IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2017

CORAM:

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

W.P.No.30059 of 2016
and
W.M.P. No.26049 of 2016 and 3391 of 2017

M/s.A.Aravindhan
Represented by his power agent
B.Anbuvel ... Petitioner

Vs.

1.The Registrar
Debt Recovery Tribunal
Coimbatore

2.M/s.Bank of Baroda
Represented by its Manager
Avinashi Road Branch
Tiruppur - 641 602

3.M/s.Anbu Textiles Pvt Ltd
having its Registered office at No.59/11
South Avanimoola Street
Madurai - 625 001 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the records pertaining to the order dated 29.07.2016, made in LA. No.974 of 2015 in O.A. NO.363 of 2014, on the file of Debts Recovery Tribunal, Coimbatore and quash the same.

For Petitioner : Mr.N.Anand Venkatesh
For Respondents : Mr.M.Arunkumar
for M/s.Sampathkumar Associates
for R2

ORDER
(made by S.MANIKUMAR, J.)

Challenge in this writ petition is to an order dated 29.07.2016, passed in I.A. No.974 of 2015 in O.A. NO.363 of 2014, on the file of Debts Recovery Tribunal, Coimbatore. dismissing the said petition filed for a prayer to accord permission to the petitioner to effectuate conveyance of the petition mentioned scheduled properties in the capacity of General Power of Attorney of the petitioner/defendant No.4's son for a sale price of Rs.2.10 Crores and to remit the above said sum, directly to the loan account by the intending purchaser Mr.M.Sahubar Sadhik, on the strength of release of mortgage and on the strength of delivery of the original title deeds to the purchaser.

2. Short facts leading to the writ petition are that Bank of Baroda, Tiruppur, has accorded facilities to M/s.Anbu Textiles Pvt Ltd, Madurai, by way of packing credit-cum-foreign bills purchased-cum cash credit limit of Rs.7.00 Crores, besides a forward contract facility with a limit of RS.75.00 Lakhs, aggregating to Rs.7.75 Crores, based on hypothecation of the movables of the company. Mr.V.Anbuvel, is the father of the writ petitioner Mr.A.Aravindhan, who is one of the Directors of the third respondent company. Property of the latter has been mortgaged with the bank, as security, for due repayment of the loan. There was default in payment. Bank has instituted proceedings in O.A. No.363/2014 on the file of Debts Recovery Tribunal, Coimbatore against M/s.Anbu Textiles Pvt Ltd, Madurai and seven others including Mr.A.Aravindhan, one of the Directors, for a decree against them for Rs.10,91,52,049/- together with costs and future interest at the rate of 15.75% per annum on cash credit dues of Rs.5, 16,89,611/- and at the rate of 17.25% per annum on the PC dues of Rs.5,74,62,438/- and to issue a certificate for recovery of the same from the defendants personally and by sale of mortgaged properties described in A, Band C schedule and the hypothecated movables, described in Schedule '0'. Details of which, are as follows:

"Schedule-A (mortgaged property of the 4th defendant). In Madurai North Registration District, Tallakulam Sub District in SATHAMANGALAM Village within the limits of the Madurai Corporation, in R.S. Nos.10(pt) and 9/7 (part) the site with superstructure in Plat No HIG 16 measuring 2400 sq ft (30 feet east west and 80 feet north south) and bounded on the North by Plot Nos.18A and 18B, south by 40 feet Road, east by HIG Plot NO.17 and west by HIG Plot No.15.

Schedule-B (mortgaged property of the 6th defendant) In Madurai North registration district Thamaraipatti (now Othakadai) subdist, Madurai North Taluk, Vallakundu village in R.S. No.3/1, site with superstructure in Plot No.52 admeasuring 10787.375 sq.ft. i.e. 24 cents 304 sq ft (65-1/2 feet north south and 164-1/4 feet east west) and bounded on the NOrth and west by 15 Metre wide roads, and south and east by Plot Nos.54 and 73 respectively.

