IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **19.02.2018**

CORAM:

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

C.R.P. (PD) No.631 of 2018
and
CMP No.3288 of 2018

Canara Bank rep. by its
Authorised Officer,
A.N.Street Branch,
131, Audiappa Naicken Street,
Chennai - 79 ... Petitioner

vs.

1. The Presiding Officer,
Debts Recovery Tribunal III, Chennai,
V Floor, Deva Towers,
770-A, Anna Salai, Chennai - 600 002.

2. M/s.Esjaypee Impex Pvt. Ltd.,
Regd. Office at
186, Govindappa Naicken Street,
Chennai - 600 001.

3. Mrs. Madhubala Parmar ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 06.02.2018 made in SA No.328 of 2017 on the file of the Debts Recovery Tribunal-III, Chennai.

For Petitioner : Mr.P.Raghunathan
for M/s.T.S.Gopalan and Co.

COMMON ORDER

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

As no adverse order is passed against the respondents, notice is waived.

2. M/s.Esjaypee Impex Private Limited, has taken credit facility to an aggregate limit of Rs.39.50 Crores, from Canara Bank, Chennai. Mrs.Madhubala Parmar, wife of Mr.Mahendra Kumar Parmar, one of the Directors also stood as guarantor and offered a property viz., land and building bearing Old No.23, New No.2, Ormes Road, Rajarathinam Street, Kilpauk, Chennai-600 010, as security. There were three other Directors.

2. Borrowers/guarantors defaulted and after classifying the loan as non performing asset. As there was an outstanding amount of Rs.36,87,68,598.16p, as against the sanctioned limit of Rs.46 Crores, possession notice dated 19.04.2017 was issued under Section 13(4) of the SARFAESI Act, 2002. Said possession notice came to be challenged in S.A.No.126 of 2017, on the file of Debts Recovery Tribunal-II, Chennai and vide order dated 20.07.2017, Debts Recovery Tribunal-II, Chennai, granted status quo on condition that the respondents 1 and 2 should pay 20% of the amount due on or before 21.08.2017. Debts Recovery Tribunal-II, Chennai directed S.A.No.126 of 2017 be called on 22.08.2017, making it clear that extension of time for payment will not be granted.

3. Being aggrieved by the order directing payment, M/s.Esjaypee

Impex Private Limited, rep. by its Director Mr.Mahendra Kumar Parmar and Mrs.Madhubala Parmar, respondents 2 and 3 herein filed AIR SA No.498 of 2017 before the Debts Recovery Appellate Tribunal, Chennai. In I.A.No.1354 of 2017, respondents and 3 herein, prayed for waiver of pre deposit. Vide order dated 18.12.2017, DRAT, Chennai in I.A.No.1354 of 2017 in AIR No.498 of 2017, directed the respondents 2 and 3 to make a pre deposit of Rs.10 Crores in two instalments. DRAT, Chennai directed I.A.No.1354 of 2017 to be listed on 16.01.2018 for confirmation. Respondents 2 and 3 failed to make the pre deposit as ordered.

4. In order to realise the outstanding amounts, bank issued the e-auction sale notice dated 20.11.2017 and notices have been served on the respondents 2 and 3 herein and other Directors. The total liability as on 31.10.2017 was Rs.46,50,54,569/-. E-auction was fixed on 28.12.2017. Being aggrieved by the e-auction notice, respondents 2 and 3 herein, filed S.A.No.328 of 2017, before the Debts Recovery Tribunal-III, Chennai. Memo Sr.No.14030 has been filed stating that S.A.No.126 of 2017, filed against possession notice under Section 13(4) has been withdrawn.

5. Bank has filed a counter affidavit in S.A.No.328 of 2017. For the failure to make the pre deposit, vide order dated 16.01.2018, Debts Recovery Appellate Tribunal, Chennai dismissed AIR SA No.498 of 2017. On 10.01.2018, when S.A.No.328 of 2017 was listed, bank counsel could not

appear. On the said date, Debts Recovery Tribunal-III, directed the bank to maintain status quo and posted the matter to 15.02.2018.

6. Setting out the fact that there were no bidders in the auction sale, conducted on 28.12.2017 and thus, S.A.No.328 of 2017 has become infructuous, bank has filed I.A.No.38 of 2017, to advance the hearing of S.A.No.328 of 2017 from 15.02.2018 to an earlier date. On 24.01.2018, in I.A.No.38 of 2018 in SA No.328 of 2017, Debts Recovery Tribunal-III, Chennai, has passed the following order.

