

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Writ Appeal No.667 of 2018
and
C.M.P.Nos.6389 and 6390 of 2018

BR & Co.,
Represented by its Partner,
M.R.Rajaram Kumar .. Appellant/petitioner

Vs.

1.The Reserve Bank of India,
South Zone Office,
Rep. by its Zonal Officer,
Rajaji Salai,
Fort Glacis, Chennai.

2. IDBI Bank Ltd.,
Represented by Managing Director,
IDBI Tower,
WTC Complex,
Cuffe Parade,
Mumbai-400 005.

3. The Authorised Signatory,
Coimbatore Branch,
IDBI Bank Ltd.,
No.72, Mayflower E Castle,
Dr.Balasubramaniam Road,
Off Avinashi Road,
ATT Colony,
Coimbatore-641 018.

4. M/s.Treat Water Technology,
Rep. by its Managing Partner,
C.P.Padmanabhan,
having office at
17-D, Cowley Brown Road,
R.S.Puram,
Coimbatore-641 002.

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order passed by the learned Single Judge in W.P.No.331 of 2018, dated 15.02.2018 on the file of this Court.

WP.No.331 of 2018:filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the 3rd respondent in and by his proceedings No.Nil dated 03.01.2018 and quash the same.

For appellant : Mr.A.Sundaravadhanan

JUDGMENT

(The Judgment of the Court was delivered by M.Venugopal,J)

Heard the learned counsel for the appellant/writ petitioner and perused the materials available on record. In view of the judgment that is being rendered, it is not necessary to issue notice to the respondents, as the Writ Appeal is being disposed of even at the stage of admission itself.

2. Earlier, the Learned Single Judge, while passing the impugned order dated 15.02.2018 in W.P.No.331 of 2018 filed by the appellant/writ petitioner, at paragraph 6, has observed the following and disposed of the Writ Petition without expressing any view on the merits of the claim made by the respective parties:

"6. Upon hearing the learned counsels appearing on either side and considering the above facts and circumstances, this Court is of the view that the dispute between the parties is arising out of a financial agreement entered between them and therefore, if any dispute arises between them out of such agreement or in respect of any proceedings initiated in terms of the said agreement, this Court, while exercising the jurisdiction under Article 226 of the Constitution of India, undoubtedly, a discretionary jurisdiction, need not necessarily go into all those disputed question of facts, as it is for the parties to agitate the matter before the appropriate forum by filing appropriate proceedings. Initially, this Court was of the view that the matter would be settled between the parties by way of negotiations and hence, adjourned the matter on several occasions. However, as it appears that the parties are not willing to settle the matter amicably, it is for them to work out their remedy before

the appropriate forum by filing appropriate proceedings."

3. However, the Learned Single Judge has granted liberty to the appellant/writ petitioner-partnership Company to work out their remedy before the appropriate forum by filing appropriate proceedings.

4. Assailing the correctness, legality and validity of the impugned order passed by the Learned Single Judge in W.P.No.331 of 2018, the learned counsel appearing for the appellant/writ petitioner submitted that the learned Single Judge has failed to appreciate that the appellant/writ petitioner-partnership firm was not issued with any notice prior to the freezing of its Bank account, and hence, the impugned order passed by the learned Single Judge is liable to be set aside in the eye of law.

5. Added further, it is the submission of the learned counsel for the appellant that when there are secured assets to a sum of Rs.25,00,00,000/- for the loan given to the fourth respondent by the third respondent, without proceeding against the same, the third respondent/Authorised Signatory of Coimbatore Branch of IDBI Bank Ltd., had frozen the Bank Account of the writ petitioner, which cannot be countenanced under the tenets of law.

6. The Learned counsel for the appellant proceeds to take a plea that only after the request was made for issuance of a Demand Draft, the matter was informed and in fact, the third respondent-Bank has not taken steps to inform the freezing of the Bank Account or after the freezing of the Bank Account and in this regard, there has been negation of principles of natural justice.