Schedule-C (mortgaged property of defendants 7 and 8). In Madurai South Registration District, Madurai IV Registration Sub dt, in Madurai Municipal Corporation, Ward No.39, in South Marret Street in T.S. No.146 the site measuring 1000 sq ft (20 feet east west and 50 feet north south) together with superstructure Door No.252 (old No.140) bounded on the North by 55 feet wide South Marret street, East by Gopal Pillai's house in T.S. No.145, South by Andalammal's house in T.S. No.128 and Samy Rathnam's house in TS 127, West by Mariappa Pillai's house in TS No.126/2 and Chokkalingam Chettiar's property in TS NO.146.

Schedule D. All stocks of goods finished and semi finished, raw materials, vehicles, machinery and all other movables kept or located in the 1st defendant's factory premises in Tiruppur at No.7, Poonthottam, Murugapalayam, opposite to Saran Theatre, Gandhinagar, Tiruppur-3.

3. Pending O.A. No.363/2014, Mr.A.Aravindhan, represented by his Power Agent Mr.B.Anbuvel, has filed LA. No.974/2015 on the file of Debts Recovery Tribunal, Coimbatore, stating that one Mr.Sahubar Sadhik s/o.A.Mustafa Ali, Sakkimangalam, Madurai, has expressed his consent to purchase one of the scheduled mentioned properties for Rs.2,10,00,000/- and on the above averments, the writ petitioner has prayed for a direction to Bank of Baroda, Tiruppur Branch, to accord permission to the petitioner to effectuate conveyance of the petition schedule properties, as General Power of Attorney of his son Mr.A.Aravindhan, for a sale consideration of Rs.2.10 Crores, and to remit the same directly, by the intending purchaser, Sahubar Sadhik or his nominee into the suit loan account, on the strength of release of the mortgage over the schedule mentioned properties and on the strength of delivery of the original title deeds to the purchaser.

4. Opposing the prayer sought for, bank has filed its counter affidavit stating that the said subject property mentioned as 'A' schedule in O.A. No.363/2014, is a main collateral security for the amount borrowed by the debtors. Property mentioned as 'B' schedule in O.A. No.363/2014 has less value. When bank had filed O.A. No.363/2014, for attachment before judgment of the borrower's property located at Chennai

and the Tribunal ordered to furnish security, the borrower did not furnish any security, to sell the property in part, to discharge the mortgage with Tata Capital. The bank had further contended that, if the available mortgaged properties of the bank are released for a small part of the amount, then bank would not be in a position to realise the remaining loan amount, and that bank has to auction all the properties for realising the amount. Bank has further contended that, if the petition seeking permission is allowed, the other guarantors may raise equity and legal issues and in that process, bank, would suffer huge loss. Notwithstanding the above, vide letter dated 30.03.2016, bank has communicated its decision to release two of the securities, to reduce the liability of payment of RS.269.92 Lakhs, which is extracted here under:

"BOB/BR/TIRUBS/14/141 Date: 30.03.2016

Mr.Anbuvel,
M/s.Anbu Textiles Pvt Ltd.
MIG Anna Nagar
Madurai - 625 020.

Dear sir,

Re: Release of two securities to reduce the liability on
payment of Rs.269.92 Lakhs - M/s.Anbu Textiles Pvt Ltd.

We write to inform you that, our higher authorities have given consent to release the below mentioned properties to reduce the liability of the company M/s.Anbu Textiles Pvt Ltd. vide their Agenda NO.A-07 dated 30.03.2016 on the terms and conditions mentioned below.

Sl. No.	Details of properties to be released	Market value in Lacks
1	EM of Plot No.52A RS No.3/1, MAHIA Industrial estate, Sivagangai Main road, Vallakundu village and Panchayat, Thamaraipatti Sub regn. North Taluk, Madurai district in the name of Mr.D.Suresh Kumar to an extent of 24.67 cents (Value Rs.47.05 lac)	Rs.59.18

Sl. No.	Details of properties to be released	Market value in Lacks
2	EM Land (2400 sq.ft.) and building thereon situated at HIG-16, RS No.9/7 & 10, Anna Nagar Housing Board sector, Sathamangalam Village, Tallakulam Sub regn, North Taluk, Madurai-20 in the name of Mr.A.Aravindhan, (Value Rs.219.03 lac)	Rs.210.74
	TOTAL	Rs.269.92