> "This case is taken up for hearing on a mentioning being made by the Ld. Counsel for the petitioner / respondent bank. IA No.38/18 is filed by the respondent bank to advance the hearing from 15.02.2018 to an earlier date. Ld. counsel for the respondent bank submitted that counter and typed set of documents had already been filed before the Registry on 20.01.2018 after serving copies to the other side. Notice in IA served to the other side. Ld. counsel for the appellant is present who prays time for filing counter in IA. At request, call on 06.02.2018 for filing counter in IA by the appellant and for hearing the parties."

7. Again on 06.02.2018, Debts Recovery Tribunal-III, Chennai has passed the following order.

> "Both sides are present. Heard Ld. counsels appearing for the parties. Call on 15.02.2018 for reporting substantial payments by the appellant and for disposal of SA."

8. Being aggrieved by the proceedings of the Debts Recovery Tribunal-III, Chennai, dated 06.02.2018 made in S.A.No.328 of 2017 and

continuing the securitisation application, which has become infructuous, for the reason that there were no bidders as on 28.12.2017 and continuation of interim orders directing the bank to maintain status quo, instant CRP (PD) No.631 of 2018, is filed.

9. Mr.P.Raghunathan, learned counsel for the bank submitted that even after bringing it to the notice of Debts Recovery Tribunal-III, the scope and prayer made in SA.No.328 of 2017, Debts Recovery Tribunal-III, Chennai has extended the interim orders of status quo and compelling the bank to receive payments against huge outstanding amount.

10. Orders dated 15.02.2018 made in S.A.No.328 of 2017 is extracted.

> "Both sides are present. Heard Ld. counsels appearing for respective parties. It is the case of appellants that they are making hectic attempts to negotiate with the respondent bank and settle the matter amicably. It is also their case that they had already extended a letter of settlement for Rs.18 Crores which was refused by the respondent bank suggesting therein that the offer is too low when compared to the outstanding dues and therefore are advised to improve upon. Ld. counsel appearing for the appellants submit that he is continuing his negotiations with the respondent bank and would like to ensure that their negotiations reach an amicable conclusion and that he would strike a deal with them for arriving at a settlement by improvising his offer substantially. Notwithstanding the above contentions, Ld. counsel for the appellant also submits that appellant is ready and willing to deposit further sum of Rs.20 Lakhs towards discharge of his loan which they admit is pittance when compared with the outstanding due which is as per sale notice at around Rs.46.5 Crores. But however submit that appellants had started augmenting of

funds and by the payment of this Rs.20 lakhs, it would aggregate to payment of Rs.80 lakhs and are willing to pay further substantial amounts to prove their bonafides notwithstanding the negotiations with the respondent bank.

Whereas Ld. counsel appearing for the respondent bank submits that the subject impugned sale notice has become infructuous as no sale could be held on the scheduled date for want of bidders and further that as there are no infirmities in issuance of the subject sale, notice, the Tribunal is without jurisdiction to maintain the matter and any indulgence including the extension of interim order would be hampering the secured creditor from proceeding further in the course of their recovery under SARFAESI Act, and therefore, submits that the interim order has to be vacated and that the SA may be disposed off while granting liberty to the respondent bank to proceed further in accordance to law.

In the circumstances, as appellants are making attempts to settle the loan account by due negotiations and are also establishing their bonafides by makes, albeit little payments in comparison to the outstanding due, time is extended upto 05.03.2018 for reporting on negotiated settlement, failing which next step follows. As the Ld. counsel appearing for the respondent bank refused to receive the sum of Rs.20 Lakhs brought in the form of demand drafts, appellants are permitted to deposit the same to the credit of their loan account on or before 17.02.2018, failing which interim order stands vacated. Call on 15.03.2018."

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

12. As extracted supra, when the Debts Recovery Tribunal-II, vide order dated 20.07.2017 in SA.No.126 of 2017 directed status quo to be

maintained on the deposit of 20% of the amount due on or before 21.08.2017, the respondents 2 and 3, filed an appeal in AIR No.498 of 2017 before DRAT, Chennai, and in the waiver application IA No.1354 of 2017, vide order dated 18.12.2017, DRAT, Chennai, directed the respondents 2 and 3, to deposit 10 crores in two intalments. Subsequently, on 20.12.2017, S.A.No.126 of 2017, has been withdrawn. On 16.01.2018 AIR SA No.498 of 2017, has been dismissed. Thus, the challenge to the possession notice reached finality.

