



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.04.2017

CORAM:

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN
W.P. [MD].No.6718 of 2017

R. Albert Vaans

: Petitioner

Vs.

1.The Authorised Officer / Chief Manager,
Indian Bank, W.C.C. Road,
Nagercoil, Kanyakumari District

2.The Branch Manager
Indian Bank,
Thuckalay,

3.The Managing Director, Arcil -Arms
The Rupy, 10th floor,
29, Senapathi Bapat Merg.

4.The Authorised Officer,
Arcil-Arms, (A Division of Asst.
Reconstruction Company Ltd)
715 -C, 7th floor,
Spencer's Plaza Phase II,
769 Annasalai,
Chennai.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents 1 and 2 to cancel the sale of the loan bought in the name of M/s. Merries Ready made and Textiles in LAN No. 870728890 in favour of the respondents 3 and 4 and thereby direct the respondents 1 and 2 to give an opportunity for an one time settlement to the petitioner.

For Petitioner

: Mr.G.Cenil

For Respondents

: Mr.Pala Ramasamy
Standing Counsel**O R D E R**

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]



behalf of the respondents. By consent, the Writ Petition itself is taken up for final disposal at the stage of admission.

2.The petitioner is a guarantor in respect of a loan, which was availed by M/s.Merris Readymade and Textiles run by the petitioner's brother Mr.Merris Robert. It is stated that the borrower is no more and since there was a default committed in repayment of the loan amount, the first respondent/bank initiated action against the properties and the petitioner's properties was brought for sale. The sale notice was put to challenge by the petitioner before the Debts Recovery Tribunal, Madurai in S.A.No. 272 of 2013, in which, they sought for an order of interim stay. The Tribunal, by order dated 02.01.2014, granted an order of interim stay subject to payment of Rs.4,00,000/- in two instalments. The first instalment of Rs.2,00,000/- to be paid on or before 13.01.2014 and the second instalment of Rs.2,00,000/- to be paid on or before 31.01.2014.

3.The first respondent bank was granted liberty to proceed with the auction scheduled on 13.01.2014 but not to confirm the sale. The petitioner has complied with the said condition and he has remitted a sum of Rs. 4,00,000/-, well within the time fixed by the Debts Recovery Tribunal.

4.In the mean time, the first respondent bank assigned debts in favour of the respondents 3 and 4. On such debts being assigned, the fourth respondent issued a notice to the petitioner and two others on 18.08.2015 under section 13(2) of the SARFAESI ACT, 2002. On receipt of the notice, the petitioner through his counsel sent a reply dated 23.10.2015, wherein apart from other things, which was brought to the notice of the fourth respondent about the order stay granted by the Tribunal. In the meantime steps were taken to settle the matter and the petitioner also requested the matter to be referred to Lok Adalat at Debts Recovery Tribunal Madurai, on 08.03.2017. Fearing that the properties will be sold by the fourth respondent, this petitioner is before this Court.

5.The learned counsel appearing for the respondent bank submitted that the fourth respondent has taken over the loan pursuant to an assignment debt and they were not aware of the fact that the first respondent bank had earlier initiated proceedings to sell the property and that the matter is now pending before the Debts Recovery Tribunal. Further it is submitted that the fourth respondent taking steps to implead themselves as party in S.A.No. 272 of 2013 before the Debts Recovery Tribunal and proceed from the stage, where the matter has been left by the first respondent bank/the assignor.

6.In the light of above, the Writ Petition is disposed of by restraining the respondent bank from initiating any coercive steps against the Writ Petitioner and to maintain the status quo, which is prevailing as on today and leaving it open to the fourth respondent



to seek for substitution in S.A.No.271 of 2013 in the place of Indian Bank, pending before the Debts Recovery Tribunal Madurai. No costs.

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/True copy/

Sd/-

Assistant Registrar

Sub Assistant Registrar

+1 CC to M/s.G.GENIL, Advocate, SR No. 52326

+1 CC to M/s.PALA RAMASAMY, Advocate, SR No. 52389

ARUL/DSK

PSM/SV-MMS/SAR4/26.04.2017/3P/3C

ORDER MADE IN
W.P.[MD].No.6718 of 2017
13.04.2017