

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.26395 of 2017
and
WMP No.28056 of 2017

M/s.B&C Machinery Limited,
Rep. by its Director
Mr.G.Vinayagam

... Petitioner

vs.

1. The Authorised Officer,
State Bank of India,
Asset Recovery Management Branch,
4/1, Eldams Road,
Alwarpet, Chennai - 600 018.

2. M/s.Best & Crompton Engineering Ltd.,
under liquidation,
Rep. by Official Liquidator,
High Court, Madras,
Ministry of Corporate Affairs,
Corporate Bhawan, 2nd Floor,
No.29, Rajaji Salai, Chennai - 600 001.

3. M/s.Johnson Lifts Pvt. Ltd.,
No.1, East Main Road,
Anna Nagar Western Extension,
Chennai - 600 101.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India,
praying for the issuance of a writ of certiorarified Mandamus, calling
for the records pertaining to the order dated 11.09.2017 received

through website passed by the Debts Recovery Appellate Tribunal, Chennai, in I.A.No.506 of 2017 in AIR No.192 of 2017 and quash the same and consequently direct the Debt Recovery Appellate Tribunal to dispose the Appeal in AIR No.192 of 2017 on merits without insisting for pre-condition deposit.

For Petitioner : Mr.Jayesh B. Dolia

ORDER

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

On 13.10.2017, we passed the following order.

"Order impugned in the instant writ petition is a direction to the petitioners, to make a pre deposit of Rs.35 Crores with the Registrar of DRAT, Chennai, out of which, Rs.17.5 Crores has been directed to be deposited, within four weeks from 11.09.2017 and that the 2nd part of the deposit of Rs.17.5 Crores should be made, four weeks thereafter. DRAT, Chennai, has further ordered that in the event of failure to deposit the said amount, appeal would stand automatically dismissed, without reference to the tribunal. Accordingly, I.A.No.506 of 2017 has been disposed of.

2. On this day, Mr.Jayesh B. Dolia, learned counsel for the petitioners submitted that bank has issued a notice under Section 13(2) of the SARFAESI Act, 2002 on 19.07.2012, for recovery of Rs.126.78 Crores. After issuance of notice, a sum of Rs.26 Crores has been made on various dates. It is the submission of the learned counsel for the writ petitioners that as per 3rd proviso to Section 18 of the SARFAESI Act, for reasons to be recorded in writing, the tribunal can direct pre-deposit to the extent of 25% of the amount claimed or

determined, whichever is less, as the case may be, and not less than that. According to the learned counsel for the petitioners, amount has not been determined. Claim made by the Bank, in the notice issued under Section 13(2) dated 19.07.2012 is Rs.126.78 Crores. When a sum of Rs.26 Crores has been claimed to have been paid, as per the proviso, the remaining amount representing 25% of pre deposit would be Rs.9 Crores, which the learned counsel for the petitioners submitted that the said sum of Rs.9 Crores would be deposited, in two equal instalments, within a period of one month from today.

3. The tribunal while exercising its discretion has to assign reason as to why directions should not be granted restricting the deposit to 25%, to the debt claim under Section 13(2) of the SARFAESI Act, which in the case on hand, is conspicuously absent.

4. Placing on record the submission of the learned counsel for the writ petitioners, permission is granted to deposit Rs.9 Crores with the Registry of DRAT, Chennai, within a period of one month from today in two equated installments, failing which, it is made clear that AIR No.192 of 2017, shall stand dismissed, without any reference to this Court.

5. Post on 13.11.2017."

Thus, it is listed today.

2. Mr.Jayesh B.Dolia, learned counsel for the petitioner submitted that order dated 13.10.2017, has not been complied with.

3. We have already made it clear that if sum of Rs.9 Crores, is not deposited, with the Registrar of Debts Recovery Appellate Tribunal, within one month from 13.10.2017, AIR No.192 of 2017, would stand dismissed, without any reference to this Court.

4. Petitioner has not filed any application for extension of time nor complied with the conditional order. On the aspect, as to whether, a borrower, who has obtained an interim order and failed to comply with the same, is entitled to be heard further, the Hon'ble Apex Court in **Prestige Lights Ltd., v. State Bank of India** reported in **(2007) 8 SCC 449**, at paragraph Nos.20, 22, 24 and 26, held as follows:

"20. But, there is an additional factor also as to why we should not exercise discretionary and equitable jurisdiction in favour of the appellant. It is contended by the learned counsel for the respondent Bank that having obtained interim order and benefit thereunder from this Court, the appellant Company has not paid even a pie. The appellant is thus in contempt of the said order. The Company has never challenged the condition as to payment of amount as directed by this Court. Thus, on the one hand, did not comply with it and failed to pay instalments as directed. Neither it raised any grievance against the

condition as to payment of instalments nor made any application to the Court for modification of the condition. It continued to enjoy the benefit of stay ignoring and defying the term as to payment of money. The Company is thus in contempt of the order of this Court, has impeded the course of justice and has no right of hearing till it has purged itself of the contempt.

22. From the above order, it is clear that notice was issued to the other side and stay granted earlier was ordered to continue on the appellant's depositing a sum of Rs.20 lakhs per month in this Court. It was also made clear that first of such payment should be made by 6.6.2015 and subsequent payments by 6th of each succeeding month. A default clause was also introduced in the order that if such payment would not be made, the stay would stand vacated. It is an admitted fact that the order has not been complied with and no payment as per the order has been made by the appellant company to the respondent bank. The said fact has also been reflected in the order of this court passed on 25-7-2007, wherein it was stated:

"It is recorded that the stay is transgressed by reason of the admitted non-compliance with the order dated 6-5-2005."

24. An order passed by a competent court- interim or final- has to be obeyed without any

reservation. If such order is disobeyed or not complied with, the court may refuse the party violating such order to hear him on merits. We are not unmindful of the situation that refusal to hear him on the proceeding on merits is a "drastic step" and such a serious penalty should not be imposed on him except in grave and extraordinary situations, but sometimes such an action is needed in the larger interest of justice when a party obtaining interim relief intentionally and deliberately flouts such order by not abiding by the terms and conditions on which a relief is granted by the court in his favour.

26. That, however, does not mean that in each and every case in which a party has violated an interim order has no right to be heard at all. Nor will the court refuse to hear him in all circumstances. The normal rule is that an application by a party will not be entertained until he has purged himself of the contempt. There are, however, certain exceptions to this rule. One of such exceptions is that the party may appeal with a view to setting aside the order is alleged must be heard in support of the submission that having regard to the meaning and intendment of the order which he is said to have disobeyed, his actions did not constitute a breach of it."

5. In the light of the above discussion and decision of the

Hon'ble Supreme Court in ***Prestige Light's case*** [cited supra], we are

not inclined to extend further time and petitioner is not entitled to be heard. Hence, instant writ petition is dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

(S.M.K., J.) (R.S.K., J.)
13.11.2017

Index: Yes/No.
Internet: Yes
Speaking/Non speaking

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S.MANIKUMAR, J.
AND
R.SURESH KUMAR, J.

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To

1. The Authorised Officer,
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Asset Recovery Management Branch,
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2. M/s.Best & Crompton Engineering Ltd.,
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