



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.8054 of 2018

and

W.M.P.No.10040 of 2018

M/s.Amarjothi Spinning Mills Limited,
Rep. by its Joint Managing Director,
Mr.R.Jaichander,
Gobi Main Road,
Pudusuripalayam,
Nambiyur - 638 458.
Erode District.

... Petitioner

vs.

1. City Union Bank,
Rep. By its Authorised Officer,
Administrative Office,
No.24-B, Gandhi Nagar,
Kumbakonam - 612 001.

2. City Union Bank,
Rep. by its Authorised Officer,
Gobichettypalayam Branch,
No.51, Cutchery Street,
Gobichettypalayam - 638 452,
Erode District.

3. M/s.Gobi Textiles Limited,
Rep. by its Managing Director,
Mr.P.S.Muthuvelappan.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the respondents 1 and 2 not to bring the movables namely raw cotton stocks, machinery and finished yarn of the petitioner kept in the leasehold godowns owned by the 3rd respondent situated in the properties schedules D&E more particularly described in the schedule to the tender cum auction sale notice issued under Section 13(4) read with Rule 8(6) of SARFAESI Act and Security Interest (Enforcement) Rules 2002 in C.O./Rec/NPA/2017-18 dated 28.02.2018 by the 1st respondent to the 3rd respondent in auction to be held on 10.04.2018 or any other dates and dispossess the petitioner from the aforesaid property on the basis of the renewed lease agreement dated 28.01.2018 entered between the petitioner and the 3rd respondent till 27.12.2018.



For Petitioners: Mr.R.Dhanaram
for Mr.G.Ethirajulu
For Respondent : Mr.R.Sivaraman (for R1 & R2)

ORDER

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

Petitioner has sought for a writ of mandamus, directing the respondents 1 and 2 not to bring the movables namely raw cotton stocks, machinery and finished yarn of the petitioner kept in the leasehold godowns owned by the 3rd respondent situated in the properties schedules D&E more particularly described in the schedule in the tender cum auction sale notice issued under Section 13(4) read with Rule 8(6) of SARFAESI Act and Security Interest (Enforcement) Rules 2002 in C.O./Rec/NPA/2017-18 dated 28.02.2018 by the 1st respondent, City Union Bank, Kumbakonam, to M/s.Gopi Textiles Ltd., 3rd respondent herein, in the auction to be held on 10.04.2018 or any other dates and dispossess the petitioner from the aforesaid property on the basis of the renewed lease agreement dated 28.01.2018 entered between the petitioner and the 3rd respondent till 27.12.2018.

2. On 09.04.2018, we passed the following order.

" Respondent No.3, is stated to be the owner of the lands comprised in S.Nos.404/11 etc., situated at Door No.352, Gobi-Dharapuram Road, Kolapalur Village, Gobi Taluk, including 9 Godowns. Petitioner and 3rd respondent have entered into a lease deed dated 28.01.2011, in respect of godowns for 11 months, with option to renew the same. Petitioner has also registered the New Godown Gopi Textile Limited with Commercial Tax Department on 08.02.2011.

2. For the loan borrowed, City Union Bank, represented by its Authorised Officer, Kumbakonam, has issued notice under Section 13(2) of the SARFAESI Act, 2002 dated 18.08.2018 to the 3rd respondent. Possession notice under Section 13(4) of the SARFAESI Act, 2002, dated 16.12.2018, has also been issued, followed by a Tender-Cum-Auction Sale notice dated 28.02.2018, by which City Union Bank Limited, Kumbakonam, has brought the mortgaged properties for auction on 10.04.2018.

3. Contending inter alia that there are goods worth about Rs.54,28,37,300/- in the godown, Amarjothi Spinning Mills Limited, Erode, petitioner herein / tenant under the 3rd respondent, has sent a letter dated 19.03.2018, to the bank, not to disturb his possession, stocks and machineries, finished yarn kept in the godowns situated in Schedule 'D' & 'E' of the property, brought for auction and as there is no reply, instant writ petition has been



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filed for a direction to the respondents 1 and 2, not to bring the movable viz., raw cotton stocks, machinery and finished yarn of the petitioner, kept in the leasehold godowns owned by the 3rd respondent situated in the properties schedules D & E more particularly, described in the schedule to the tender cum auction sale notice issued under Section 13(4) read with Rule 8(6) of SARFAESI Act, and Security Interest (Enforcement) Rules, 2002 in C.O./Rec/NPA/2017-2018 dated 28.02.2018 by the 1st respondent to the 3rd respondent in auction to be held on 10.04.2018 or any other dates and dispossess the petitioner from the aforesaid property on the basis of the renewed lease agreement dated 28.01.2018 entered between the petitioner and the 3rd respondent till 27.12.2018.

4. On 06.04.2018, when the matter came up for hearing, we permitted the learned counsel for the petitioner to serve the entire cause papers on 1st respondent/ City Union Bank, Kumbakonam, pursuant to which, private notice by email dated 06.04.2018 is stated to have been sent to the 1st respondent on 06.04.2018, enclosing a copy of the supporting affidavit to the writ petition. Though, Bank/1st respondent is stated to have acknowledged, not entered appearance.

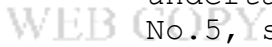
5. Post on 23.04.2018.

6. There shall be an order of interim injunction, restraining respondents 1 and 2, their men, servants or officials in any manner, from removing the petitioner's raw cotton stocks, machinery and finished yarn kept in the leasehold godowns situated in Schedule D & E properties from part of the tender-cum-auction sale notice under SARFAESI Act, 2002 in C.O/REC/NPA/2017-2018 dated 28.02.2018, issued by the 1st respondent to the 3rd respondent, until further orders."

3. Subsequently, on 24.04.2018, we passed the following order.

"Mr.Ethirajulu, learned counsel for th petitioner/tenant submitted that auction scheduled on 10.04.2018, did not take place. He further submitted that the creditor has informed the tenant that a sum of Rs.4.5 Crores has been paid towards the amount outstanding. He requested time for removing the machineries / fixtures.

Though Mr.Mudit, learned counsel represented the bank, he is nt in a position to acknowledge the submission regarding payment.



१२.३ : प्रमेय ५२ (१)

"5. I state that the above mentioned goods are to be removed from the premises and the same shall be handed over to my landlord, the 3rd respondent herein. However since the volume of goods is substantial, the same cannot be removed at once. It is highly necessary to find a proper storage facility to store the cotton as they need delicate care. Hence it is hereby undertaken that the premises shall be vacated within 4 months by removing our goods and machineries from the subject-matter premises. The period of four months shall commence from 01.05.2018"

Sd/--
Assistant Registrar (CCC)

Sub Assistant Registrar

To

<https://hcservices.ecourts.gov.in/hcservices/>



2. The Authorised Officer,
City Union Bank,
Gobichettypalayam Branch,
No.51, Cutchery Street,
Gobichettypalayam - 638 452,
Erode District.

VD(CO)
sm:28.5.2018

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