IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.MANI KUMAR
&
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.488 of 2018
and W.M.P.No.590 of 2018

M/s.Asveens Forging Pvt. Ltd.,
Represented by its Authorised Representative
Mr.N.Selvakumar, S/o.Mr.C.Nandanam,
No.5, Lakshmi Street, Alagappa Nagar,
Kilpauk, Chennai - 600 010. ... Petitioner

Vs.

1. The Registrar,
   Debt Recovery Appellate Tribunal
   4th Floor, Indian Bank Circle Office
   Ethiraj Salai, Chennai - 600 008.

2. The Authorised Officer,
   State Bank of India,
   Stressed Assets Management Branch,
   32, Montieth Road, "Red Cross Buildings",
   Egmore, Chennai - 600 008. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the proceedings on the file of the first respondent regarding the SARFAESI proceedings and records and quash the impugned order dated 18.12.2017 in RA(SA).No.3 of 2017 issued by the Debts Recovery Appellate Tribunal, Chennai.

For Petitioner : Mr.P.Jesus Moris Ravi

For Respondents : Mr.Ganesh
For R2

R1 - Tribunal

Judgment

(Judgment of the Court was delivered by V.BHAVANI SUBBAROYAN,J.,)

This Writ Petition has been filed in continuity of the earlier Writ petition filed by the petitioner in W.P.No.8475 of 2017 before this Court. The Writ Petitioner has invoked the Jurisdiction of this Court under Article 226 of the Constitution of India, seeking to call for the records of the first respondent herein regarding the SARFAESI proceedings made in RA(SA).No.3 of 2017 dated 18.12.2017 and to quash the same

2. The petitioner has raised various grounds assailing the order of the DRAT. As the Writ Petition.No.8475 of 2017 has already been dealt in detail, for brevity, facts leading to the present case as narrated by the petitioner, in his affidavit are as follows:-

3. The petitioner has approached the first respondent bank for a cash credit and term loan during the year 2005. The respondent bank sanctioned a sum of Rs.105 lakhs as cash credit and Rs.350 lakhs as Term loan. As the petitioner company was regular in repayment of the loan amount, the respondent bank has extended the cash credit limit from Rs.105 lakhs to Rs.175 lakhs making the total term loan limit as Rs.329 lakhs, and thereby, a total sum of Rs.504 lakhs was sanctioned to the petitioner by the first respondent bank in the year 2008.

4. The petitioner states that though the petitioner company was doing well, dues payable by various persons to the petitioner company were not paid during the year 2010, which had affected the performance of the petitioner company. Due to which, the respondent bank has classified the account as NPA (Non Performing Asset on 31.03.2010. Accordingly, bank arrived at the loan amount of Rs.4,79,69,205/- as outstanding from the petitioner.

5. The petitioner would further submit that the respondent bank issued a possession notice on 12.04.2013, and after the receipt of possession notice, various OTS proposals have been arrived at between the petitioner and the respondent bank, and thereafter, the petitioner has paid a sum of Rs.3,71,57,163/- as on 28.03.2015. Apart from the above said payment, the respondent bank has released a portion of the secured asset on receipt of the payment of Rs.2 Crores by the guarantors, without any confirmation from the petitioner herein. Further, the respondent bank has also initiated recovery proceedings and filed O.A.No.58

of 2013. Apart from the recovery proceedings, without the knowledge of the petitioner, the respondent bank had been taking efforts to take physical possession of the schedule mentioned property under Section 14 of SARFAESI Act, 2002, and obtained an order behind the petitioner on 10.04.2014 from the learned Chief Metropolitan Magistrate, Egmore.

6. The petitioner also submitted that the said order of learned Chief Metropolitan Magistrate, Egmore, dated 10.04.2014, was put to the knowledge of the petitioner only on 03.08.2015. Challenging the proceedings initiated by the respondent bank, the petitioner preferred an application before the DRT-I, in SA(SR).No.2678 of 2015 dated 10.08.2015 under Section 17 of the SARFAESI Act and the same was dismissed on 10.09.2015 on the point of limitation.

7. Aggrieved by the order of DRT-I in SA(SR).No.2678 of 2015 dated 10.09.2015, the petitioner preferred further appeal before DRAT, Chennai, on 23.10.2015 in AIR (SA). No.804 of 2015, which was renumbered as RA(SA).No.3 of 2017. Furthermore, the petitioner also submitted that along with the said appeal, a waiver petition was also filed by him, in which, a detailed arguments were made by the parties. Thereafter, accepting the averments made by the petitioner/borrower, that they had deposited a sum of Rs.3.71 Crores out of Rs.4,79,69,205/-, DRAT, by its order dated 30.03.2016, directed the petitioner to deposit a further sum of Rs.15 lakhs, to make it more than 80% of the notice amount and in addition to that, DRAT, has also directed the parties to maintain status quo, on deposit of such amount.

