IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 19/12/2017
C O R A M
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE R.PONGIAPPAN

Civil Revision Petition No.4679 of 2017

1. Smt. Alli
proprutor of Mam Spinning Mills,
no.678/5, Murugan Kathi Valasu, Olapalayam,
Kangayam Taluk,
Tirupur District.

2. Thiru.M.A.Mohanraj

3. Smt.A.Nallammal

4. Thiru.M.A.Mohanraj
propretor of Phareesh Textiles,
no.330, Murugan Kathi Valasu, Olapalayam
kangayam Taluk,
Tirupur District. ...Petitioner/Applicants

vs

The Authorised Officer
City Union Bank Ltd
No.24 B Gandhi Nagar
Kumbakonam 612 001. ...Respondent/Defendants

Petition filed under Article 227 of the Constitution of India against the Proceeding Order, dated 20/11/2017, passed in S.A.No.341 of 2017, on the file of the Debts Recovery Tribunal, Coimbatore, seeking to set aside the same.

For petitioners ... Mr.R.Naga Sundaram

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O R D E R

(Order of the Court was made by S.MANIKUMAR, J)

Proceeding impugned in the instant Civil Revision Petition, dated 20/11/2017, is as follows:-

PROCEEDINGS ORDER DATED 20.11.2017

"Learned counsel Mr.S.Durairaj is appearing for Applicant. Applicants are appearing in person. Learned counsel Mr.T.R.Jeganathan filed vakalat for R/B.

IA 2231/17, Stay Petition and IA 2232/17, Direction Petition are pending. Counter not filed. Heard both. SARFAESI Proceedings copies furnished. For perusal and orders after lunch.

I.A.No.2231/17: (Stay Petition). This petition has been filed by the Petitioners/Applicants to stay all further proceedings in pursuant to the impugned e.auction sale notice dated 21.09.2017 and the sale which was held on 07.11.2017.

The learned counsel for the Petitioners/Applicants would submit that the Respondent Bank without following the guidelines issued by the RBI, classified the account as 'NPA', and without following the procedures contemplated S.13(2) and S.13(4) of the SARFAESI Act and R.8(6) and 9(1) of the Security Interest (Enforcement) Rules, issued the impugned auction sale notice. The learned counsel further would submit that the property has been undervalued and without considering the OTS proposal the R/Bank is proceeding against the property which has to be stayed.

The learned counsel for the R/Bank objected to the plea of the Petitioners/Applicants on the ground that all the procedures contemplated under the SARFAESI Act and Rules were scrupulously followed and the sale was conducted on 07.11.2017 and the successful bidder has paid 25% of the bid price and the sale was confirmed in his favour, but the Sale Certificate is yet to be issued in favour of him. The learned counsel sought to dismiss the petition.

Having taken into consideration that the secured assets is a dwelling house, this Tribunal is of the view that if a chance is given to the Petitioners/Applicants, to prove their bona fides, it would meet the interest of justice and natural justice. Accordingly, Ad Interim Injunction is granted against the R/Bank not to issue the Sale Certificate till 23.01.2018, subject to payment of Rs.98,00,000/- directly before the Respondent Bank, on or before 20.12.2017, as 1st instalment, and another sum of Rs.98,00,000/- directly before the Respondent Bank, on or before 22.01.2018, as 2nd instalment. However, in the event of failure to pay even a single instalment, as ordered above, the Ad Interim Injunction granted not to issue the Sale Certificate till23.01.2018, shall stand vacated automatically and thereafter, the Respondent Bank is at liberty to proceed against the secured assets, as per law. It is also made specifically clear that the Respondent Bank is at liberty to proceed against the secured assets, subject to the above conditions.

Call on 23.01.2018. Counter, R/S and PP by then.

I.A.No.2232/17: (Direction Petition). This petition has been filed by the Petitioners/Applicants to direct the Respondent Bank to furnish the documents listed out in the petition.

The documents sought for are pertaining to the impugned e-auction sale. Hence, in view of the order passed in I.A.No.2231/17, this petition is allowed. No costs. The R/Bank is directed to furnish the documents sought for in this petition also by then. Call on 23.01.2018."

2. With the limitation in exercise of jurisdiction, under Article 227 of the Constitution of India, in the matter of interference with interim orders, Mr.R.Nagasundaram, learned counsel for the petitioners, drew the attention of this Court, to the decision in AIR 1999 SC 1975 (Industrial Credit and Investment Corporation of India Ltd Vs. Grapco Industries Ltd., and Ors), wherein, after considering the provisions of various enactments, enabling grant of interim order, the Hon'ble Apex Court, held as follows:-

Further, when power is given to the Tribunal to make interim order by way of injunction or stay, it inheres in it the power to grant that order even ex parte, if it is so in the interest of justice and as per the requirements as spelt out in the judgment of this Court in Morgan's case which has been quoted above.

