

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2017

CORAM

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

W.P.NO.18216 OF 2016

AND WMP NO.15963 OF 2016

Deccan Chronicle Employees' Union
(Regd.234) (Affiliated to INTUC No. IV/1457)
36, Sarojini Devi Road,
Secundarabad - 500 003.

Rep. By its General Secretary N.Balakrishna

.. Petitioner

VS.

- 1.The Governor
Reserve Bank of India
Central Office Building 18th Floor,
Shahid Bhagat Singh Road,
Mumbai - 400 001.
- 2.The Secretary to Government of Tamil Nadu
Information and Public Relations Department
Fort St. George,
Chennai - 600 009.
- 3.The Secretary to Government of Tamil Nadu
Labour Department
Fort St. George,
Chennai - 600 009.
- 4.The Chairman
Canara Bank
Head Office
112, J.C. Road,
Bangalore - 560 002.
- 5.The Authorised Officer Canara Bank
Prime Corporate Branch
TSR Complex, S.P. Road,
Secundarabad - 500 003.

6.Canara Bank
Prime Corporate Branch
TSR Complex, S.P. Road,
Secundarabad - 500 003.

7.M/s.Deccan Chronicle Holdings Limited
Rep. By Guruprasad (Authorised Signatory)
36, Sarojini Devi Road,
Secundarabad - 500 003.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, to direct the respondents 5 and 6 to allow the 7th respondent's Chennai Unit viz., Deccan Chronicle Holdings Limited, SP3, Developed Plot, Guindy Industrial Estate, Guindy, Chennai - 600 032, to run by appointing an Administrator / Commissioner / Common Expert in the field to continue the business without taking possession simplicitor but under their administrative supervision and control of so as to protect and safeguard the life of employment of 600 direct and indirect employees / workers in the departments of Administration, Systems, Advertisement and Marketing, Scheduling, Circulation, Press and Electrical and persons involved in House Keeping, Security, Agents, Hawkers, etc., as guaranteed under Article 21 of the Constitution of India and to deposit the generated income from the newspapers towards loan account to the 6th respondent's Bank on day today basis.

For Petitioner : Mr.Palani Selvaraj
For Respondents
2 and 3 : Mr.TM.Pappaiah
Special Government Pleader
For Respondents : Mr.P.Raghunathan
4, 5 and 6 : for M/s.T.S.Gopalan & Co.
For Respondent 7 : Mr.R.Gandhi
Senior Counsel
for Mr.R.G.Narendran

O R D E R

M.GOVINDARAJ, J.

The present writ petition has been filed for a mandamus, directing the respondents 5 and 6 to allow the 7th respondent's Chennai Unit viz., Deccan Chronicle Holdings Limited, Chennai, to run by appointing an Administrator / Commissioner / Common expert in the field to continue the business without taking possession simplicitor, but under their administrative supervision and control so as to protect and safeguard the life of employment of 600 direct and indirect employees / workers in various departments and to deposit the generated income from the

newspapers towards loan account to the sixth respondent's bank on day today basis and for further orders.

2. The writ petitioner is an Union in the name and style of Deccan Chronicle Employees' Union at Secundarabad. The writ petitioner had registered under the Trade Union Act, 1926, with Registration No.234, affiliated to INTUC. The Union is expounding the causes of the member employees of the seventh respondent numbering about 800 throughout the country. Under the seventh respondent, 240 direct employees are working in various departments and more than 500 employees involved indirectly for the past 12 years. The seventh respondent / employer was facing closure of the Chennai Unit, as the Company as on date is a Sick Industrial Undertaking and has been classified as NPA by the fifth and sixth respondents. Consequent to the declaration as NPA, the fifth and sixth respondents, have initiated SARFAESI proceedings, which culminated in issuing a notice under Section 13(4) of the SARFAESI Act. The contention of the petitioner is that if the physical possession of the properties are taken, the members of the unit would be thrown to streets.

3. In the order passed by the Debts Recovery Tribunal - II (DRT - II), Chennai, in S.A.No.83 of 2015, dated 01.10.2015, it is observed that the respondent Bank has to discuss the issue with the applicant Company namely, the seventh respondent herein, and recover the amount by way of generating income from publishing newspapers. Both parties have to sit together and work out a speedy recovery of the due amount. Therefore, in order to safeguard and protect the life of the direct and indirect employees and the right to life guaranteed under Article 21 of the Constitution of India and for the welfare of employees, the respondent Bank shall consider the suggestion given by the Presiding Officer, Debts Recovery Tribunal - II, Chennai.

