IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. No.22123 of 2015 and
M.P.No.1 of 2015

R.Krishnamoorthy - Partner
M/s.Chitrahar Traders,
No.69, Komarapalayam,
Uthukuzhi Main Road,
Tirupur - 641 607. .. Petitioner

Vs.

1.UCO Bank,
rep by its Chairman cum Managing Director,
No.10, BTM Sarani,
Kolkata - 700 001.

2.The Authorized Officer,
UCO Bank, Tirupur Branch,
No.171, Kumaran Road,
Tirupur - 641 607.

3.Asset Reconstruction Co. Of India Ltd.,
Shreepathi Arcade, AK Marg,
Gnana Khowk,
Mumbai - 400 036.

4.The Registrar,
Debts Recovery Appellate Tribunal,
Chennai - 2. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus calling for the records of the impugned order dated 21.04.2015 passed in RA (SA).No.144 of 2012 on the file of the Debt Recovery Appellate Tribunal, Chennai and quash the same as being contrary to the law, well established legal principles and also contrary to the facts and circumstances of the case and hold the measures under SARFAESI Act by the respondents as null and void and consequently direct the 3rd respondent to discharge the mortgage and return the title deeds of all the mortgaged properties held by them in the account of M/s.Chitrahar Traders, holding that the debt had been fully discharged.

For Petitioner : Mr.T.Mohan for M/s.K.Surendar
For Respondents : Mr.V.Sudhakar (R1 & R2)
Mr.V.Jayachandran
for M/s.V.Jayachandran & Associates (R3)
R4 - Tribunal

O R D E R

(Order of the Court made by M.DURAISWAMY,J.)

The petitioner has filed the above Writ Petition to issue a Writ of certiorarified mandamus calling for the records of the impugned order dated 21.04.2015 passed in RA (SA).No.144 of 2012 on the file of the Debt Recovery Appellate Tribunal, Chennai and to quash the same and consequently to direct the 3rd respondent to discharge the mortgage and return the Title Deeds of all the mortgaged properties held by them in the account of M/s.Chitrahar Traders, holding that the debt had been fully discharged.

2.It is the case of the petitioner that he had availed credit facility from the respondent - Bank and Karur Vysya Bank for a sum of Rs.67 crores against the common security of immovable properties. The petitioner settled the dues of the Karur Vysya Bank and when he was taking steps to settle the loan with the UCO Bank, a sum of Rs.2.82 crores was due and payable, the respondent - Bank initiated steps to assign the debt to the 3rd respondent. Subsequently, the loan was assigned in favour of the 3rd respondent. Thereafter, the petitioner made an offer for One Time Settlement to settle the account. Accordingly, the petitioner had paid a sum of Rs.66 lakhs by way of cheque to the 3rd respondent and the same was received by the 3rd respondent on the specific term that they would encash the payment on approval of settlement. The 3rd respondent later demanded and received a Demand Draft for Rs.66 lakhs instead of the cheque from the petitioner and also encashed the same, which according to the petitioner clearly discloses that the 3rd respondent had accepted the settlement amount as full and final.

3.The petitioner also contended that despite the full and final settlement of the loan, the mortgaged properties were not released to him. Therefore, the petitioner had filed an appeal in S.A.No.94 of 2010 before the Debts Recovery Tribunal, Coimbatore, under Section 17 of the SARFAESI Act, which was dismissed by the Debts Recovery Tribunal on 03.07.2012. Challenging the said order of the Debts Recovery Tribunal, Coimbatore, the petitioner had filed an appeal in R.A.(SA). No.144 of 2012 on the file of the Debt Recovery Appellate Tribunal, Chennai, which was also dismissed on 21.04.2015.

4.The 3rd respondent contended that the petitioner gave a letter dated 11.02.2009 offering to make payment of Rs.348.63 lakhs and to prove their bona fide, a cheque for Rs.66 lakhs was given without understanding their own offer, imaginarily thinking and calculating upon the acceptance of Rs.66 lakhs, the 3rd respondent has to close the accounts as One Time Settlement.

5.On a perusal of the reply given by the 3rd respondent on 11.02.2009, it is clear that the proposal for payment of Rs.348.63 lakhs is under consideration and further wanted the petitioner to give a Demand Draft in the place of the cheque for Rs.66 lakhs. In the said letter, the 3rd respondent made it clear that the offer of the petitioner was at Rs.348.63 lakhs as One Time Settlement of the entire loan amount. For taking the said proposal for consideration, the 3rd respondent encashed the Demand Draft and kept the amount in no lien interest bearing account, which amount, with accrued interest, was repaid to the petitioner while turning down the proposal of the petitioner.

