

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2017

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.18594 of 2003
& WMP Nos.42739 of 2005 and 2540 of 2017

Sikora Knits Pvt.Ltd.,
Rep.by its Director
19A, Kaliyamman Koil Street
Velampalayam Village,
Tiruppur Taluk
Coimbatore District

.. Petitioner

Vs.

1. State Industries Promotion
Corporation of Tamil Nadu Ltd.,
Rep.by its Managing Director
P.B.No.7223,
19-A, Rukmani Lakshmipathy Road
Egmore, Chennai 8
2. The Special Tahsildar
Recovery, SIPCOT
19-A, Rukmani Lakshmipathy Road
Egmore, Chennai 8
3. Denim Garments
rep.by its Proprietor
N.Subramaniam
Shed No.37 & 38, Tekic Tea Nagar
Mudalipalayam
Tirupur 641 606

(3rd respondent impleaded as per order of Court dated 21.1.2006
made in WMP No.42737 of 2005) .. Respondents

Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in connection with impugned order PF/F&R-I/838-2003/S.T(R) dated 24.6.2003 together with the records of the tender process commencing with the publication dated 14.2.2005 in Dina Thanthi edition in respect of the sale of the property at serial No.27 comprised in Survey No.44/1 to 4 and 47/1 to 47/4 in 15,

Velampalayam Village, Tirupur Taluk, Coimbatore District measuring 3.05- 1/2 acres and quash the same and consequently direct the cancellation of the sale of the aforesaid property in favour of the third respondent and direct restoration of possession to the Directors of the petitioner.

(Prayer amended as per order of Court dated 21.1.2006 in WPMP No.42738/2005)

For Petitioner .. Mr.C.V.Vijayakumar
For Respondents.. Mr.Sudharshana Sunder for R1
Mr.V.Jayaprakash Narayanan
for R2

ORDER

The petitioner company availed loan in the year 1977 from the first respondent to a tune of Rs.85 Lakhs and on account of slump in business, it was not able to repay the loan with interest. Therefore, the first respondent by order dated 30.1.2001 foreclosed the loan and duly communicated the same to the petitioner. Thereafter, the second respondent issued a notice dated 22.10.2001 stating that they have initiated proceedings under section 29 of State Financial Corporation Act, 1951 (hereinafter called as "Act") to take possession of the properties offered by the company as collateral security. Challenging the said notice, the petitioner filed W.P.No.20864 of 2001 and on 23.11.2001, in WPMP No.30792 of 2001, this Court (F.M.Ibrahim Kalifulla,J) passed the following order:

"Interim stay extended by four weeks subject to the petitioner paying a sum of Rs.2,00,000/- (Rupees two lakhs only) to the first respondent within that period. In the mean time, the petitioner shall approach the first respondent and seek for reschedulement of whole liability due to the first respondent."

The petitioner paid Rs.2 Lakhs and sought reschedulement for repayment. The first respondent did not act on the petitioner's request.

2. Once again, the first respondent issued a notice dated 24.6.2003, calling upon the petitioner to show cause as to why they should not proceed under section 29 of the Act and to take possession of the immovable properties, namely two tiled houses in S.No.44/3C & 47/1C to realize their dues. The petitioner was asked to give its explanation on 4.7.2003 at 10.00 a.m. Challenging the order dated 24.6.2003, the petitioner filed the present writ petition on 3.7.2003 and at the time of admission, on 30.7.2003, this Court passed the following order (A.Kulasekaran,J):

"Heard. In the circumstances of the case, the petitioner is directed to pay further sum of Rs.15,00,000/- (Rupees fifteen lakhs only) within a period of 4 weeks and another sum of Rs.10,00,000/- (Rupees ten lakhs only) in four weeks thereafter. In default of nay one of the payments, the interim stay shall stand automatically vacated."

On 10.9.2003, this Court passed the further order as follows (K.Raviraja Pandian,J):

"If the condition imposed while granting the Interim stay on 30.7.03 is complied with, the stay granted would enure in favour of the petitioner till the disposal of the writ petition. Otherwise stay granted is automatically vacated without any further reference."

On the same day, i.e., on 10.9.2003, Miscellaneous Petition No.30792 of 2001 in W.P.No.20864 of 2001 came up before another single Judge of this Court and the learned Judge (F.M.Ibrahim Kalifulla, J, as he then was) passed the following order:

"By order dated, this Court granted Interim stay though initially for a period of two weeks, it is stated that no further development has taken place nor the impugned order was implemented in the mean time. Therefore, the interim stay granted earlier shall be continued and made absolute. This WPMP is closed. Post the main writ petition during the second week of January 2006.)

3. Strangely, it was not brought to the notice of the learned Judge who heard WMP No.30792 of 2001 in W.P No.20864 of 2001, by the petitioner that he has subsequently filed the present writ petition, namely W.P.No.18594 of 2003 and obtained the aforesaid orders.

4. Admittedly, the petitioner did not deposit the sum of Rs.15 Lakhs and Rs.10 Lakhs, that was ordered to be deposited by this Court in the order dated 30.7.2003. On account of that, the interim stay granted by this Court, staying the operation of the impugned order dated 24.6.2003 got automatically vacated.

