IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

Writ Petition No.25994 of 2017

M/s.Vinplex India Pvt Ltd
rep. By its Director
Mr.K.R.Rangarajan ... Petitioner

Vs.

1. The Authorised Officer
Andhra Bank
Anna Nagar Branch
Old No.995 JA/New No.170
2nd Avenue
Annanagar
Chennai 600 040.

2. M/s.Vantage Resorts & Clubs Pvt Ltd
rep. By its Director
Mr.Senthilnathan
No.89 Santhome High Road
Chennai 600 028.

3. The Chairperson,
Debt Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai, Chennai 600 008. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, directing the 1st respondent- Bank to comply with the orders, dated 31.05.2017 at Paragraph 6, Page 4 of the orders in R.A.(S.A.)No.2 of 2016, on the file of the Debt Recovery Appellate Tribunal, Chennai, the 3rd respondent herein, as also the directions of DRT-I, Chennai, dated 08.12.2015 at Para 14, Page 7, by refunding the money along with Bank rate of interest to the Petitioner.

For petitioner	...	Mr.D.Gopinathan for Mr.P.B.Sampath Kumar
For 1st respondent	...	Mr.R.Gowthamanarayanan
For 2nd respondent	...	Mr.M.Rajesh for Mr.G.R. Lakshmanan

O R D E R

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

Auction purchaser, M/s. Vinplex India Private Limited, represented by its Director, Mr.K.R.Rajarajan, has sought for a writ of Mandamus, directing the Authorised Officer, Andhra Bank, Anna Nagar Branch, Chennai, 1st respondent herein, to comply with the orders, dated 31.05.2017 at Paragraph 6, Page 4 of the orders in R.A.(S.A.)No.2 of 2016, on the file of the Debt Recovery Appellate Tribunal, Chennai, the 3rd respondent herein, as also the directions of DRT-I, Chennai, dated 08.12.2015 at Para 14, Page 7, by refunding the money along with Bank rate of interest to them.

2. The Petitioner is the Auction Purchaser of the Property, belonging to M/s.Vantage Resorts & Clubs Pvt. Ltd., Chennai, 2nd respondent herein. The 1st respondent, as a secured creditor of the 2nd respondent herein sold the said property in the auction sale, dated 28.11.2012. The 2nd respondent herein-borrower availed credit facilities from the 1st respondent-Bank and mortgaged the property comprised in Survey No.224/6, new Survey Nos.244/6A1B5 and 224/6A1B6, Kottivakkam Village, Tambaram Taluk, Kanchipuram District. In default of the payments due to the Bank, the Bank initiated proceedings under the SARFAESI Act. The 2nd respondent questioned the validity of the possession notice, dated 23.05.2011, issued under Section 13(4) of the SARFAESI Act. The same was dismissed by the learned Presiding Officer, DRT-I, Chennai, the 3rd respondent, vide order, dated 26.07.2012.

3. Thereafter, the 1st respondent-Bank has issued Auction Sale Notice, dated 22.10.2012, fixing the auction sale of the said property on 28.11.2012. The 2nd respondent-borrower filed an Appeal in S.A.No.150 of 2012, questioning the validity of the Auction Sale Notice, dated 22.10.2012. The Presiding Officer, DRT-I, Chennai, passed a conditional order, dated 27.11.2012, directing the 2nd respondent-Borrower to pay Rs.1 Crore, on or before 26.12.2012, after taking into account the amount of

Rs.1.55 Crores already deposited by the 2nd Respondent / Borrower with the Bank. The Learned Presiding Officer also passed on order that if the said amount of Rs.1 Crore is not paid, on or before 26.12.2012, the Bank may proceed to confirm the sale.

4. The borrower did not pay the said amount of Rs.1 Crore, before 26.12.2012, but paid only on 05.01.2013, claiming that the Tribunal had granted an extension of time, for the payment of the said amount till 04.01.2013. The 1st respondent Bank confirmed the Auction Sale in favour of the Petitioner. Learned Presiding Officer in its conditional order, dated 27.11.2012 in S.A.No.156 of 2012, as a second condition, directed the borrower to pay the balance amount due, as demanded in the Section 13(2) Notice along with interest on or before 28.02.2013. If the 2nd Respondent / Borrower fails to deposit the said amount, the Bank is entitled to confirm the auction sale in favour of the highest bidder. The Presiding Officer, DRT-I, Chennai has also directed the confirmation of sale, by the Bank, if the 1st instalment of Rs.1 Crore is not paid on or before 26.12.2012.