8. The petitioner further submits that in compliance of the said order dated 30.03.2016, the petitioner paid Rs.15,00,000/- on 10.05.2016, which was duly acknowledged by the respondent bank. The grievance of the petitioner is that when there was a status quo order, the second respondent bank had called for sale of the portion of secured asset on 15.09.2016, 04.11.2016, 23.12.2016 and 02.02.2017. As against which, the petitioner also tried his level best to sort out this issue, and despite the same, the second respondent bank had taken further efforts to take physical possession of the property, which made the petitioner to prefer a police compliant before the Inspector of Police, Thiruvallur. However, in the final hearing, the Appeal filed by the petitioner in RA(SA).No.3 of 2017 was dismissed by DRAT on 16.03.2017.

9. Challenging the order dated 16.03.2017, the petitioner has filed a Writ Petition in W.P.No.8475 of 2017

along with a Stay Petition in W.M.P.No.9267 of 2017 before this Court. By an order dated 27.07.2017, this Court has allowed the Writ Petition by passing the following order:

> "19. With due respect, except extracting the pleadings, the Debts Recovery Appellate Tribunal, Chennai, has not discussed any material, as to how the appellate forum has come to the conclusion that the Direction of the Company had come to know about the proceedings of the Chief Metropolitan Magistrate, Commissioner, Chennai, earlier and not for the first time in August 2015. The Debts Recovery Appellate Tribunal, Chennai has not given any reasons as to how, the fact averred by the Writ Petitioner, is false. We would certainly agree with the learned counsel for the Bank, had the forum assigned reasons for the conclusions arrived at, but on the careful consideration of the materials available on record, and in the light of the decisions stated supra, we are of the considered view that the impugned order, deserves to be set aside.
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> 20. Accordingly, Writ Petition is allowed and the order made in R.A.(SA).No.3 of 2017, dated 16.03.2017, in S.A.SR.No.2678 of 2015, on the file of the Debts Recovery Tribunal - I, Chennai, is set aside. While setting aside the above said order, we request the Debts Recovery Appellate Tribunal, Chennai, to pass a speaking order. on merits, within a period of one month, from the date of receipt of a copy of the order, made in this Writ Petition.
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> 21. Bank is at liberty to file a detailed counter affidavit, on the maintainability of the appeal, on the basis of the communication received from the official assignee, High Court, Madras. Though M/s.Asveens Forging Pvt Ltd., represented by its Director, has filed W.M.P.No.19974 of 2017, has sought for an amendment of the cause title, in view of the fact that two of the Directors have already been declared as insolvent, which fact has not been gone into by the Tribunal, we are not inclined to allow, any amendment. Accordingly, this Miscellaneous Petition No.19974 of 2017 is dismissed. No Costs. Consequently, M.P.No.9267 of 2017 is also closed."

10. In the above order, this Court has directed the

Appellate Tribunal to pass a speaking order on merits, within a period of one month from the date of receipt of a copy of the said order and in compliance of the same, DRAT, by its order dated 18.12.2017, dismissed the appeal filed by the petitioner in RA(SA).No.3 of 2017 stating that the order of possession cannot be challenged at a belated stage and further directed the respondent bank to collect the pre-deposited amount, lying with the Registrar of DRAT and to deal with it in accordance with law. As against which, the present Writ Petition has been filed by the petitioner, seeking to quash the said order passed by DRAT, Chennai.

11. The respondent bank, by filing a counter by its Assistant General Manager, has raised a preliminary objection that the deponent, Mr.N.Selvakumar is not legally entitled to represent the petitioner company, since the Board of Directors, namely, Mr.S.Dhanasamy and Mrs. Baghyaprabha were adjudged as insolvents by this Court in IP Nos.32,36 to 38, 58, 64, 97,98 of 2013, IP Nos.1 to 3 of 2014, IP No.6 of 2014 and IP.No.8 of 2014.