6.Knowing full well that while making the offer of payment, Rs.348.63 lakhs includes the amount of Rs.1,41,26,500/- paid to the 1st respondent against the then outstanding of Rs.348.53 lakhs, his contention that he had paid Rs.66 lakhs towards full and final settlement towards One Time Settlement cannot be accepted. Since the One Time Settlement proposal was rejected, the sum of Rs.66 lakhs paid by the petitioner was refunded with accrued interest to him. According to the 3rd respondent, the petitioner is liable to pay a sum of Rs.4,93,94,405/- as on 25.11.2015.

7.It is pertinent to note that as on 01.10.2008, the total outstanding payable by the petitioner was Rs.4,19,00,000/- and the petitioner offered to pay a sum of Rs.348.63 lakhs towards full and final settlement and to show his bona fide the petitioner paid a sum of Rs.66 lakhs by way of Demand Draft. Therefore, when the outstanding was Rs.4,19,00,000/-, we cannot accept the contention that the respondent - Bank had agreed for the settlement of the loan account for a sum of Rs.66 lakhs. The sum of Rs.66 lakhs was paid by the petitioner only to show his bona fide in giving the proposal. Subsequently, when the respondent – Bank rejected the proposal, they have returned the sum of Rs.66 lakhs together with interest to the petitioner. When the respondent – Bank was not agreeable to the One Time Settlement proposal, the Court cannot compel them to accept the One Time Settlement proposal given by the petitioner.

8.It is needless to show that the respondent – Bank is dealing with public money and they should take all precautions to protect the same.

9.Merely because the 3rd respondent, in their letter dated 11.02.2009 have stated that the cheque for Rs.66 lakhs shall be encashed after the approval of the proposal, the same cannot be put against the 3rd respondent in recovering the legitimate amount payable by the petitioner. As already stated, the sum of Rs.66 lakhs was paid by the petitioner to show his bona fide and it is not an One Time Settlement amount.

10.It is also pertinent to note that specifically the cheque referred to in the letter dated 11.02.2009 was also returned to the petitioner and the petitioner has submitted a Demand Draft for the said amount. Therefore, just because the 3rd respondent had encashed the Demand Draft for Rs.66 lakhs, the same cannot be taken as a ground by the petitioner to compel the 3rd respondent to accept for the said amount. In these circumstances, we are not accepting the contention raised by the petitioner with regard to the One Time Settlement.

11.The next contention raised by the learned counsel for the petitioner is with regard to the application of Section 31(j) of the SARFAESI Act. As per Section 31 (j), for complying with the provisions of the SARFAESI Act, the outstanding payable by the borrower should not be less than 20%. The learned counsel contended that since the amount due is less than 20%, the proceedings initiated under the SARFAESI Act is liable to be set aside.

12.It cannot be disputed that the borrower availed a loan of Rs.15 crores and after appropriating various payments, when the outstanding payable was Rs.3,78,11,783/-, a notice of demand dated 09.01.2007 was issued to him. This sum of Rs.3,78,11,783/- was arrived at as on 30.09.2006. Since the outstanding payable by the petitioner was more than 25% as on the said date, there was no impediment for the respondent – Bank to initiate proceedings under the SARFAESI Act.

13.The learned counsel appearing for the petitioner relied upon the judgment reported in AIR 2017 Mad 241 [Ensquare Engineerings India (P) Ltd. Vs. The Authorized Officer, Union Bank of India] wherein the Division Bench of this Court, following the judgment of the Punjab and Haryana High Court reported in (2013) 171 PLR 583 [Renu Gupta and another Vs. Debts Recovery Tribunals and others], held that if the outstanding due payable by the borrower is less than 20%, the Bank cannot take any measures for recovery under the SARFAESI Act.

14.However, in the case on hand, as already stated, at the time of issuing the notice initiating proceedings under the SARFAESI Act, the outstanding due payable by the petitioner was more than 25%, therefore, the judgment relied upon by the learned counsel for the petitioner is not applicable.

15.The Debts Recovery Tribunal, Coimbatore and also the Debt Recovery Appellate Tribunal,Chennai, after taking into consideration all these aspects, rightly rejected the case of the petitioner. In these circumstances, we do not find any ground to interfere with the concurrent orders passed by the Tribunals. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1..The Registrar,
Debts Recovery Appellate Tribunal,
Chennai - 2.

+1cc to Mr.V.Suthakar, Advocate, S.R.No.74937

W.P. No.22123 of 2015 and
M.P.No.1 of 2015

GSP(19/11/2018)