13. Subsequently, bank has issued e-auction sale notice dated 20.11.2017, fixing the date of e-auction as 28.12.2017. Outstanding amount as on 31.10.2017 was Rs.46,50,54,569/-. Said e-auction notice has been challenged in SA No.328 of 2017. On 22.12.2017 in SA No.328 of 2017, Debts Recovery Tribunal-II, Chennai has passed the following order and posted the matter on 10.01.2018.

"Ld. counsel for the appellant is present. This SA is filed challenging the Sale Notice dated 20.11.2017 issued by the respondent bank scheduling sale to 28.12.2017 for recovery of sum of Rs.46,50,54,569/- along with S.I.A. Nos.1546/17 and 1547/17 for urgent hearing and stay respectively.

Respondent bank is on caveat and copy of SA already served to the Ld. counsel for the caveator / respondent bank. Junior counsel for the respondent bank is present who prays time for filing counter and typed set of documents.

S.I.A.No.1546/17 is allowed and hence S.I.A. No.1547/17 is taken up. It is the case of the appellants that schedule mentioned property is their only dwelling house and that they are making every endeavour to turn around their import and export business which suffered a setback owing to extraneous conditions beyond the control of the appellant but however are willing to settle the loan dues to the respondent bank by augmenting necessary funds and are also approaching the respondent bank for OTS. To prove their bonafides they are ready with a sum of Rs.50 lakhs today by way of Demand Draft bearing No.545906 dated 22.12.2017, which is handed over to the Liaison Officer of the respondent bank under due acknowledgment and submits that they shall make every endeavour to make further payments to ensure their commitment for settlement of their loan dues to the respondent bank. Call on 10.01.2018 for filing counter and typed set of documents by the respondent bank."

14. On 10.01.2018, there was no representation on behalf of the bank. Debts Recovery Tribunal-III, Chennai, has passed the following order.

"Appellants are represented by Ld. Counsel. Ld. Counsel for the appellants submits that the offer of settlement made by the appellants to the respondent bank has been negatived on 30.12.2017 and have been directed to improvise the same, of which they are in the process of deliberation with the respondent bank officials to give an acceptable proposal. Notwithstanding the same appellants are ready today with a further payment of Rs.10 Lakhs in pursuit of their settlement under OTS with the respondent bank and to show their bonafides.

There is no representation on behalf of the respondent bank even during second round of call work. Counter and typed set of documents are also not filed.

Appellants are directed to deposit the demand draft No.912007 dated 9.1.2018 for Rs.10 lakhs drawn on Corporation Bank with the respondent bank as undertaken. Respondent Bank is directed to maintain status quo as on date. Call on 15.02.2018 for filing counter and typed set of documents by the respondent bank and for reporting compliance of payments."

15. Contending inter alia that there were no bidders on 28.12.2017, the due as on 12.01.2018 was Rs.4726.63 Lakhs, payment of Rs.60 Lakhs was a pittance and SA No.328 of 2017, has become infructuous, as there were no bidders, I.A.No.38 of 2018, has been filed by the bank. On 24.01.2018, Debts Recovery Tribunal-III, Chennai in I.A.No.38 of 2018 in SA No.328 of 2017, has passed the orders, extracted supra. Orders passed on 06.02.2018 and 15.02.2018, respectively, have also been extracted supra.

16. As rightly contended by the bank, when sale fixed on 28.12.2017, did not take place, the auction notice lapse, leaving it open to the respondents 2 and 3 herein, to challenge any further action, taken by the bank. When challenge to the sale notice has become infructuous, the tribunal cannot direct maintenance of status quo as on 10.01.2018. Proceedings of Debts Recovery Tribunal-III, is in effect, restraining the bank from taking further action towards realisation of the dues, stated to be huge.

17. According to Mr.P.Raghunathan, learned counsel for Canara Bank

/ writ petitioner, towards the outstanding dues of Rs.46,50,54,569/-, since 2015 respondents 2 and 3 herein have paid only Rs.80 Lakhs. Bank cannot be compelled to receive the loan amounts in instalments. As rightly contended that if the challenge becomes infructuous, no interim order can be granted and continued.

18. By keeping in mind the above observation, Debts Recovery Tribunal-III, Chennai is directed to dispose of SA No.328 of 2017, as expeditiously as possible, not later than 05.03.2018.

19. Civil Revision Petition is disposed of, accordingly. No Costs. Consequently the connected Civil Miscellaneous Petition is closed.

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

19.02.2018

Index: Yes

Internet: Yes

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To

The Presiding Officer,
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V Floor, Deva Towers,
770-A, Anna Salai, Chennai - 600 002.

S.MANIKUMAR, J.

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