

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2017

CORAM

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.34453 OF 2014
AND M.P.NO.1 OF 2014

S.Kathiravan .. Petitioner

VS.

1.Indian Overseas Bank
Rep. By its Authorised Officer
New Marine Line Branch
Mumbai.

2.M/s.Velavan Impex (P) Ltd., (Chennai Unit)
No.27/1, Jambulingam Street,
Nungambakkam,
Chennai - 600 034.

3.T.Jaikumar

4.T.Lakshmi

5.The Presiding Officer
Debts Recovery Tribunal - III
Chennai. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records relating to S.A.No.385 of 2014 on the file of Debt Recovery Tribunal - III, Chennai and quash the order of the 5th respondent dated 25.11.2014 and to direct the 5th respondent to dispose of the S.A.No.385 of 2014 on the file of Debt Recovery Tribunal - III, Chennai afresh in accordance with the law.

For Petitioner : Mr.S.Kalyanaraman
For Respondent-1: Mr.F.B.Benjamin George

O R D E R
(ORDER OF THE COURT WAS MADE BY M.GOVINDARAJ, J.)

Challenging the order dated 25.11.2014 passed in S.A.No.385 of 2014 by the Debts Recovery Tribunal - III, Chennai, the fifth respondent herein and for a consequential direction to dispose of S.A.No.385 of 2014 afresh in accordance with law, the petitioner has come up with the present writ petition.

2. The petitioner is the former Director of the second respondent company; third respondent is the Director of the second respondent company and the fourth respondent is the guarantor for the loan availed by the second respondent company from the first respondent Bank. The first respondent Bank sanctioned various credit facilities to the second respondent Company on 31.01.2009, to which, the third and fourth respondents stood as guarantors. The fourth respondent offered her property at Vellore as collateral security for the loan sanctioned in favour of the second respondent company.

3. The second respondent company had two Units, one at Mumbai and another at Chennai. In June 2010, it was decided to split the credit facilities between Mumbai and Chennai Units. The first respondent Bank has agreed for the said proposal and also issued fresh sanction advice on 12.06.2010 and separate credit facilities were granted to the second respondent company for both units. Consequent on the bifurcation of the two units, they became independent entities, as per the fresh sanction advice on 12.06.2010.

4. While so, the first respondent Bank treating M/s.Velavan Impex Pvt. Ltd., one unit, as a whole, issued a notice dated 24.08.2012, under Section 13(2) of the SARFAESI Act, demanding a sum of Rs.4,89,75,704/-being the amount due from the company towards outstanding dues. The second respondent company (Chennai unit) filed objections that the composite notice is not legally valid. The second respondent (Chennai Unit) gave several proposals and the same were rejected by the first respondent Bank. Further, the first respondent Bank proceeded to take steps under Section 13(4) of the SARFAESI Act by taking symbolic possession of the property offered as a collateral security by the fourth respondent, who stood as a guarantor, on 25.04.2013. Against which, the writ petitioner has filed S.A.No.385 of 2014 under Section 17 of the SARFAESI Act on various grounds before the Debts Recovery Tribunal - III, Chennai.

5. Before the Debts Recovery Tribunal - III, Chennai, the first respondent Bank filed a counter stating that the bifurcation of the loan was made for operational convenience and

the Cash Credit limit of Rs.350 Lakhs and Packing Credit limit of Rs.100 Lakhs were clubbed together and the total limit of Rs.450 Lakhs was re-allocated to the Chennai and Mumbai units for Rs.130 Lakhs and Rs.320 Lakhs and the Term Loan of Rs.285 Lakhs was also renewed. Thereafter, one more CC Account No.7442 was opened for Chennai Unit retaining the old Account No.7138 for Mumbai Unit also. Therefore, the averment that two units are separate was incorrect and therefore, it is stated that the action taken by the first respondent Bank is very much legal. It was also stated that no supplemental mortgage was created for Chennai Unit and no fresh guarantee documents were executed by the petitioner as well as respondents 3 and 4. On 12.12.2011, the first respondent Bank renewed the limits and issued a sanction letter stating that the liability is restricted to the dues of Chennai Unit only. But by letter dated 25.07.2012, the second respondent company requested to accept the dues of Chennai Unit and release the documents besides receiving them from personal liability. But it was not agreed. Therefore, the sanction letter dated 12.06.2010 had become ineffective and inoperative and the notices issued under Sections 13(2) and 13(4) of the SARFAESI Act treating the second respondent company as a single unit are valid. Further, the objections raised by the writ petitioner was also considered and the same was rejected on 26.11.2012. The account was classified as NPA on 31.03.2012 as per RBI guidelines and the confirmation letter dated 20.06.2012 executed by the second respondent for the dues of Chennai Unit reveal that the petitioner and the respondents 2 to 4 are liable to pay the dues to the first respondent Bank.