Terms and conditions:
1. The initial payment of Rs.125.00 lacs to be made on or before 31.03.2016.
2.The balance amount of RS.144.92 lacs to be payable on or before 30.04.2016
3. The primary and collateral securities charged to the Bank shall be released only after receipt of full amount.
4. All the relief/concession given under shall be withdrawn and entire claim amount with interest accrued as per decree of DRT would become payable if you fail to honour any of the terms and conditions whether fully or partially. The decision of the bank shall be conclusive and binding on you.
5. Any default in compliance of any terms and conditions stipulated herein above will be treated as default and which will result in termination of sanction automatically and Bank will proceed to recover the dues through appropriate legal/recovery action without any notice to you. Any amount deposited till that time will be adjusted towards the due and shall not be refunded.
6. To undertake that all present and future statutory liabilities other dues and claim if any should be settled directly and the Bank will not undertake any obligation to pay such dues/claims.
7. The company has to produce the copy of agreement for sale.
8. The company has to produce the life certificate of Mr.Aravinthan and latest EC of the registered Power of Attorney.
9. The original title deeds deposited with us in respect of the above two properties at the time of creation of equitable mortgage will be released only on full payment of Rs.269.92 Lacs to the bank.
10. This No Objection certificate is valid up to

30.04.2016 only.

The letter is issued without prejudice to the rights and remedies available to the bank to pursue the proceedings already initiated by it under the provisions of SARFAESI Act/DRT Act. further, this reply shall not be construed as waiver of any rights or remedies available to the bank for recovery of dues in respect of your accounts by taking recourse of any other law for the time being in force.

Yours faithfully,

Senior Branch Manager"

5. Though Mr.B.Anbuvel, representing M/s.Anbu Textiles Pvt. Ltd., has written a letter dated 21.04.2016, to the Chief Manager, Bank of Baroda, Tiruppur, for extension of time, no amount has been paid. Thereafter, vide order dated 25.07.2016 in I.A. No.974/2015 in O.A. No.363/2014, the Debts Recovery Tribunal, Colrnbatore, dismissed the petition filed seeking permission to effect conveyance as hereunder:

"The petitioner has produced the reply sent by the Respondent bank dt.30.3.2016 and the Reply sent by the petitioner/defendant in which he expressed his inability to honour the OTS offer for the reasons stated therein. Thereafter, the petitioner/defendant on 21.07.2016 has sent a letter to the Respondent/Bank in which it has been stated that one Mr.A.L.Ramanathan, Pitchai Manickam and his wife Mrs.Chandradevi, have agreed to repay the loan account. But this petition has been filed on 18.6.2015, in which the name of the prospective purchaser is mentioned as Mr.Sahubar Saddiq. The proposal sent by the petitioner/defendant at a later point of time to the Respondent/Bank would suggest another three prospective purchasers. Therefore, after considering the materials available on record, this Tribunal is of the view that the petitioner/applicant is taking different stands at a different point of time with a view to forestall the proceedings of the R/Bank and the different stands taken on different situations, discloses the fact that the claim of applicant is not bonafide. Hence, this Tribunal is not inclined to consider the prayer of the petitioner in I.A. No.974/2015. Hence, in view of the observations made supra, I.A. No.974/2015 is dismissed. No costs."

6. The above said order is assailed in this writ petition, on the grounds inter alia that Debts Recovery Tribunal, Coimbatore has failed to consider the bona fides of the

petitioner in bringing private purchasers and dismissed the prayer without any valid reasons. The Tribunal failed to consider that, to release two of the securities, to reduce liabilities suffered, time granted to make initial deposit of Rs.125.00 Lacs was not sufficient. Though time of 60 days was sought for, there was no response.

7. Record of proceedings shows that, while ordering Notice returnable in four weeks, a Honourable Division Bench of this court in W.P. No.30059/2016 dated 30.08.2016, granted interim stay of further proceedings, on condition that the petitioner shall ensure payment of the value assessed in respect of the property with interest thereon. Registry has been directed to post the matter after service. Thus after service, it is listed for further hearing.

8. Based on the letter dated 17.11.2016, addressed to the Deputy General Manager, Bank of Baroda, Coimbatore. and the reply dated 24.11.2016, Mr.N.Anand Venkatesh, learned counsel for the petitioner, submitted that bank has rejected the request to accord permission for sale of the property and without such permission, property could not be conveyed, to ensure payment, as ordered by this court. Learned counsel made submissions on the above averments.

