



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 15.06.2017
CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.(MD)Nos.23243 and 23244 of 2016

V.S.S.Sivalinga Raja : Petitioner in W.P.(MD)No.23243 of 2016
V.S.R.Velayutha Raja : Petitioner in W.P.(MD)No.23244 of 2016
Vs.

1.The Branch Manager,
Bank of India,
Tuticorin Branch,
58, Bala VinayagarKovil Street,
S.R.Complex,
Tuticorin-628 002.

2.The Chief Manager/The Authorized Officer,
Asset Recovery Department,
Star House,
3rd Floor, 324 Oppanakarar Street,
Coimbatore-641 001.

3.M/s. Parvathy Transport Services,
Prop. Mr.A.M.Rajesh,
242, Sivanthakulam Road,
Tuticorin-628 003.

4.B.Uma Maheswari

5.R.Vimalarani

6.P.Paulraj : Respondents

COMMON PRAYER: Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records in reference No.TUT/AS/2015-2016/07 dated 23.05.2015 issued by the first respondent and quash the same and consequently direct the respondents 1 and 2 to credit the amount of RS.13,00,000/- along with accrued interest in the No lien account of the petitioner wherein the first respondent bank unilaterally had appropriated to the loan account of third respondent M/s.Parvathy Transport Services on 06.07.2016.

(Prayer amended vide Court Order dated 17.04.2017 in W.M.P.(MD) Nos.3415 and 3416 of 2017)



For Petitioner
(in both the Writ Petitions) : G.Krishnakumar
For Respondent No.1 : Mr.Pala Ramasamy
For Respondent No.5&6 : Mr.H.Lakshmi Shankar
For Respondents 2,3 & 4 : No appearance.
(in both the Writ Petitions)

COMMON ORDER

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

Heard Mr.G.Krishna Kumar, learned Counsel appearing for the petitioner, Mr.P.Pala Ramasamy, learned Standing Counsel appearing for the first Respondent and Mr.H.Lakshmi Shankar, learned Counsel appearing for the fifth and sixth Respondents. Though, the second third and fourth respondents have been served and their names were printed in the cause list, none appears for the second third and fourth respondents.

2.The amended prayer in the writ petitions is for issuance of Writ of Certiorarified Mandamus to quash the communication sent by the respondent bank dated 23.05.2015 and to direct the first and second respondents to credit a sum of Rs.26,00,000/- (Rupees Twenty Six Lakhs only) along with accrued interest in the No lien account of the writ petitioners.

3.The contention raised by the petitioners is that the respondent bank should not have appropriated the amount of Rs.26,00,000/- (Rupees Twenty Six Lakhs only) which was offered by the petitioners, pursuant to their letter of undertaking / Affidavit dated 06.11.2013, which was submitted by them soon after they received notice under Section 13(2) of the SARFAESI Act. Further, it is submitted that the guarantors had filed applications before the Debt Recovery Tribunal, one of which has been dismissed as withdrawn and two other applications are pending and the properties have been sold and the respondent Bank has recovered a sum of Rs.71,95,000/- (Rupees Seventy One Lakhs and Ninety Five Thousand only), which would be sufficient to satisfy the entire loan. Therefore, the petitioners would contend that the appropriation of the money deposited by them is untenable and the same should be returned to them along with the title deeds of the documents deposited by them in the capacity of guarantors for the loan availed by the third respondent.

4.The learned Counsel appearing for the Respondent Bank would submit that it is not correct to state that as of now, the bank has recovered a sum of Rs.71,95,000/- which has been wrongly calculated by the petitioners by taking into account the bid amount which was quoted by the purchasers for the property which



was brought for public auction. Further, he would submit that the Bank has received only an earnest money from those purchasers.

5. The fifth and sixth respondents would submit that they are also guarantors to the loan transactions and the petitioners contention alone has been considered by the respondent bank and the amount has been received from them. Such amount is now lying with the Bank without even being adjusted and there cannot be any piece-meal settlement among the guarantors who are all similarly placed. Therefore, it is submitted that the relief sought for by the petitioners should not be granted.

6. After elaborately hearing the learned Counsels for the petitioners and the respondents and carefully perusing the material placed on record, we find that the substantial dispute is now pending before the Debt Recovery Tribunal and the petitioners have also impleaded themselves in one such proceedings. The question would be as to whether the petitioners could be exonerated and the documents be released by appropriating the sum of Rs.26,00,000 (Rupees Twenty Six Lakhs only). Further, question would be, if such a procedure is adopted, what would be the fate of other guarantors to the loan transactions, especially, when the borrower is remaining silent and not contesting any of the proceedings.

7. Therefore, this Court is of the view that the parties should agitate the matter before the Debt Recovery Tribunal in the pending SARFAESI appeals. Wherein, the Debt Recovery Tribunal would be able to consider the contentions of all the parties, including the stand taken by the Bank and by then, it will be known as to whether the purchasers of the property who bid at the auction would remit the balance amount of sale consideration as per the terms and conditions of the auction.

8. Therefore, at this juncture, the relief sought for by the petitioners cannot be granted. However, we propose to safeguard the amount of Rs.26,00,000/- which has been deposited by the petitioner to the respondent bank as the same should not be adjusted as against the loan account, as the matter is still in a nebulous state and being adjudicated by the Debt Recovery Tribunal. Thus, we grant liberty to the petitioners to appear before the Debt Recovery Tribunal and put forth their submissions. Till the Debt Recovery Tribunal takes a decision in the SARFAESI appeals pending before it, the respondent bank is directed to retain the sum of Rs.26,00,000 in a "No lien interest bearing account" and not to adjust the same as against the outstanding of



the borrower and abide by the orders that would be issued by the Debt Recovery Tribunal in the pending SARFAESI appeals.

9. The learned Counsel appearing for the fifth and sixth respondents would submit that the contentions raised by the petitioners before this Court should be decided as the first among the several issues by the Debt Recovery Tribunal. We do not wish to issue any such specific direction, but, leave it to the Debt Recovery Tribunal to frame the issues for consideration and proceed in accordance with law. The petitioners are not parties to S.A.Nos.6 and 74 of 2015, pending before the Debt Recovery Tribunal at Madurai. In the light of the orders passed by us in these writ petitions, the petitioners should be impleaded as respondents in S.A.Nos.6 and 74 of 2015. Therefore, as and when, the petitioners file appropriate applications, the Debt Recovery Tribunal shall order those applications and implead these petitioners as respondents in the pending SARFAESI appeals. It is open to the fifth and sixth respondents to raise all issues which has been canvassed by them before this Court, especially, when they contend that the Bank has granted certain preferential terms to the writ petitioners.

10. Accordingly, the Writ Petitions are disposed of. No costs.

Sd/-
Assistant Registrar (CSII)

/True Copy/

Sub-Assistant Registrar

To

The Registrar,
The Debt Recovery Tribunal, Madurai
+One cc to Mr.G.Prabahari, Advocate, SR.No.60721
+One cc to Mr.Pala Ramasamy, Advocate, SR.No.60744
+One cc to M/s.H.Lakshmi Shankra, Advocate, SR.No.60491

MR/TSG
RL/5c/4p/JC/SAR1/7/7/2017

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15/06/2017