4. The writ petitioner Union has submitted a Memorandum of representation dated 16.05.2016 to the respondents 1 to 7 praying that the Chennai Unit of Deccan Chronicle Holdings Limited shall continue to run by appointing an Administrator / Commissioner / Common Expert in the field to continue the business, without giving possession simplicitor, but under the administrative supervision and control of the fifth and sixth respondents, by which, welfare and livelihood of the members of the petitioner Union will be safeguarded. For the said purpose, the present writ petition has been filed.

5. The seventh respondent employer has filed a counter affidavit reiterating the averments made by the petitioner Union and has averred that the seventh respondent requires only eight months time to repay the entire outstanding liability, by taking

over the management and control of the company by the fifth and sixth respondents, as per the repayment schedule given as under:

"(i) Average income fetched by running the unit per day is Rs.One lakh, thereby, on every Monday or the first working day if Monday is a public / bank holiday, a sum of Rs.7 lakhs shall be credited in the loan account for 8 months;

(ii) 10% of the outstanding amount of Rs.347,40,52,551.29 (Three Hundred and Forty Seven Crore Forty Lakhs Fifty Two Thousand Five Hundred and Fifty One and paise twenty nine) as per Sec 13(2) Notice (after adjusting the amount paid thus for every Monday) shall be paid within 6 months apart from the above;

(iii) Within 2 months thereafter the entire balance outstanding shall be paid to close the loan."

6. The seventh respondent is taking serious steps to revive the original position, and if the fifth and sixth respondents, are allowed to take possession, the entire crew of 600 direct and indirect employees of Chennai Unit, would be at peril and that it would result in throwing them out and their dependent family members to the streets. Therefore, in the interest of justice, a chance may be given to the seventh respondent to revive, by repaying the entire outstanding, as per the repayment schedule indicated above.

7. Per contra, respondents 4 to 6 have filed a detailed counter contending the actual averments projected by the writ petitioner as well as the seventh respondent Management. According to the respondents 4 to 6, the seventh respondent is a borrower, who has mortgaged the property in question, to the Bank. The borrower does not evince any interest in the asset sought to be enforced by the Bank under the provisions of the SARFAESI Act. Neither make any allegation of infringement of any legal right vested with the borrower nor any reason to stall the enforcement of security interest by the Bank. In such circumstances, the writ petition is not maintainable in law.

8. The SARFAESI Act merely regulates exercise of private rights of any Bank or financial institution, to enforce its security. The above statute does not confer any right on the employees and workmen to challenge the action taken as per the provisions of the Act. They have a limited right, when the borrower company is wound up. Even if the securities are realised by the secured creditor, benefits are not available, to all employees, but only to those, who answer the definition of

the term "workmen", under the Industrial Disputes Act, 1947. In that view of the matter also, the petitioner Union has no right to maintain the above writ petition.

9. As on 06.06.2016, a sum of Rs.645,75,90,708-29 remains due and payable by the seventh respondent to the Bank. The credit facilities granted to the seventh respondent was classified as Non Performing Asset (NPA) as on 08.09.2012, and a demand notice was issued on 31.12.2012. The seventh respondent has neither paid any money as per the demand notice, nor objected to the action taken by the Bank. In fact, it is reported that the seventh respondent owes Banks, Financial institutions and other lenders more than Rs.4000 Crores. The seventh respondent had siphoned off money from the financial system wilfully and deliberately, and therefore, the offence is being investigated by the Central Bureau of Investigation. The other Banks have security interest like "Deccan Chronicle", "Andhra Bhoomi", "The Asian Age", "Financial Chronicle" and propose to auction the same for realisation of Rs.444 Crores. Therefore, the present writ petition is only a proxy proposed by the borrower to protract the proceedings. The conduct of the seventh respondent from 08.09.2012, when the credit facilities were declared as non performing asset, would show that it is an attempt by a wilful defaulter to stall and defeat realisation of public money of Rs.645,75,90,708-29.

10. The seventh respondent received the demand notice on 31.12.2012, but not chosen to reply or file its objection under Section 13(3)(A) of the SARFAESI Act. When the possession notice issued to the property situated in Chennai on 11.03.2013, the company had not raised any objection nor filed any application under Section 17 of the Act. Instead, on 19.03.2013, filed a company application in C.A.No.347 of 2013, before the Andhra Pradesh High Court for framing a Composite Scheme of Demerger and Arrangement. On 17.04.2013, the Company Court declined to grant injunction. On 27.04.2013, sale notice for the property was issued and the date of sale was fixed as 06.06.2013.

