation for the applicants in the last three consecutive adjournments while the respondent bank hs filed its counter, which copy is also served on the applicants, but they did not choose to represent or prosecute the matter in its right earnest. Hence this MA is liable to be dismissed. Accordingly, the MA No.104/2015 is dismissed for default for non-prosecution, however, without costs. Consequently, all other IAs pending if any are also disposed of.

Sd/-
Po"

7. Extract of the proceedings dated 27.08.2015 in I.A.No.708/2014 in M.A.No.105/2014 in S.A.No.236/2012 is reproduced hereunder:

" DEBTS RECOVERY TRIBUNAL - III
CHENNAI
SA 236/2012
Matter between

M/s.Karpagam's Agro Hi-Techs India Pvt Ltd
& 2 Others ... Applicants

Vs

A.O. State Bank of India,
Palacode Branch,
Dharmapuri Dist. ... Respondent

TRUE EXTRACT OF PROCEEDING DATED 27.08.2015

IA No.708/2014 in MA No.105/2014 in
27.08.2015
SA No.236/2012

This petition is filed to restore the SA challenging the sale notice which is dismissed on 23.6.2014 as infructuous in view of the sale not being held on scheduled date. It is the case of the applicants that they ought to have been heard before passing nay orders and despite the orders from the Hon'ble High Court in the writ petition filed by them and the reasons stated in the affidavit further goes to say that the petitioner/Managing Director of the first applicant firm has made with a series of accidents and therefore could not appear before this Tribunal on 23.6.2014 for prosecuting the dismissed SA and therefore could not avail the opportunity of making final submissions to this Tribunal. However, it is observed that it is the counsel who has to present the case and not the petitioner himself when the matter is dismissed as infructuous. Even in the application to restore the said SA, no additional grounds are raised, but the grounds that are raised in the SA are only requested to consider as the grounds that they wish to urge, for which appropriate counter has already been filed by the respondent bank, which is not rebutted by the applicants. Notwithstanding the above factual matrix there is no representation for the applicants in the last three consecutive adjournments while the respondent bank hs filed its counter, which copy is also served on the applicants, but they did not choose to represent or prosecute the

matter in its right earnest. Hence this MA is liable to be dismissed. Accordingly, the MA No.105/2015 is dismissed for default and for non-prosecution, however, without costs. Consequently, all other IAs pending if any including IA No.708/2014 are also disposed of.

Sd/-
Po"

8. Thus, from the above, it could be seen that this court vide common order dated 16.07.2012 made in W.P.Nos.18120 and 18121 of 2012 has observed and granted liberty to the petitioners therein stating that in any event, if the representation/objection under Section 13(3-A) was not considered, it was always open to the petitioners to raise the said ground, as one of the grounds of challenge to the subsequent proceedings, which the petitioners are entitled by way of an appeal under Section 17 of the SARFAESI Act, 2002, and further observed that, as the petitioners therein, have approached the court, after the subsequent proceedings have been taken place, which had gone upto the stage of issuance of sale notice, the relief cannot be granted and thus gave the liberty to the petitioners to raise all the contentions before the appropriate forum.

9. Contending inter alia that the petitioners have sent their representation dated Nil, which the bank has acknowledged by letter dated 17.12.2011 and not responded, on other grounds inter alia, the writ petitioners have once again filed the instant writ petitions for the very same prayer.

10. When the Tribunal, has found that the writ petitioners have continuously absented themselves for more than three occasions, and thus dismissed M.A.Nos.104 and 105 of 2014, the applicants therein, have not chosen to file a statutory appeal, against the order dated 27.08.2015, before the Debts Recovery Appellate Tribunal. Instead, they have chosen to file the instant writ petitions to declare the proceedings initiated in pursuance of the Possession Notice dated 11.01.2012 by the 1st respondent pertaining to the sale notice dated 11.05.15 published in New Indian Express, Coimbatore Edition dated 11.05.15 relating to the secured asset of the petitioner as nonest in the eye of law.

11. During the course of hearing, Mr.P.Elaya Rajkumar, learned counsel for the respondent bank, submitted that when the writ petition Nos.18120 and 18121 of 2012 were disposed of on 16.07.2012, it was brought to the notice of this court, that sale notice dated 30.06.2012 was already issued and taking note

of the same, by the above said common order, both the writ petitions were dismissed. While that be so, in the present writ petitions, petitioners have sought for a declaration, declaring the proceedings initiated in pursuance of the Possession Notice dated 11.01.2012 by the 1st respondent pertaining to the sale notice dated 11.05.15 published in New Indian Express, Coimbatore Edition dated 11.05.15 relating to the secured asset of the petitioner is nonest in the eye of law. Earlier when the sale notice dated 30.06.2012 was issued, writ petitioners raised the same grounds. In the present writ petitions, when the subsequent notice dated 11.05.2015, has been issued, petitioners have filed instant writ petitions on the very same grounds. We do not find any material change in the situation or substantive grounds warranting issuance of any declaration as prayed for.

12. From the above, it could be deduced that the conduct of the petitioner is to protract the proceedings initiated under SARFAESI Act, 2002 for recovery of public money. Though Mr.S.Gowri Shankar, learned counsel for the petitioner placed reliance on the order of the Hon'ble Division Bench of this court in IFCI v. DRAT & Others reported in 2011 CIJ 287 CLJ and contended that there is violation of statutory provisions and therefore, the whole proceedings has to be declared null and void, in the light of the earlier decision of this court in W.P.Nos.18120 and 18121 of 2012 dated 16.07.2012, which is a judgment in personam, this court is of the view that the writ petitions deserve to be dismissed with costs.

In the result, both the writ petitions are dismissed with costs, quantified at Rs.5,000/-. The cost should be paid to the Director, Social Defence, Juvenile Justice Fund, for the welfare of the Children, who require care and protection, to be paid within 10 days from the date of receipt of a copy of this order. Post the matter for compliance on 19.01.2017. Consequently, all the connected miscellaneous petitions are closed.

सत्यमेव जयते

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

asr

+4 ccs to M/s.Ramalingam Associates Advocate
sr 1234,1235

+1 cc to M/s.G.Jeremiah Advocate sr 1528

W.P.Nos.14827 and
14828 of 2015

aa06/01/2017



WEB COPY