5. Since the 1st Respondent-Borrower did not comply with any of the aforesaid conditions, within the time limit fixed by the Presiding Officer, DRT-I, Chennai, the Bank has proceeded to confirm the auction sale in favour of the 8th respondent herein, as the highest bidder. The 2nd respondent-Borrower has filed an appeal in S.A.No.5 of 2013, before the third respondent herein, questioning the said sale of the property, in favour of the 8th respondent by the Bank. Vide order, dated 08.12.2015, the Presiding Officer, DRT-I, Chennai, has allowed the said appeal, by setting aside the auction sale, dated 28.11.2012.

6. Pursuant to the same, the 1st respondent-Bank has nullified the effects of the auction sale, by its own conduct and subsequently, accepted the amounts from the 2nd respondent-Borrower, even after the sale of the property, in favour of the petitioner. However, on 04.03.2013, when the Presiding Officer, DRT-I, Chennai, has taken up the matter, at the instance of the representatives of the respondents, a representation has been made by the 2nd respondent that the entire dues were discharged by them, on 02.03.2013, which was accepted by Ms.Deepa Devi, the Nodal Officer of the 1st respondent-Bank. Consequently, the 1st respondent was directed not to confirm the Auction Sale in favour of the petitioner herein.

7. According to the petitioner, the 1st respondent-Bank is very well aware of the proceedings, dated 04.03.2013, of the Learned Presiding Officer, DRT-I, Chennai, wherein, it has directed the Bank not to confirm the sale or not to receive further amounts from the auction bidder and await further

directions of the Tribunal. The said order was passed in the presence of Ms.Deepa Devi, the nodal officer of the 1st Respondent Bank herein. It is the further case of the petitioner that till the filing of the writ petition, the Bank has not chosen to question the said directions passed by the learned Presiding Officer, DRT-I, Chennai, dated 04.03.2013.

8. The petitioner has further submitted that the 1st respondent-Bank has filed an appeal in R.A.(S.A)No.2 of 2016, before the Debt Recovery Appellate Tribunal, Chennai, 3rd respondent herein. Considering the facts and circumstances of the case, the Debts Recovery Appellate Tribunal, Chennai, vide order, dated 31.05.2017, while dismissing the appeal, observed as follows:

> "5. On careful perusal of submissions of the Counsel of rival parties and considering the pleadings, it becomes clear that Appellant failed to pay Rs.1 Crore on or before 26.12.2012 and Bank confirmed the sale on 27.12.2012, i.e. on the next date itself. But it is also true that PO (Presiding Officer) of DRT had extended the time of payment of Rs.1 Crore to be made by the borrower upto 4.1.2013. On 5.1.2013, borrower approached the Bank along with Draft of Rs.1 Crore. In such a situation, it can easily be inferred that though the order dated 27.11.2012 passed by the PO (Presiding Officer) of DRT in S.A.No.156/2012 was not complied with by the borrower in its strict sense, but he made all attempts to approach the DRT and succeed for extension of time and ultimately made the deposit of Rs.1 Crore on 5.1.2013. In such a situation, confirmation of sale by Bank on 27.12.2012 was unwarranted. Rather, such confirmation should have been avoided at least for few days. It is-true that Bank has appropriated the amount received by the auction purchaser, but at face value, it appears that there had been some conditional stay issued by way of extension of time to the Respondent borrower.
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> 6. Hence, order of confirmation of sale renders unsustainable. Bank has been rightly directed to return the money of auction purchaser along with Bank's rate of interest. In impugned order, PO (Presiding Officer) of DRT has dealt with the facts of the case in right perspective and has reached to the correct conclusion."

9. Earlier, the petitioner has filed W.P.No.27529 of 2016, before this Court, praying for a direction to the 1st respondent-Bank to comply with the orders of the DRT-I, dated

08.12.2015, which was dismissed by this Court, vide orders, dated 02.01.2017, holding that since the appeal is pending before the DRAT, Chennai, against the aforesaid orders, dated 08.12.2015 of DRT-I, Chennai, the said writ petition is not maintainable.