11. Thereafter, the seventh respondent filed S.A.No.27 of 2013 before the Debts Recovery Tribunal - II, Chennai. Creation of security interest, demand notice, possession and sale notices, were challenged. The Debts Recovery Tribunal - II, Chennai, permitted the Bank to proceed with the sale, by its order dated 04.06.2013. Unfortunately, there were no bidders to purchase the property.

12. Thereafter, on 03.07.2013, the Bank has filed a criminal complaint, for siphoning off Bank funds. On the next day, i.e. on 04.07.2013, the Company Law Board, Chennai, granted injunction.

13. On 02.08.2013, the Bank filed Crl.M.P.No.815 of 2014 before the Chief Metropolitan Magistrate, Egmore, to assist in taking physical possession. The seventh respondent / company filed reference before BIFR to declare them as Sick and Rehabilitate on 17.09.2013. In the meanwhile, on 26.09.2013, the Debts Recovery Tribunal - II, Chennai, dismissed S.A.No.27 of 2013, filed by the seventh respondent. Against which, the seventh respondent filed a writ petition in W.P.No.31020 of 2013 before this Court. The same was rejected by this Court, by order dated 16.12.2013. In the meanwhile, the appeal to the Secretary, BIFR was rejected in Appeal No.17 of 2013, vide order dated 21.11.2013.

14. The seventh respondent without exhausting the alternative remedy of filing an appeal before the Debts Recovery Appellate Tribunal, as indicated by this Court, had taken the matter before the Hon'ble Supreme Court and filed W.P.No.125 of 2014 impugning the constitutionality of the Act. Thereafter, it was withdrawn on 13.01.2014. The appeal preferred to the Chairman, BIFR was rejected. Against which, the seventh respondent filed W.P.(Civil) No.705 of 2014 before the Delhi High Court. The same was disposed of with a direction to constitute a Special Bench.

15. Without stopping with that, the seventh respondent filed W.P.Nos.5897 and 5898 of 2014, before this Court challenging the constitutionality of the definition of non performing asset under Section 2(1)(o) of the Act. This Court, vide order dated 26.02.2014, had granted status-quo. Simultaneously, the seventh respondent maintained a company application in C.A.No.347 of 2013 before the Andhra Pradesh High Court also.

16. The Hon'ble Supreme Court while upholding the constitutionality of the Act, imposed 1% of the demand notice, as cost to the petitioner. But the petitioner failed to pay the cost of Rs.3,47,40,525/-. Thereafter, the seventh respondent has filed S.A.(SR) 1185 of 2015 before the Debts Recovery Tribunal - II, Chennai, to declare the demand notice dated 31.12.2012, symbolic possession on 11.03.2013, and the application under Section 14, pending before the Chief Metropolitan Magistrate, as null and void. The seventh respondent has also filed an application before the Chief Metropolitan Magistrate, Egmore to recall order and not to issue any warrant to Advocate Commissioner. But on 16.04.2015, warrant was issued. Against which, the seventh respondent filed S.A.No.83 of 2015, which came to be dismissed on 01.10.2015. On 14.10.2015, the seventh respondent filed an appeal before the Debts Recovery Appellate Tribunal, Chennai and also filed an application for waiver of the entire pre-deposit. The Debts Recovery Appellate Tribunal

(DRAT) in AIR (SA) No.760 of 2015 passed an order in I.A.No.885 of 2015 directing payment of 25% of the amount claimed in the demand notice. The borrower failed to deposit the same.

17. While the matter stood thus, the writ petitioner has submitted a memorandum of representation for appointment of an Administrator / Commissioner / Common Expert. Virtually, the present writ petition is filed for the same relief.

18. The respondents 4, 5 and 6 would contend that the seventh respondent has been successfully protracting the proceedings from 2012 and the sale of the Chennai property, as well as the property at Rajahmundry, could not be realised, despite the earnest efforts taken by them. The seventh respondent has a total liability of about Rs.4000 Crores. Different assets, including trade marks, book debts and receivables have been secured to different secured creditors, who have already initiated action to realise their dues. In such circumstances, the proposal to continue the business for the benefit of continued employment of persons, cannot be taken by the respondent Bank. The very object of the SARFAESI Act to realise the debts from the non performing assets will be defeated. The observation made by the Presiding Officer of the Debts Recovery Tribunal -II, Chennai is not mandatory to comply with. Till date, the action taken under Section 14 of the SARFAESI Act could not be completed and the security interest could not be realised by the Bank. Therefore, the respondents 4 to 6 prays for dismissal of the writ petition.

