IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.03.2018**

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. (NPD) No.1494 of 2017
and
CMP No.6992 of 2017

M/s.MNSK College of Engineering,
(A Unit of Sri Mudaliambal Trust),
represented by its Chairman,
M.Nagarajan,
Dhakshinapuram,
Vallthirakkottai ... Petitioner

vs.

1. The Authorized Officer,
Allahabad Bank,
Zonal Office,
"VAIRAMS" 112, Sir Thyagaraya Road,
T.Nagar, Chennai - 600 017.

2. The Branch Manager,
Allahabad Bank,
Pudukottai. ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 09.03.2017 made in IA No.199 of 2017 in AIR No.49 of 2017 on the file of the Debts Recovery Appellate Tribunal, Chennai.

For Petitioner : Mr.B.Thilak Narayanan.

For Respondents : Mr.M.Devaraj

ORDER

(Order of the Court was delivered by **S.MANIKUMAR,** ***J)***

Proceedings dated 09.03.2017, impugned in this writ petition is as follows:

"Ld. Counsel Mr.B.Thilak Narayanan for Appellant present

Ld. Counsel Mr.N.Rajendra for R1 and R2 present.

Heard on I.A.No.199/2017 application for consideration of waiver.

Appellant has challenged the order dated 27.12.2016 of DRT-III, Chennai, by which SARFAESI Appeal has been dismissed. Ld. Counsel for Appellant submits that Bank has issued Demand Notice on 21.10.2014 for recovery of Rs.1.12 Crores. The Appellant has deposited Rs.72 Lakhs in all till date.

Ld. Counsel for Bank represents that in their present SARFAESI Appeal, Possession Notice dated 25.5.2016 has been challenged. As on 25.5.2016, outstanding due was Rs.96 lakhs. In response, Ld. Counsel for Appellant submits that Appellant has deposited Rs.28,50,000/-.

According to provisions of Section-18 of SARFAESI Act, DRAT cannot entertain the Appeal without making a pre-deposit, which should not be less than 25% of the amount determined in any case.

Prima facie, considering the merits of the Appeal, in this case, I held the debt amount to be Rs.96 lakhs. Pre-deposit should be normally 50% which cannot reduced less than 25% in any case. Considering the fact that Bank has released one of the security by at the same time borrower is making payments also, I hereby direct to make slightly less than 50% deposit of the debt amount i.e., Rs.44 lakhs. It is made clear that Appellant will get benefit of Rs.28 lakhs deposited by him recently. Hence, Appellant is directed to make a deposit of Rs.16 lakhs by way of pre-deposit. Appellant will deposit Rs.8 lakhs directly tot he loan account within four weeks from today and remaining Rs.8 lakhs after four weeks of the first deposit.

In the event of failure of deposit of the first instalment, this Appeal shall stand dismissed without reference to this Court.

List on 10.4.2017 for confirmation of pre-deposit of first installment of Rs.8 lakhs in loan account of the Bank."

2. As per the order dated 09.03.2017, petitioner has been directed to deposit a sum of Rs.16 Lakhs by way of pre deposit in two equated intalments and that Debts Recovery Appellate Tribunal, Chennai has directed the matter IA No.199 of 2017 in AIR (SA) No.49 of 2017, to be listed on 10.04.2017 for confirmation of pre-deposit of first instalment of Rs.8 Lakhs to the loan account of the bank.

3. Civil Revision Petition, has been filed on 09.04.2017, just one day prior to 10.04.2017, on which date, I.A.No.199 of 2017 and AIR (SA) No.49 of 2017, have been directed to be listed for confirmation of pre-deposit. Typed set of papers have been filed on 18.04.2017. On 24.04.2017, a Hon'ble Division Bench of this Court, while ordering notice to the

respondents in CRP (NPD) No.1494 of 2017 and CMP No.6992 of 2017 , granted an order of status quo and the same is extracted hereunder.

> "Notice to the respondents returnable in four weeks.
> There shall be an order of status quo as on today subject to the petitioner paying a sum of Rs.8,00,000/- (Rupees Eight Lakhs Only) to the credit of IA No.199 of 2017 in AIR No.49 of 2017 within a period of four weeks from the date of receipt of a copy of this order.
> List after vacation."

4. Prayer made in CMP No.6992 of 2017 in CRP No.1494 of 2017, is as follows:

> "to grant an order of interim stay of all proceedings of the Respondents under the SARFAESI Act pursuant to the impugned order dated 09.03.2017 in respect of the petition scheduled properties pending the disposal of the present Civil Revision Petition."

5. On this day, when the matter came up for hearing, Mr.B.Thilak Narayanan, learned counsel for the petitioner submitted that on 10.04.2017, I.A.No.199 of 2017 and AIR (SA) No.49 of 2017 were listed before Debts Recovery Appellate Tribunal, Chennai and for non compliance of the conditional order dated 09.03.2017, I.A.No.199 of 2017 was dismissed and AIR (SA) No.49 of 2017, rejected.

6. Material on record discloses that the factum of dismissal of I.A.No.199 of 2017 and rejection of AIR (SA) No.49 of 2017, have not been

placed before the Hon'ble Division Bench, which passed interim order of status quo on 24.04.2017.

7. It is well settled that interim orders passed in any proceedings, merge with the final orders. On the principle of law that interim order merges with final orders, we deem it fit to consider few decisions.

(i) In **South Eastern Coalfields Ltd v. State of MP and Others** reported in **(2003) 8 SCC 648,** the Hon'ble Supreme Court held as follows:

> "The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage.

(ii) In **Prem Chandra Agarwal and Another v. Uttar Pradesh Financial Corporation and Others** reported in **(2009) 11 SCC 479,** the Hon'ble Supreme Court held that once a final order is passed, all the earlier interim orders merge into the final order, the interim orders cease to exist.

(iii) In **State of West Bengal and Others Vs Banibrata Ghosh and Others** reported in **(2009) 3 SCC 250,** the Hon'ble Apex Court held that the Interim Order does not decide the fate of the parties to the litigation finally, it is always subject to and merges with the final order passed in the proceedings.

8. In the case on hand on 24.04.2017, there was no matter pending on the file of the Debts Recovery Appellate Tribunal, Chennai. Had the petitioner brought to the notice of the Hon'ble Division Bench about the dismissal of I.A.No.199 of 2017 and the consequential rejection of AIR (SA) No.49 of 2017, probably, the Hon'ble Division Bench, which heard the revision petition would not have exercised its jurisdiction under Article 227 of the Constitution of India and granted an interim order. Thus, on 24.04.2017, Civil Revision Petition itself was not maintainable.

9. Though, Mr.B.Thilak Narayanan, learned counsel for the petitioner, submitted that adequate time may be granted for payment of the deposit amount and sought for interim protection, the same cannot be countenanced. Inasmuch as the revision petition itself is not maintainable, no orders can be passed. Civil Revision Petition is dismissed. No costs. Consequently, order of status quo granted in Civil Miscellaneous Petition is vacated.

(S.M.K., J.) (V.B.S., J.)
08.03.2018

Index: Yes/No.
Internet: Yes
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To

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