10. According to the petitioner, they are neither borrower nor guarantor to get entangled in this litigation and it is only logical for them to demand the refund of the sale consideration along with interest, as per the directions, dated 31.05.2017 at Para 6, Page 4, of the orders in R.A.(S.A)No.2 of 2016, on the file of the Debt Recovery Appellate Tribunal, Chennai, as also the directions of DRT-I, Chennai, dated 08.12.2015 at Para 14, Page 7.

11. The Authorised Officer, Andhra Bank, Anna Nagar Branch, Chennai, 1st respondent has filed a detailed counter, contending inter alia that the property did not belong to the 2nd respondent herein. The property belonged to M/s.Skyscape Properties Pvt. Ltd., which mortgaged the property as security for the loan availed by the 2nd respondent and hence, the writ petition is liable to be dismissed for non-joinder of necessary party.

12. The 1st respondent has further submitted that as the 2nd respondent-borrower defaulted in repayment of the loan, they initiated proceedings under SARFASI Act, 2002 and issued demand notice on 10.02.2011, under Section 13(2) and possession notice on 23.05.2011, under Section 13(4) of the Act. The 2nd respondent has filed S.A.No.152 of 2011, on the file of the Debt Recovery Tribunal - I at Chennai to set aside the possession notice, dated 23.05.2011. Though the 2nd respondent has raised various untenable grounds in the said Application, while moving for interim order, they gave up the grounds and pleaded for time to settle the account. In view of the same, on 05.07.2011, the Debt Recovery Tribunal, has passed the following order:

> "Apparently, there appears to be no legal/procedural infirmities in respect of impugned possession notice and allegation appears to be vague. Any how the learned Counsel for Petitioner/Appellant fairly conceded the obligation of the Petitioner / Appellant / Borrower to repay pay the debt. The request of the Petitioner / Appellant seeking time towards the disposal of the property in order to settle the dues cannot be simply brushed aside. As such there is nothing wrong in granting a final opportunity to the Petitioner / Appellant to raise the recourse by disposal of the properties. But at the same time the stale mate cannot be continued for a long time. This process should be completed within a

time bound manner and in any case within a period of 3 months".

Again on 26.07.2012, the Debt Recovery Tribunal has passed the following order:

"At the request of the applicant to settle the entire dues, 3 months time was sought and was granted by this Tribunal. On 07.05.2012, the applicant submitted that he will deposit Rs.2 Crores on or before 10.05.2012 however deposited only Rs.1 Crore and sought further time to deposit the balance amount. Respondent bank has already taken physical possession of the property. The total dues payable by the applicant is Rs. 5,20,00,000/ - and interest thereon from 30.04.2011. It appears that the applicant is not serious enough to settle the dues with the respondent bank. Sufficient time has already been granted to the applicant to enable the applicant to redeem his property by paying the dues to the respondent bank or to negotiate settlement with the respondent bank. The applicant could not establish any evidence to show that the respondent bank has faulted in the measures initiated. Accordingly, present SA does not survive. Hence SA is dismissed."

13. The 1st respondent-Bank has further submitted that the Bank has issued sale notice for the sale of the property on 22.10.2012, fixing the sale on 28.11.2012. The 2nd respondent-Borrower has again filed S.A.No.156 of 2012 on the file of Debt Recovery Tribunal - I, challenging the said notice. Though they raised various untenable grounds, they gave up their case and pleaded for concession and time for settlement. The Bank has offered to charge 1% more than BPLR on the amount claimed in 13 (2) notice provided the 2nd Respondent pays 1/ 3rd of the amount immediately and balance within 30 days. The counsel for the 2nd respondent submitted that the 2nd respondent will deposit Rs.1 Crore, within 30 days and the balance amount, as per the demand notice under 13(2), together with interest of BPLR plus 1% on or before 28.02.2013. Therefore, on 27.11.2012, the Debt Recovery Tribunal passed the following orders,

"(a) That the proposed auction on 28.11.2012, the respondent bank may proceed with, receive bids and also declare the highest bidder, and receive the 25% amount prescribed, however not to confirm the sale. The 25% amount received from the auction purchaser may be kept in interest bearing account by the respondent bank till 28.02.2013.