12. The respondent bank has further contended that the two guarantors namely, Mr.Dhanasamy and Mrs.Bhaghyaprabha who had originally filed the SARFAESI Application in SA (SR).No. 2678 of 2015 before the DRT-I, Chennai, challenging the order passed, against possession notice under Section 14 of the SARFAESI Act, and the same was dismissed on 10.09.2015. As against which, another appeal has been filed in RA(SA).No.3 of 2017 before DRAT, Chennai, which also came to be dismissed on 16.03.2017. However, when the said order dated 16.03.2017 was challenged by the petitioner before this Court in W.P.No.8475 of 2017, this Court had remanded the matter back to the DRAT to consider and pass a speaking order on merits. In compliance of the same, DRAT, after hearing both the side, passed a speaking order and according to the learned counsel for the respondent that the said order has been passed on merits and therefore, to be sustained.

13. It is further stated in the affidavit filed by the respondent bank, that they have not violated any of the Provisions of SARFAESI Act, 2002, as alleged by the petitioner and they have followed the same:

(i) Demand Notice issued on 1.11.2012

(ii) Amended Notice issued on 21.11.2012 by correcting the outstanding loan amount.

(iii) Demand Notice and Amended Notice was duly acknowledged by the applicants and other guarantors.

(iv) Possession Notice was issued on 12.04.2013 and the same was affixed on the secured properties on 12.04.2013 itself.

(v) Possession Notice was acknowledged by the first petitioner and its guarantors.

(vi) Possession notice was duly published in Tamil and English dailies on 13.04.2013.

(vii) Sale Notice dated 04.03.2014 was issued to the petitioner and its guarantors.

(viii) The Sale Notice was duly acknowledged by the petitioner and its guarantors.

(xi) Sale Notice was duly published in Tamil and English dailies on 04.03.2014.

14. Heard the learned counsel for the petitioner and the learned counsel for the respondents and we have perused the materials available on record.

15. The learned counsel for the petitioner vehemently contended that despite a direction of this Court in the earlier Writ Petition.No.8475 of 2017, DRAT, has not applied its mind while dealing with the order passed by the DRT-I, and it has dismissed the appeal on the ground of limitation by its order dated 10.09.2015. The order passed by DRAT is manifestly illegal and caused injustice to the petitioners.

16. The learned counsel for the petitioner has also contended that the respondent bank had received a sum of Rs.3,71,57,163/- from the petitioner and there was no fresh demand from the respondent bank and hence, DRAT, ought to have set aside the order of the DRT-I and should have remanded the matter back to the DRT-I for fresh consideration of SA(SR).No.2678 of 2015, Instead, DRAT, without application of mind, has dismissed the appeal filed by the petitioner on illusionary ground.

17. The learned counsel for the petitioner would also contend that DRAT, having perused the records, while granting status quo order, by its order dated 30.03.2016 and having directed the petitioner to deposit a further sum of Rs.15,00,000/- to make it more than 80% of the notice amount, ought to have set aside the order passed by DRT-I.

However, denying all the averments and arguments made by the petitioner, Mr.Ganesh, the learned counsel for the respondent bank, disputed the very deposit of Rs.3,71,57,163/- and contended that Rs.2.60 Crores was remitted by the guarantors, namely, Mrs.Suriyaprabha and Mr.G.Senthil Kumar and the respondent bank released their mortgaged property situated at Kodaikanal and the amount received from them, was appropriated to the loan account. In fact, the respondent bank has also sold the factory premises on 22.02.2016 itself and realised a sum of Rs.4.03 Crores, which was also duly credited to the loan account.

18. Apart from that, the learned counsel appearing for the respondent bank, submitted that O.A.No.58 of 2013 filed before the DRT-II, Chennai, for recovery of outstanding loan amount from the petitioner company and its guarantors was allowed after contest by the petitioner and the said order has become final and till date, no appeal has been preferred by the petitioner. Further, pursuant to the order passed in O.A.No.58 of 2013, the petitioner represented by its guarantors, filed an objection before the Recovery Officer which was also dismissed and no further appeal has been filed by the petitioner till date.

19. Under these circumstances, this Court, in W.P.No.384 of 2017 remanded the matter back to DRAT for fresh consideration and DRAT, after hearing the parties, dismissed the appeal and confirmed the order dated 16.03.2017 passed by the DRAT. In this circumstances, the respondent counsel Mr.Ganesh, argued that no interference is requited against the order passed by the DRAT.

20. On a careful perusal of the materials on record, it could be seen that DRAT, had dismissed the appeal in RA (SA).No.3 of 2017 filed challenging the order dated 10.09.2015 passed by the DRT-I in SA(SR).No.2678 of 2015, and the said SA(SR).No.2678 of 2015 was filed to set aside the possession order dated 10.04.2014 passed by the learned Chief Metropolitan Magistrate, Egmore, Chennai.