19. We have heard the submissions made on either side and perused the materials available on record.

20. The Scheme of SARFAESI Act clearly shows that the secured creditor shall comply with the mandates of Section 13 (2), 13(3)(A) and 13(4) of the Act, in recovering the dues from the defaulting borrowers. From the dates and events elaborated by the respondents 4 to 6, it could be seen that the demand notice issued under Section 13(2) of the Act was not objected, nor any reply was filed, by the seventh respondent. Thereafter, a possession notice was issued by the Bank under Section 13(4) of the Act, which was also not objected to by the seventh respondent. But they have chosen to challenge the vires of the Act and provisions, by frivolous litigation. The conduct of the seventh respondent clearly shows that it has been indulging in protracting the proceedings rather than finding out an efficacious solution to solve the problem. The seventh respondent had chosen to approach different forums viz., Company Law Board, Andhra Pradesh High Court, Delhi High Court and Honourable Supreme Court and after having failed in all those attempts, repeated appeals before the Debts Recovery Tribunal.

It has also been noted that the liability of the seventh respondent to the respondents 4 to 6 Bank is around Rs.645 Crores. That being so, the seventh respondent ought to have pursued its remedy by approaching the appropriate judicial forum after complying with the mandatory provisions of the Act. But, instead of pursuing with the remedy in proper direction, the seventh respondent appears to have swayed away from regular course of action and indulged in frivolous litigations.

21. The learned counsel for the respondents 4 to 6 submitted that in order to avoid the entire pre-deposit as directed by the Debts Recovery Tribunal only, the seventh respondent is swaying in different directions. The material contents and the attempt of filing a Memorandum to appoint Administrator / Commissioner by the writ petitioner would clearly show that the seventh respondent is attempting to evade the pre-deposit which is a mandatory requirement for filing appeal as contemplated under the provisions of the Act.

22. It is also to be noted that the writ petitioner Union had taken up the case of the seventh respondent for revival under the pretext of the livelihood of the employees of the seventh respondent. It cannot be denied that such an attempt gives an impression that it is a proxy obligation in order to safeguard the interest of the seventh respondent through the writ petitioner Union. While the remedy under the Labour Welfare Legislation, particularly, under the Industrial Disputes Act, 1947 is available to the petitioner's Union, approaching the High Court by way of writ petition for revival of the seventh respondent and for continuity of business does not augur well. The writ petitioner Union appears to have preferred the above writ petition not with bonafide intention to safeguard the welfare of its members, but at the behest of the seventh respondent.

23. Be that as it may, viewed from any angle, the writ petitioner Union has no legal right for maintaining the writ petition under the SARFAESI Act. The writ petitioner is neither an aggrieved party nor a person connected to the proceedings under Section 17 of the SARFAESI Act. In such circumstances, the writ petitioner does not have any legal right vested with them.

24. The writ petitioner has not shown that there is violation of their fundamental rights or the statutory rights, nor there is infringement in taking legal action by the respondents 4 to 6. In other words, the writ petitioner have no privity of contract with the Bank, nor any nexus to the action taken, in accordance with the SARFAESI Act. In the absence of any violation of law or arbitrary exercise of power by the respondent Bank, the petitioner Union cannot have any complaint

against the respondents 4 to 6. In the absence of the same, they cannot prevent the respondents 4 to 6 from realising their security interest. Therefore also, the writ petition is not maintainable in the eyes of law.

25. The very object of the SARFAESI Act is to expedite the realisation of the non performing assets and thereby save the economy of the nation. If such an object is delayed by the writ petitioner, for instance, the present writ petition, the same shall be deprecated. Therefore, this Court is of the opinion that the writ petition filed above, is not maintainable in the eyes of law and deserves to be dismissed.

26. In the result, the writ petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

sd/
Assistant Registrar (CS V)

/true copy/

Sub Assistant Registrar

TK
To

1. The Governor
Reserve Bank of India
Central Office Building 18th Floor,
Shahid Bhagat Singh Road,
Mumbai - 400 001.
2. The Secretary to Government of Tamil Nadu
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3. The Secretary to Government of Tamil Nadu
Labour Department
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+1cc to Mr. Palani Selvaraj, Advocate SR.No.4744
+1cc to Mr. R.G. Narendhiren, Advocate SR.No.4743,
+1cc to Mr. T.S. Gobalan & Co, Advocate SR.No.5304,
+1cc to the Government Pleader SR.No.5304,

W.P.NO.18216 OF 2016

VD(CO)
GN(27/02/2017)