7. Lastly, it is the contention of the Learned counsel for the appellant that the appellant/writ petitioner-partnership firm had not availed of any loan from the Third Respondent/Bank and just because one partner is common in both the appellant/partnership firm and the fourth respondent-partnership firm, it cannot make the appellant/partnership firm liable for the debt of the fourth respondent.

8. It comes to be known that the appellant/writ petitioner is a partnership firm having an account with the Third Respondent-Bank and according to the writ petitioner, before formation of the partnership firm, the amount was borrowed as Proprietorship concern in the same name and subsequent to the formation of partnership firm, the same account was operated by the partnership firm and the same was also intimated to the third respondent-Bank, which was accepted by them. As a matter

of fact, one Mr.Rajaramkumar is partner in both the appellant/writ petitioner-partnership firm and also the fourth respondent-firm. In reality, according to the appellant, the fourth respondent had availed of the loan from the third respondent-Bank and the since the default was committed only by the fourth respondent, the payments are to be made for the auction conducted by Religare Finvest Ltd.

9. It transpires that the appellant/writ petitioner issued cheques for payment, and the said Religare Finvest Ltd. insisted for Demand Draft and RTGS on 03.01.2018, and the third respondent had frozen the Bank Account of the petitioner without notice to the petitioner-partnership firm.

10. In pith and substance, the stand of the Appellant/Partnership Firm is that they had not availed of any loan facility with the third respondent and viewed in this background, the impugned order passed by the Learned Single Judge is liable to be set aside.

11. It is to be pertinently pointed out that to constitute a partnership, the parties must have agreed to carry on the business and to share the profits in the same way in common, as per the decision in the case of Mollwo March and Company Vs. V.Court of Wards, reported in 1872 L.R. (4) P.C. 419 at 436. Further, the status of a partner qua the firm, is not that of a Master and a Servant. After all, a partnership firm is a "compendious description of persons", who form the firm. Undoubtedly, a firm is not a legal entity in strict sense of a Company incorporated under the Companies Act. Moreover, the act of a partner of a firm can be construed as an act on behalf of all the partners, if the circumstances warrant such a conclusion. Ordinarily, a partner has full authority to deal with the partnership property for partnership purposes.

12. Apart from that, every partner in a trading firm has an implied authority to borrow money for the purpose of the business or credit of the firm. It is to be remembered that, a partner cannot, without the consent and knowledge of the other partners, enter into a contract with himself so as to bind the firm. As per Section 19 of the Indian Partnership Act, 1932, the authority of a partner to bind a firm is based on an Implied Authority.

13. It is to be pointed out that the dispute between the parties based on the financial agreement entered into between them, can be sorted out or agitated for resolving the same before the competent/appropriate forum by filing necessary petition. Without approaching the competent forum, of course, in the manner known to law and in accordance with law, the appellant/partnership firm has approached this Court seeking the relief under Article 226 of the Constitution of India.

14. Admittedly, the relief sought for by the appellant/writ petitioner in the Writ Petition under Article 226 of the Constitution of India is a discretionary one.

15. Be that as it may, in view of the fact that the third respondent-Bank has frozen the Bank Account of the appellant/writ petitioner/partnership firm only resting on the terms and conditions of the financial agreement entered into between the parties, and the writ petitioner being a partnership firm, cannot assail the action of the third respondent/Bank when one of the partners of the fourth respondent, a defaulting Company, had not fulfilled its commitment in accordance with the terms and conditions of the agreement stated supra.

16. In view of the foregoing, this Court finds no merit in the Writ Appeal. Consequently, the Writ Appeal is dismissed. No costs. Consequently, C.M.Ps. are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cs

To

1.The Zonal Officer
The Reserve Bank of India
South Zone Office, Rajaji Salai
Fort Glacis Chennai

+1 cc to Mr.A.Sundaravadhanam Advocate sr 23593

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W.A.No.667 of 2018

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