6. The Debts Recovery Tribunal - III, Chennai, vide its order dated 25.11.2014, has considered all those points and dismissed S.A.No.385 of 2014, against which, the present writ petition came to be filed.

7. We have heard the contentions of the respective counsels appearing for the parties.

8. At the outset, the short question arises for consideration is as to whether the writ petition filed against the order dated 25.11.2014, passed in S.A.No.385 of 2014, by the Debts Recovery Tribunal - III, Chennai, without exhausting the appeal remedy available under Section 18 of the SARFAESI Act is maintainable or not.

9. In this regard, it is relevant to extract Section 18 of the SARFAESI Act, which is as follows:

"18. Appeal to Appellate Tribunal: - (1)
Any person aggrieved, by any order made by the
Debts Recovery Tribunal under section 17, may

prefer an appeal alongwith such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal: PROVIDED that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower: PROVIDED FURTHER that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less: PROVIDED ALSO that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso. (2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder."

Therefore, in the considered opinion of this Court, the writ petitioner is entitled to file an appeal under Section 18 of the SARFAESI Act before the Debts Recovery Appellate Tribunal, against the order dated 25.11.2014 passed in S.A.No.385 of 2014, by the Debts Recovery Tribunal - III, Chennai.

10. Further, the Hon'ble Supreme Court in KANAIYALAL LALCHAND SACHDEV AND OTHERS VS. STATE OF MAHARASHTRA AND OTHERS [2011 (2) SCC 782] and UNITED BANK OF INDIA VS. SATYAWATI TANDON AND OTHERS [Civil Appeal No. Nil of 2010 SLP (C) No.10145 of 2010 - decided on 26.07.2010] has categorically held that exercise of power under Article 226 of the Constitution of India is not available without exhausting the appeal remedy provided under Section 18 of the SARFAESI Act.

11. In this regard, it is relevant to note that the Supreme Court in Satyawati Tandon's case (cited supra) has held as follows: "30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.

The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law."

12. Further, a Division Bench of this Court in M.R.MOTOR COMPANY VS. THE FEDERAL BANK LTD., AND OTHERS [W.P.No.40445 of 2016 decided on 18.11.2016] wherein one of us (S.Manikumar, J) has passed an order following the judgment of the Supreme Court in KANAIYALAL LALCHAND's case cited supra, wherein it is clearly mentioned that the action under Section 14 of the SARFAESI Act constitutes an action after the stage of 13(4) and therefore, the same would fall within the ambit of Section 17(1) of the SARFAESI Act. It has also been held that when there is an efficacious remedy available under the Act, without exhausting the remedy, the writ petition is not maintainable. Further, the Supreme Court has categorically held that the litigants cannot be permitted to bypass the statutory remedy available under the SARFAESI Act and take recourse to the proceedings under Article 226 of the Constitution of India. Therefore, the writ petitioner must have exhausted the alternative remedy.

13. It is also mandated that the writ petitions without exhausting the appeal remedy are not maintainable under Article 226 of the Constitution of India in view of the judgments cited supra. Therefore, we are not inclined to delve into the factual aspects of the matter, it is fit leave for the consideration of the appellate forum.

14. In fine, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. However, it is open to the writ petitioner to work out his remedy in the manner known to law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TK

To

1.The Presiding Officer
Debts Recovery Tribunal - III
Chennai.

+1cc to Mr.S. Kalyana Kumar, Advocate, S.R.No.9650

ks (CO)
md(03/03/2017)

W.P.NO.34453 OF 2014

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