(b) The applicant is directed to deposit with the respondent bank Rs.1 Crore within 30 days from today, as agreed by the counsel for the applicant either by way of Demand Draft/pay order or cash, as acceptable to the respondent bank. The balance amount from out of the 'amount demanded in the 13(2) Notice with interest charged out BPLR plus 1% and after giving due credits for the amounts already paid by the applicant as per the earlier directions plus this direction, the applicant is directed to pay on or before 28.02.2013 and if the applicant fails to deposit the same, on 01.03.2013 the respondent bank is entitled to confirm the same in favour of the highest bidder.

(c) No extension of time will be allowed to the applicant after 28.02.2013 and if the applicant fails to deposit Rs.1 Crore, on or before 26.12.2012 with the respondent bank as directed herein above, the respondent bank is at liberty to confirm the sale on 27.12.2012.

The S.A is accordingly disposed off based on oral submission made by the counsel for the Applicant and the Respondent bank."

14. The 1st respondent-Bank has further submitted that as the 2nd respondent has failed to pay Rs.1 Crore, till 26.12.2012, the bank confirmed the sale on 27.12.2012 as permitted by the Debt Recovery Tribunal, by its order dated 27.11.2012. After confirmation the sale certificate was also issued on 31.12.2012 and the same was registered on 02.01.2013. The 2nd respondent again filed an Application in S.A.No.5 of 2013 on the file of Debt Recovery Tribunal -I, Chennai, to set aside the above sale. In the said application, the 2nd respondent has raised various grounds regarding legality of demand notice and possession notice.

15. The 1st respondent-Bank has further submitted that as per the order of Debt Recovery Tribunal, the sale was conducted on 28.11.2012 and out of four bids received, the bid submitted by the petitioner was the highest and he was declared as successful bidder. As the 2nd respondent has failed to pay Rs.1 Crore, till 26.12.2012, the sale was confirmed on 27.12.2012, in compliance of the order of the Debt Recovery Tribunal. The sale certificate was issued In favour of the petitioner on 31.12.2012 and was registered on 02.01.2013. According to the 1st respondent-Bank the sale effected by the bank is valid and free from legal or procedural infirmities.

16. The 1st respondent has denied that the 2nd respondent-borrower has paid Rs. 1 Crore, only on 05.01.2013, claiming that the Tribunal had granted an extension of time for payment of said amount, till 04.01.2013 and further submitted that no such claim was made by the 2nd respondent, while tendering Rs.1 Crore, on 05.01.2013. The Bank was not aware of any such extension of time allowed by the Debt Recovery Tribunal. No notice of any petition for extension of time was served on them.

There was no hearing on any such petition for extension of time. When the Director of the 2nd respondent visited the Branch and tendered Rs.1 Crore, he did hot inform the Branch of any such extension.

17. Subsequently, on perusal of records, the Bank has come to know that on 27.12.2012, the 2nd respondent has moved a Petition for extension of time and in the said Petition, without any notice and enquiry, the Presiding Officer has passed an order on 04.01.2013, extending time upto that date. There is an endorsement of "noted" on that petition by the counsel for the 2nd respondent on 08.01.2013. The order of extension was passed only on 04.01.2013. However, before that order was passed, the sale was completed and the Sale Certificate was registered. Even otherwise, the first instalment of Rs.1 Crore was not paid ever before that date. For the abovesaid reasons, the 1st respondent-Bank has prayed for dismissal of the writ petition.

Heard the learned counsel for the parties and perused the materials available on record.

18. As per the order of the DRT, the borrower has remitted the amount and the same has been received. There is no material, to indicate that such amount has been received, without prejudice to the right of the Bank, towards discharge of loan amount. In the light of the above, this writ petition is allowed, directing the 1st respondent-Bank to refund the money to the petitioner, with interest at the rate of 7.5% per annum, within a period of one month, from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

skm
To
The Chairperson,
Debt Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai, Chennai 600 008.
+ 1 cc to Mr.R. Gowthamanarayanan, Advocate SR.79270
+ 1 cc to Mr.G.R. Lakshmanan, Advocate Sr.79829
+ 1 cc to Mr. P.B. Sampath Kumar, Advocate SR.79372
Writ Petition No.25994 of 2017
(CS-IV)
EU(26/02/2018)