An ex parte order is only of short duration and it is granted to safeguard the interest of the applicant, but, at the same time, such an order cannot be granted as a matter of course. A Court or Tribunal has also to consider the consequences of such an order if ultimately the order is to be revoked after hearing the defendant. In such circumstances, the Tribunal must put the applicant on terms while granting an ex parte order and compensate the defendant in case the ex parte order was obtained without any justification and harm has been caused to the defendant. It must be remembered that an ex parte order can also affect the reputation of the person against whom it is issued and sometimes it may be difficult to undo the damage caused by an interim order. A Tribunal while granting ex parte order of stay or injunction must record reasons, may be brief one, and cannot pass a stereo- typed order in terms of the prayer made. Then an ex parte order cannot be allowed to continue indefinitely and the continuance of interim order has to be decided without undue delay when the defendant puts in his appearance. It is not necessary to near long drawn arguments. Principles on which an interim order can be granted are well settled. Sub-section (8) of Section 19 requires that application for recovery of debt itself is to be disposed of finally within a period of six months from the date of. receipt of the application. That also shows the urgency to decide is an interim order of injunction or stay granted ex parte is to be continued or not. In our view, the High Court was not correct in holding that a Tribunal under the Act has no power to grant an ex parte order of injunction or stay.

High Court also said that on merits as well the Tribunal was wrong in granting an ex parte order. It is not that High Court itself considered the merits of the case. Objection of the High Court was twofold :(1) the Tribunal did not give any reasons and (2) it was an omnibus order and that there was no reference even to prayers in the application and that the prayers stood allowed "in terms of entire hog". Criticism of the High Court appears to be correct on that account. Judgment of the High Court, however, does not refer at all to the facts of the case and it proceeds more on abstract principles of law. There was no bar on the High Court to itself examine the merits of the case in the exercise of its jurisdiction under Article 227 of the Constitution if the circumstances so require. There is no doubt that High Court can even interfere with interim orders of the courts and tribunals under Article 227 of the Constitution if the order is made without jurisdiction. But then a too technical approach is to be avoided. "

3. Though the learned counsel for the petitioner drew the attention of this Court to the various loans mentioned in the Notice, dated 27/4/2017, issued under Section 13 (2) of the SARFAESI Act, 2002, and contended that some of them have been sizeably scaled down, perusal of the said notice shows that as on 27/4/2017, a sum of Rs.3,65,80,134/- was due. There are no materials indicating payment, but OTS offered by the writ petitioners, has been rejected, vide letter, dated 4/8/2017, and consequently, auction notice has been issued. When the petitioners sought for an interim injunction against the bank, not to issue the sale certificate, the Debt Recovery Tribunal, Coimbatore, vide proceeding, dated 20/11/2017, in S.A.No.341 of 2017, has granted interim injunction against the Bank not to issue sale certificate till 23/1/2018, subject to the payment of Rs.98 lakhs, directly before the respondent bank, on or before 20/12/2017, as first instalment and another sum of Rs.98 lakhs, on or before 22/1/2018, as second instalment. While doing so, Debt Recovery Tribunal, Coimbatore, has further ordered that in the event of failure to pay even a single instalment, ad interim injunction granted, vide proceeding dated 20/11/2017, would stand vacated automatically and thereafter, bank would be at liberty to proceed against the secured assets, as per law.

4. Learned counsel for the petitioners submitted that there are three schedules in the notice issued under Section 13 (2) of the SARFAESI Act, 2002, dated 27/4/2017. Perusal of the same shows that there are 12 immovable properties, out of which dwelling house and two factory units have been hypothecated.

5. Learned counsel for the petitioners further submitted that out of the above said schedules, three properties have been sold for value of Rs.49.86 lakhs. Now that Bank has realised Rs.25% of the sale price.

6. Considering the fact that three properties involved in this lis a dwelling house and two residential plots and and in the light of the pronouncement of the Hon'ble Supreme Court, in Industrial Credit and Investment's case, stated supra, in the matter of grant of interim orders, and taking note of the contention that there was some difficulty in generating resources, for repayment of the loan, when the entire properties of the writ petitioners were subjected to mortgage with the Bank, and in exercise of the powers under Article 227 of the Constitution of India, we are inclined to interfere with the proceeding impugned before us, to an extent of modifying the order, directing the petitioners, to pay a sum of Rs.70,00,000/- (Rupees Seventy lakhs only), to the Bank, within a period of four weeks from today, as first instalment and another Rs.70 lakhs, within four weeks, thereafter, as second instalment. There shall be an order of interim injunction, restraining the City Union Bank Ltd.,

Kumbakonam, from issuing sale certificate, subject to compliance of the above said condition, within the time stipulated. However, it is made clear that for the failure of any of the above, interim injunction granted by this Court will stand vacated automatically, without any further reference. Petitioner is permitted to file a memo setting out the details of this order to the Tribunal.

7. With the above modification, this writ petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Debts Recovery Tribunal, Coimbatore,

2. The Authorised Officer
City Union Bank Ltd
No.24 B Gandhi Nagar
Kumbakonam 612 001.

+1cc to Mr.R.Nagasundaram, Advocate, S.R.No.90957

Civil Revision Petition No.4679 of 2017

CNR(CO)

RRK(20/12/2017)