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

9. Admittedly, there is a default in making payment. Bank has instituted proceedings in O.A. No.363/2014 for the relief, as stated supra. Pending disposal of the same, petitioner, in LA. No.974/2015,
has sought for a direction to the bank to accord permission to the petitioner to effectuate conveyance of the petition schedule mentioned properties, as General Power of Attorney of his son Mr.A.Aravindhan, for a sale consideration of Rs.2.10 Crores, by directly remitting the said sum the intending purchaser Sahubar Sadhik or his nominee into the suit loan account, on the strength of release of the mortgage over the schedule mentioned properties and on the strength of delivery of the original title deeds to the purchaser.

10. Bank has filed objections to the prayer, as stated supra. However, on 30.03.2016, bank has consented to release two items of the petition schedule mentioned properties, to reduce the liabilities of the company M/s.Anbu Textiles Pvt. Ltd. Citing that election has delayed the parties who come forward for transfer of money and due to high value properties, there was delay in taking a decision by the buyer, vide letter dated 21.04.2016, M/s.Anbu Textiles Pvt. Ltd. has requested the Chief

Manager, Bank of Baroda, Tiruppur, to grant 60 days time.

11. Thereafter, considering the submissions of the bank that the defendants therein, had failed to create equitable mortgage against a property situated in Chennai, as agreed by them, at the time of sanctioning of loan and sold the hypothecated machineries without remitting sale proceeds before the respondent bank and thereby cheated the bank and the further submission of the bank that the petitioner has suppressed the value of other two properties, and approached the Tribunal, with a plea of identifying a prospective buyer, Mr.M.Sahubar Sadhik, without production of any concrete evidence, and thereafter, came out with three other prospective buyers, thus taking different stands, DRT, Coimbatore vide order in LA. No.974/2015 in O.A. No.363/2014, dismissed the lA, for the reasons recorded in the foregoing paragraphs.

12. Loan has been availed in the year 2011. Bank has instituted the proceedings in the year 2014. Since then, no payment has been made. Though on 30.08.2016, this court in W.P. No.30059/2016 has granted interim stay on condition that the petitioner shall ensure payment, instead of complying with the directions, once again, the petitioner vide letter dated 17.11.2016, has requested the Deputy General Manager, Bank of Baroda, Coimbatore, to accord permission for sale of the properties accepted and to afford an opportunity by way of substantial remittance in the loan account, for which, bank has sent a reply dated 24.11.2016, stating that no deposit has been made to show the bona fides. Bank has also stated that petitioner has cheated, by selling away the hypothecated machineries without the consent of the bank and also sold the property at Chennai, agreed to be mortgaged with the bank. Bank, in its reply dated 24.11.2016, has also made it clear that the attempts are nothing but dilatory tactics. On the facts and circumstances of this case, this court is of the view that nothing prevented the petitioner from making deposit, as directed by this court into the loan account, if there are prospective buyers or to ensure payment.

13. When permission to sell as requested by the petitioner has been turned down by the Tribunal in I.A. No.974/2015 dated 29.07.2016, and when a conditional order has been passed by this court, it is not open to the petitioner to once again revive the same request, by a subsequent letter dated 17.11.2016. The bank has not acceded to such request. Material on record discloses that there is absolutely no bona fide in the conduct of the petitioner, as observed in the impugned order, as well as in the reply of the bank dated 24.11.2016. There is no manifest error in the order

impugned. Petitioner is not entitled to any equity. Interim order granted is vacated.

Accordingly, the writ petition is dismissed. However, there shall be no order as to cost. Consequently, all the connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

asr

1. THE REGISTRAT,
DEBT RECOVERY TRIBUNAL,
COIMBATORE.

2. THE MANAGER,
M/S.BANK OF BARODA,
AVINASHI ROAD, BRANCH,
TIRUPPUR - 641 602.

+1cc to Mr.N.Anand Venkatesh Advocate, S.R.No. 71368/17

+1cc to M/s.Sampathkumar Asso. Advocate, S.R.No. 71831/17

W.P. No.30059 of 2016

BR(CO)
TR(23/11/2017)