5. The first respondent waited till 2005 and took steps to bring the property to sale by public auction. At that juncture, the petitioner filed three Miscellaneous Petitions, namely WPMP Nos.42791, 42737 and 42738 of 2005 in this writ petition. In WPMP Nos.42737 and 42738 of 2005, the petitioner prayed for including M/s.Denim Garments, who had purchased the property in

public auction, as third respondent in the writ petition and also prayed for amendment of the prayer to set aside the sale. In WPMP No.42791 of 2005, the petitioner prayed for an injunction, restraining the respondents Nos.1 and 2 from executing the sale deed in favour of Denim Garments. WPMP Nos.42737 and 42738 of 2005 were allowed on 21.1.2006, pursuant to which Denim Garments was impleaded as 3rd respondent and the prayer was also amended.

6. In WPMP No.42791 of 2005, this Court (M.Chockalingam, J.) passed the following order on 12.6.2006:

"This petition has been brought forth seeking interim injunction restraining the respondents 1 and 2 from executing the sale deed in respect of the property in Survey No.44/1 to 4 and 47/1 to 47/4 in 15, Velampalayam Village, Tirupur Taluk, Coimbatore District, measuring 3.05 1/2 acres.

2. Affidavit in support of the petition is perused. The Court heard the learned counsel for the petitioner. The learned counsel for the respondents are also heard.

3. The learned counsel appearing for the third respondent would submit that the sale deed which is sought to be restrained was executed by the third respondent on 15.11.2005 and under such circumstances, no question of interim injunction restraining the execution of the sale deed would arise.

4. The statement made by the learned counsel for the third respondent is recorded. In view of the same, no question of interim orders would arise. Hence, this petition deserves an order of dismissal, and accordingly, it is dismissed. Post the writ petition in the first week of July 2006 for final disposal.

7. Thus, from the above, it is clear that the interim stay that was granted by this Court, staying the operation of the order dated 24.6.2003 got vacated on its own, as the petitioner did not deposit Rs.15 Lakhs and Rs.10 Lakhs, as directed by this Court. Hence, the action of the respondents in bringing the property to sale in public auction, cannot be found fault with.

8. The writ petition No.20864 of 2001 was dismissed by this Court on 19.8.2010 (S.Nagamuthu, J) as follows:

"When the matter was called on 17.8.2010, there was no representation on behalf of the petitioner. Hence, the matter is directed to be listed today (19.8.2010) under the caption "for dismissal". Even today also, there is no representation on behalf of the

petitioner. Hence, the writ petition is dismissed for default. No costs. Consequently, connected miscellaneous petition is closed."

9. From the above narration, the following points emerge:

- (a) The petitioner had failed to repay the loan amount with interest;
- (b) The first respondent foreclosed the loan on 30.1.2001;
- (c) The first respondent issued a Notice dated 22.10.2001 under section 29 of the Act. Challenging the said notice, the petitioner filed W.P.No.20864 of 2001 and WPMP No.30792 of 2001, wherein this Court directed to pay Rs.2 Lakhs and seek re-schedulement;
- (d) The petitioner paid Rs.2 Lakhs and sought re-schedulement, which was not acceded by the first respondent;
- (e) The first respondent issued a fresh Notice dated 24.6.2003 under section 29 of the Act, after giving due credit to the sum of Rs.2 Lakhs paid by the petitioner. Challenging the Notice dated 24.6.2003, the petitioner filed the present writ petition, in which this Court had granted interim stay on condition that the petitioner should pay Rs.15 Lakhs and Rs.10 Lakhs to the respondents and on the failure of such payment, interim stay would stand automatically vacated;
- (f) The petitioner did not comply with the order and therefore the interim stay got automatically vacated;
- (g) The property was brought to sale in the year 2005 in public auction by the first respondent and M/s.Denim Garments (newly impleaded as 3rd respondent) purchased the property by a deed of sale dated 15.11.2005.

10. Therefore, in the opinion of this Court, nothing survives in this writ petition. However, the learned counsel for the petitioner placed strong reliance on the judgment of the Supreme Court in Mahesh Chandra v. Regional Manager, U.P.Financial Corporation and others, reported in AIR 1993 SC 935(1) and submitted that the first respondent had not followed the guidelines in the said judgment and therefore, the entire proceedings stand vitiated.

11. Per contra, the learned counsel for the respondents brought to the notice of this Court that the judgment in Mahesh

Chandra case stands overruled, by a Three-Judge Bench of the Supreme Court in Haryana Financial Corporation and another vs. Jagdamba Oil Mills and another, reported in (2002) 3 SCC 496. On a perusal of Jagdamba Oil Mills Case, it is clear that the earlier view expressed by the Supreme Court in Mahesh Chandra case was held to be not laying down the correct law. In Jagdamba Oil Mills Case, the Supreme Court has held that the challenge to an action taken under Section 29 of the State Financial Corporation Act, 1951 can be subjected to judicial review only under two circumstances, namely:

a) where there is statutory violation on the part of State Financial Corporation,

b) where State Financial Corporation acts unfairly i.e. unreasonably. While exercising its jurisdiction under Article 226 of the Constitution of India, 1950 (in short, "the Constitution"), the High Court does not sit as an appellate authority over the acts and deeds of the Corporation. Similarly, the courts other than the High Courts are not to interfere with action under section 29 of the Act unless the aforesaid two situations exist.

