



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2017

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.[MD].No.1643 of 2017
and
W.M.P.(MD).Nos.1331, 1332 and 2906 of 2017

M.Arumugam .. Petitioner

Vs.

1.The Authorized Offier,
Punjab National Bank,
Asset Recovery Management Branch,
448-A, Dr.Nanjappa Road,
Coimbatore - 641 018.

2.Punjab National Bank,
rep. by its Branch Manager,
Tirunelveli Town Branch,
No.59, North Car Street,
Maninadar Complex, 1st Floor,
Tirunelveli - 627 006.

3.Punjab National Bank,
Asset Recovery Management Branch,
448-A, Dr.Nanjappa Road,
Coimbatore - 641 018.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Declaration, declaring the action of the respondents in sealing the premises at M/s.Subraya Resorts No.7/18/2, Nagercoil Road, Jothipuram, Munneerpallam Village, Palayamkottai Taluk, Tirunelveli District, through third parties in a deceitful manner without any prior or post notice of such sealing, as highly unwarranted, arbitrary, illegal, unjustified and against the principles laid down by the legislature as well as this Court and consequently permit the petitioner to enter the premises.

For Petitioner

: Mr.P.Elayaraj Kumar for
M/S.Ramalingam & Associates,

For respondents

: Mr.O.M.Prakash,
M/s.Vastlaw Associates

O R D E R

[Order of the Court was made by R.SUBBIAH, J.]

This writ petition has been filed by the petitioners seeking a direction to the respondents herein to declare the action of the respondents in sealing the premises at M/s.Subraya Resorts No.7/18/2, Nagercoil Road, Jothipuram, Munneerpallam Village, Palayamkottai Taluk, Tirunelveli District, through third parties in a deceitful manner without any prior or post notice of such sealing, as highly unwarranted, arbitrary, illegal, unjustified and against the principles laid down by the legislature as well as this Court and to consequently permit the petitioner to enter the premises.

2.It is stated in the petition that the petitioner and his wife are the partners of the firm by name M/s.Subraya Resorts. For the development of the said firm, they availed a term loan of Rs.150 lakhs and an Overdraft of Rs.20 lakhs from the respondent Bank by mortgaging the property of the firm worth about Rs.10 crores. Due to default in repayment, the first respondent issued Possession Notice under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act) and thereafter, issued demand notice under Section 13(2) of the SARFAESI Act. Aggrieved by the same, the petitioner approached the Debt Recovery Tribunal in S.A.No250 of 2014 and obtained conditional order of interim stay and on his failure to comply with the condition, the said interim order was vacated. However, the petitioner has paid Rs.1,49 crores after issuance of demand notice. During the pendency of the said proceedings, as requested by the petitioner, the third respondent issued OTS letter dated 18.10.2016 calling upon the petitioner to pay a sum of Rs.1.60 crores towards full and final settlement and last such payment to be paid on or before 15.01.2017. While so, even before the expiry of last installment, the 2nd respondent illegally sealed the resort premises on 06.01.2017. The action of sealing the premises without invoking Section 14 of the SARFAESI Act is prima facie illegal and only amounts to an arbitrary action. Hence, the petitioner has come up with this writ petition for the aforesaid prayer. .

3. When the matter was taken up for hearing, the learned counsel for the petitioner submitted that originally the Bank issued demand notice on 26.06.2014 claiming Rs.2,69,88,143/- with further interest and costs. After the said notice, the petitioner has paid Rs.1,49,70,000/- and offered for OTS by selling one of his properties. Considering the payments made and also calculating further interest, the Bank sanctioned an OTS of Rs.1.60 crores by three deferred payments. However, due to demonetization issue, the petitioner is not able to sell the property, mobilize the



amount and comply with the due date of payment. The learned counsel for the petitioner further submitted that the petitioner is ready to pay the entire OTS amount on or before 30.04.2017 together with interest at the rate of 9% p.m. for the delayed period i.e., from 15.01.2017 to 30.04.2017. In order to show the bona fide, the petitioner has also produced two demand drafts each for Rs.10 lakhs, ie., for Rs.20 lakhs. He has further stated that on the failure of the petitioner to comply with the undertaking, the Bank may proceed further in accordance with law. Thus, the petitioner requested to remove the seals on the property. In support of his contention, the learned counsel for the petitioner has also submitted an undertaking affidavit.

4.The learned counsel appearing for the respondent submitted that the petitioner has not paid the amount as per the OTS and therefore, he sought for dismissal of this writ petition.

5.Admittedly, the Bank issued demand notice claiming Rs.2,69,88,143/- for which the petitioner has repaid a sum of Rs.1,49,70,000/-. Considering the said aspect and also as per the request made by the petitioner, the Bank directed the petitioner to pay a sum of Rs.1.60 lakhs on or before 15.01.2017. According to the petitioner, due to current prevailing circumstances, he could not mobilise fund. However, by producing Rs.20 lakhs by way of demand draft, the petitioner assured that he would pay the amount demanded under OTS along with interest for the delayed period on or before 30.04.2017. In paragraph No.4 of the undertaking affidavit, the petitioner has assured as follows;

"4. I respectfully submit that this Hon'ble Court may be pleased to consider the undertaking to pay the OTS amount with interest on or before 30.04.2017 and the payment of Rs.20 lakhs affront towards the said OTS and allow the writ petitioner by directing the Bank to remove the seals on the property. On failure to comply with this undertaking, the Bank may proceed further in accordance with law."

6.Considering the peculiar circumstances of the case and also in the interest of justice, this Court is inclined to pass the following order:

"The petitioner is directed to hand over the demand drafts for a sum of Rs.20 lakhs (Twenty lakhs only) to the first respondent. The petitioner is further directed to pay the balance amount to be payable under OTS on or before 30.04.2017 together with interest for the delayed period i.e., from 15.01.2017 to 30.04.2017, as per the undertaking given by him in the undertaking affidavit. On receipt of Rs.20 lakhs, the first respondent is directed to remove

the firm viz., M/s.Subraya Resorts No.7/18/2, Nagercoil Road, Jothipuram, Munneerpallam Village, Palayamkottai Taluk, Tirunelveli District forthwith. On the failure of the



petitioner to settle the OTS amount together with interest for the delayed period on or before 30.04.2017, as per the undertaking, the first respondent shall proceed further in accordance with law.

7. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar

/True Copy/

Sub Assistant Registrar.

To

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Asset Recovery Management Branch,
448-A, Dr. Nanjappa Road,
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+1CC to M/S. Ramalingam Associates, SR.No. 12229

+1CC to M/S. Vast Law Associates, SR.No. 12228

Order made in
W.P. [MD]. No. 1643 of 2017
Dated: 03.03.2017

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AM/SV MMS/SAR-1/06.03.2017/4P/6C