

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/1/2018

C O R A M

The Honourable Mr.Justice S.Manikumar
a n d
The Honourable Mrs.Justice V.Bhavani Subbaroyan

Writ Petition No.34058 of 2017

P.S.M.Enterprises
rep. By its Partner
No.48-B, M.K.M.Road
Guindy
Chennai 600 032.

... Petitioner

Vs

1. The Authorised Officer
International Asset Reconstruction
Company Pvt Ltd
No.2-B, K.G.Retreat
Old No.119, New No.26
G.N.Chetty Road
T. Nagar
Chennai 600 017.

2. M/s. TAN India Ltd
No.21 Gandhipuram Main Road
Kumarapalayam
Namakkal District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the first respondent in IARC/Che/legal/17-18/105 dated 7/12/2017 and quash the same and direct the first respondent to grant eight months time to the petitioner to remove the plant and machineries of cement division of TAN India Ltd., Kumarapalayam.

For petitioner ... Mr.M.Muthappan

For respondents... Mr.Chethan Sagar
for Mr.V.V.Sivakumar

O R D E R

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

Material on record discloses that M/s.Tan India Limited, Namakkal, has availed loan from ICICI Bank Limited. Account has been assigned, in favour of International Asset Reconstruction Company Private Limited/first respondent. Thereafter, International Asset Reconstruction Company Private Limited, first respondent has initiated proceedings, under the SARFAESI Act, 2002, and issued e-auction sale notice, dated 19/8/2017, bringing the movable and immovable properties of Tan India Limited/second respondent. The petitioner has participated in the e-auction, for plant and machineries of cement division of TAN India Limited. He has paid a sum of Rs.2,07,68,000/-. Accepting the same, sale certificate, dated 10/10/2017, has been issued by the first respondent.

2. When the petitioner wanted to remove the machineries, one of the guarantors of M/s.TAN India Ltd., Namakkal/second respondent, filed C.P.No.243 of 1997 and obtained an order of status-quo. Thereafter, the petitioner, as well as the International Asset Reconstruction Company Private Limited, first respondent, moved the Company Court, for vacating the order of status-quo. Vide order, dated 17/11/2017, the Company Court, permitted all the successful bidders of all divisions, to remove the Plant & Machineries. Thereafter, International Asset Reconstruction Company Private Ltd., Chennai/first respondent, issued a letter, dated 7/12/2017, directing the petitioner, to remove the machineries, before 3/1/2018, stating that they have issued a public sale notice of immovable properties, through private treaty. On receipt of the letter, dated 7/12/2017, petitioner sent e-mail, dated 9/12/2017, requesting eight months time, for removing the plant and machineries. As there was no response, instant writ petition has been filed for a certiorarified mandamus, to quash the letter, dated 7/12/2017, and the petitioner has prayed for a direction to grant eight months time, to remove the plant and machineries of Cement Division of Tan India Limited, Kumarapalayam.

3. Heard the learned counsel for the petitioner and perused the materials available on record.

4. Plant and Machineries have been purchased, in public auction, when International Asset Reconstruction Company, Chennai, assignee of ICICI, brought the movable and immovable properties, secured assets, for the loan availed by M/s. TAN India Limited, first respondent. Sundaram Finance Limited, represented by its General Manager, has filed C.P.No.243 of 1997, for winding up of TAN India Limited, Namakkal.

5. Material on record discloses that initially, the

company Court had granted status-quo. Auction purchasers, have filed impleading petitions in C.P.No.243 of 1997. After hearing the learned counsel for the parties therein, and taking note of the fact that the successful bidder has paid considerable amount, the Company Court, in C.A.No.705 of 2017, in C.P.No.243 of 1997, has passed the following orders:-

"3. Considering the above, particularly, in view of the fact that the successful bidders of movable assets in the form of plant and machinery have already paid their respective bid amounts, which, on a perusal, would show that far beyond the upset price fixed coupled with the fact that they have been issued with sale certificates, this Court is of the view that they should be permitted to remove the machineries. Accordingly, the successful bidders are permitted to remove the machineries as they have paid the amount.

4. The report of the learned official liquidator is also taken on record.

5. The successful bidders shall remove only such part of the machinery which they are entitled to pursuant to the auction."