12. In this case, the aforesaid 2 circumstances do not exist, inasmuch as the first respondent informed the petitioner about the foreclosure of the loan on 30.01.2001. Thereafter, they issued a notice under section 29 of the Act on 22.10.2001, which was the subject matter of challenge in W.P.No.20864 of 2001. The respondent was not agreeable for the re-schedulement submitted by the petitioner, however issued a fresh notice under section 29 of the Act on 24.6.2003, challenging which the petitioner filed the present writ petition and time was given to the petitioner by this Court to make payments of Rs.15 Lakhs and Rs.10 Lakhs in instalments, which the petitioner did not comply with. This Court had clearly stated that on the failure of the petitioner in not paying the amounts, the interim stay of the notice dated 24.6.2003 will stand automatically vacated. Admittedly, the petitioner did not make the payments and therefore, the property was brought to sale in public auction in the year 2005.

13. The contention of the petitioner that he was not aware of public auction, cannot be accepted. The contention of the petitioner that he should have been given one more Notice before holding public auction, cannot be accepted because section 29 of the Act clearly empowers the Financial Corporation to take over the possession of the property as well as transfer the same by way of sale and realize its dues.

14. In this case, the petitioner was given show cause notice twice, once in the year 2001 and again in the year 2003 under

section 29 of the Act, which he did not avail. This Court had even stayed the Notice on condition that he should deposit Rs.15 Lakhs and Rs.10 Lakhs, which also he did not comply. Therefore, in the facts and circumstances of the case, it cannot be stated that there has been any violation of the law laid down by the Hon'ble Supreme Court in Jagdamba Oil Mills and another (cited supra).

15. In the result, the writ petition is devoid of merits and is accordingly dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ajr

To

1. The Managing Director
State Industries Promotion Corporation of Tamil Nadu Ltd.,
P.B.No.7223,
19-A, Rukmani Lakshmipathy Road
Egmore, Chennai 8
2. The Special Tahsildar
Recovery, SIPCOT
19-A, Rukmani Lakshmipathy Road
Egmore, Chennai 8

+1cc to Mr.Rajaraman, Advocate, S.R.No.8602

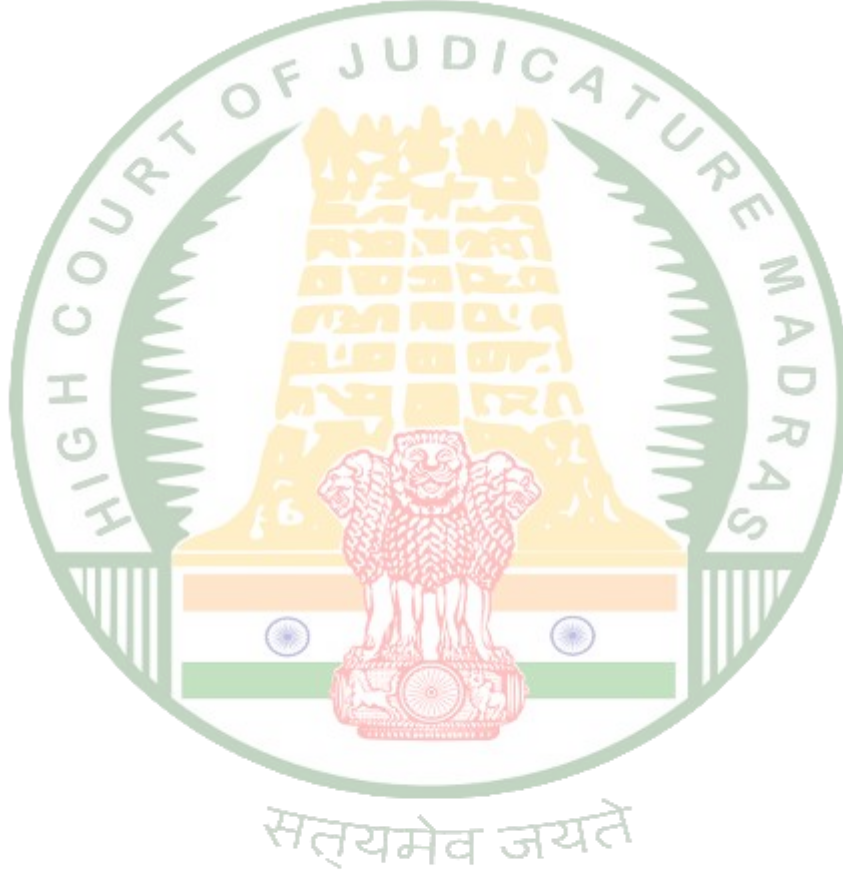
+1cc to Mr.Sudharshana sunder, Advocate, S.R.No.8455

SS(CO)
RS(02/03/2017)

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P.N.PRAKASH, J.
ajr

W.P.No.18594 of 2003



09.02.2017

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