21. Perusal of the order of the learned Chief Metropolitan Magistrate, Egmore, Chennai, in Crl.M.P.No.1017 of 2004 dated 10.04.2016, shows that the Authorised Officer of the bank has approached the learned Chief Metropolitan Magistrate, Egmore, by filing a petition under Section 14 along with the necessary application, seeking possession of the secured asset. The learned Chief Metropolitan Magistrate, after perusing the materials and documents on record and after being satisfied with the sworn statement of the Authorised Officer, has allowed the petition.

22. This Court is of the opinion that as per Section 14(1) of the SARFAESI Act, the respondent is entitled to take physical possession of the schedule mentioned assets and the respondent bank has also applied as per the proviso of Section 13(4) of the Act and Rule 8, 1 and 2 of the Security Interest (Enforcement) Rule, 2002. It may not be out of place to state that, when proceedings under Section 14 was initiated, simultaneously O.A.No.58 of 2013 has been filed by the respondent bank for recovery proceedings, which is permissible as per the statute.

23. The petitioner, having participated in the Original Application in O.A.No.58 of 2013 filed by the respondent bank for recovery of dues and having knowledge of the same, has sought to challenge the order passed by the learned Chief Metropolitan Magistrate, Egmore, Chennai, dated 10.04.2014 before DRT-I in SA(SR).No.2678 of 2015 under Section 17 of the SARFAESI Act, which ought to have been filed within a period of 45 days from the date on which such measure under Section 14 has been taken. However, the petitioner has not filed any application challenging the order passed under Section 14 within the time, but filed the same only on 10.08.2015 in SA(SR). No.2678 of 2015 after a delay of 487 days. The petitioner has not filed any petition before DRT-I, seeking for condonation of delay in filing such application against the order of the learned Chief Metropolitan Magistrate, Egmore. On 10.09.2015, when DRT-I questioned the order passed under Section 14 of the SARFAESI Act, had dismissed the application filed by the petitioner, on the ground of limitation, stating that the applicant's contention that the order of learned Chief Metropolitan Magistrate, Egmore, came to their knowledge only on 03.08.2015 is not at all having truth, and hence, the reason stated for saving limitation is not tenable.

24. As against the said order dated 10.09.2015, the petitioner has filed an appeal in RA(SA).No.3 of 2017 before DRAT and DRAT, confirming the order of the DRT-I, had disposed of the appeal filed by the petitioner.

25. There being no doubt that much water has been flown during the interregnum period between the order passed on 10.09.2015 by the DRT-I and till date. It could be seen from the materials on record that O.A.No.58 of 2013 filed by the respondent bank has attained finality, in favour of the respondent bank, despite of the same, no appeal has been preferred by the petitioner. Apart from this, the petitioner has not challenged the sale or sale certificate issued in favour of the auction purchaser, who

had taken physical possession of the factory premises also. Moreover, the petitioner has also not challenged the sale of plant and machinery, subsequent to the possession notice issued by the learned Chief Metropolitan Magistrate, Egmore, Chennai.

26. The petitioner, having not challenged the sale notice and even the final order made in O.A.No.58 of 2013, cannot, now come before this Court, challenge the proceedings of learned Chief Metropolitan Magistrate, Egmore, Chennai, passed under Section 14 of the SARFAESI Act. Further, the petitioner, having failed to challenge the sale certificate issued to the auction purchaser who has also taken the physical possession of the property i.e. factory premises and the plant and machinery, cannot challenge the proceedings of Section 14 belatedly. Furthermore, the petitioner has not put forth any valid reason before this Court, for not contesting the matter prudently.

27. In the light of the above circumstances, we do not find any infirmity or illegality, to interfere with the order passed by the DRAT in RA(SA).No.3 of 2017. Accordingly, this Writ Petition is dismissed. No Costs. Consequently, Interim stay already granted shall be vacated and connected miscellaneous petition is also closed.

Sd/-/-
Assistant Registrar(CSix)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar,
Debt Recovery Appellate Tribunal
4th Floor, Indian Bank Circle Office
Ethiraj Salai, Chennai - 600 008.

2. The Authorised Officer,
State Bank of India,
Stressed Assets Management Branch,
32, Montieth Road, "Red Cross Buildings",
Egmore, Chennai - 600 008. Judgment in

W.P.No.488 of 2018
and W.M.P.No.590 of 2018

ASK(09/10/2018)