6. Pursuant to the above, International Asset Reconstruction Company Limited/first respondent, in letter dated 27th November 2017, has requested PSM Enterprises, Chennai, writ petitioner herein, the successful bidder of Plant and Machineries, to remove the machineries mentioned in the sale certificate issued to them. Writ petitioner/successful bidder, has also been cautioned that there should be no unwarranted and deliberate damage to the building structure over any part of the building while removing the machineries. For the sake of convenience, letter dated 27th November 2017, is extracted hereunder:-

"You are well aware that pursuant to the orders passed by Hon'ble High Court, Madras on November 17, 2017, you were allowed to take out the machinery as listed in the sale certificate handed to you. It is also clearly mentioned in the said order copy that you are allowed to remove those machinery for which you are entitled to attached is the order copy for your perusal. Further an undertaking was given in the HC by yourself that due care will be taken to ensure that no damage is caused to the structures at the time of removal of the machineries.

Hence based on the above you are

requested to remove only those machineries mentioned in the sale certificate. You are also hereby cautioned that there should be no unwanted and deliberate damage to the building structures or any part of the building while removal of the machineries.

IARC has the right to claim compensation for any unnecessary damage caused to the building temporary or permanently. This letter is issued without prejudice to our rights and contentions in this matter."

7. Material on record discloses that subsequently, for realisation of the balance due from M/s. TAN India Limited, International Asset Reconstruction Company Limited, first respondent has issued a notice, dated 1/12/2017, under Rule 8 (8) of the Security Interest (Enforcement) Rules 2002, bringing the movable properties for sale, by private treaty. Thereafter, International Asset Reconstruction Company Private Limited/first respondent has addressed another letter, dated 7th December 2017, to P.S.M.Enterprises, Chennai, to remove all the machineries before 3/1/2018 and further stated that after 3/1/2018, International Asset Reconstruction Company Private Limited, first respondent shall not be held liable for any dispute in the matter. The petitioner, seemed to have sent an e-mail, dated 9th December 2017 and as there was no response, instant writ petition, has been filed for the relief, as stated supra.

8. Upon notice, Mr.Chethan Sagar, for Mr.VV.Sivakumar, learned counsel for the International Asset Reconstruction Company Private Limited, first respondent submitted that immovable properties mentioned in the sale notice, dated 1/12/2017, have already been sold. Property, where plant and machineries of cement division, purchased by the writ petitioner is in the physical possession of custody of International Asset Reconstruction Company Private Limited/first respondent. Submission is placed on record.

9. Under the provisions of SARFAESI Act, 2002, Bank has sold the immovable properties in which plant and machineries purchased by the writ petitioner, is located. As stated, Bank is no longer in physical possession of the immovable properties. Further, when the Company, by order had already permitted the successful bidders of all the divisions to remove the machineries, the writ petitioner ought to have taken immediate steps. Though, vide letter, dated 27th November 2017, the petitioner had been reminded to remove the machineries, there is no indication, as to what steps the writ petitioner had taken, pursuant to the order of the Company Court and the letter, dated 27th November 2017. Only after the issuance of sale notice, dated 1/12/2017, by which, the first respondent, International

Asset Reconstruction Company Private Limited, intended to sell the immovable properties, by way of private treaty, on 3rd January 2018, and the further letter, dated 7/12/2017 of the first respondent, the petitioner seemed to have sent e-mail, dated 9th December 2017, seeking for extension of time, by eight months. Between 17/11/2017 and 9/12/2017, there is absolutely, no communication by the petitioner, to the International Asset Reconstruction Company Private Limited/first respondent, for extension of time and there is no material indicating any steps taken for removal.

10. Secondly, when the petitioner has sought for an order of removal of the machineries from the Company Court, extension could have been sought for, and obtained from the Company Court. Writ Petitioner has not chosen to file any application before the Company Court, for extension. Immovable property in which plant and machineries of cement division, are located, have also been transferred by private negotiation. Owner has not been made as a party in the instant writ petition. In the above said circumstances, communication of International Asset Reconstruction Company Private Limited/first respondent, dated 7/12/2017, cannot be said to be manifestly illegal, warranting interference. Consequently, the relief sought for cannot be granted.

11. In view of the above discussion, writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

सत्यमेव जयते

mvs.

+2cc to Mr.M.Muthappan, Advocate SR.No.1984
+1cc to Mr.V.V.Siva Kumar, Advocate SR.No.1964

Writ Petition No.34058 of 2017

KGK (CO)
GN (14/02/2018)