

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.05.2018

CORAM

THE HON'BLE Mr.JUSTICE V.PARTHIBAN
AND
THE HON'BLE Mr.JUSTICE P.D.AUDIKESSAVALU

W.P.No.12197 of 2018 and W.M.P.No.14227 of 2018
AND

W.P.No.12198 of 2018 and W.M.P.Nos.14228 & 14229 of 2018

M/s.Anu Akshaya Traders,
Rep. by its Partner M.Senthil Kumar,
4/245, Selvalakshmi Nagar,
Veerapandi Post, Tirupur 641 604. Petitioner in
W.P.12197/2018

M.Senthil Kumar,
Partner of M/s.Anu Akshaya Traders,
Door No.5&6, Vaikal Thottam,
Near Kamatchiyamman Temple,
Sheriff Colony, Tiruppur 641 604. Petitioner in
W.P.12198/2018

Vs.

1. State Bank of India,
Rep. by its Authorised Officer,
Pudur Privu Branch,
Two Win Chambers,
Dharapuram Main Road,
Tirupur 641 608.
2. The Presiding Officer,
The Debt Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
Wellington Estate,
55, Ethiraj Salai, Egmore,
Chennai-8. Respondents in both
Writ Petitions

Common Prayer:-

Writ Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records on the file of the Hon'ble Debt Recovery Appellate Tribunal, Chennai in I.A.No.421 of 2018 in AIR [SA] No.205 of 2018 dated 23.04.2018 and quash the same as illegal.

For Petitioner : Mr.V.Raghavachari,
in both Writ Petitions for M/s.P.J.Rishikesh.

For 1st Respondent : Mr.J.Pothiraj for
in both Writ Petitions Mrs.S.R.Sumathy

2nd Respondent : Court

C O M M O N O R D E R

(Order of the Court was made by P.D.AUDIKESSAVALU, J.)

The present Writ Petitions have been filed to quash the proceedings dated 23.04.2018 passed by the Debt Recovery Appellate Tribunal, Chennai in AIR [SA] No.205 of 2018.

2.The petitioner had preferred an application bearing S.A.No.36 of 2018 before the Debt Recovery Tribunal, Coimbatore (hereinafter referred to as DRT for brevity) under Section 17(1) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act for brevity), for declaration that the act of the first respondent, invoking the provisions of Section 13(4) of the SARFAESI Act is completely bad in law, mala fide and cannot be resorted to and to quash and set aside the Possession Notice dated 18.01.2018 and for consequential orders restraining the first respondent, from taking actual physical possession of the property more fully described in the said notice and other incidental reliefs.

3.During the pendency of the said application, the first respondent had issued another Notice dated 26.02.2018, for sale of the aforesaid property in auction on 31.03.2018 and in pursuance thereof, the petitioner had filed a petition bearing I.A.No.555 of 2018 for amending the relief, so as to include challenge to the said auction sale in that application. The DRT, Coimbatore, in the proceedings dated 20.03.2018, had permitted the aforesaid amendment, considering the fact that it would not in any way change the character of the proceedings.

4.In another petition bearing I.A.No.556 of 2018, the petitioner had sought for stay of all further proceedings in pursuance of the said auction notice dated 26.02.2018 fixing sale on 31.03.2018 and DRT, Coimbatore and in the said proceedings dated 20.03.2018, passed the following order :-

"... However, having taken into consideration of the rival contentions and the materials available on record, this Tribunal is of the view that without going into the merits of the matter, as an interim measure, and to prove their bona fides, if a limited conditional order is passed, it would meet the interest of justice and natural justice. Accordingly, ad interim injunction is granted against the respondent Bank, not to confirm the sale till 22.05.2018 subject to payment of Rs.57,00,000/- directly before the respondent Bank on or before 20.04.2018, as 1st instalment and another sum of Rs.57,00,000/- directly before the respondent Bank, on or before 21.05.2018, as 2nd instalment. However, in the event of failure to pay even a single instalment, as ordered above, the ad interim injunction granted not to confirm the sale till 22.05.2018, shall stand vacated automatically and thereafter, the respondent Bank is at liberty to proceed against the secured assets, as per law. It is also made specifically clear that the respondent Bank is at liberty to proceed with the proposed sale fixed on 31.03.2018, subject to the above conditions.

Vakalat, counter and R/S by 22.05.2018. PP also by then. Call on 22.05.2018."

5.The petitioner had preferred the appeal under Section 20 of The Recovery of Debts and Bankruptcy Act, 1993 before the Debt Recovery Appellate Tribunal (hereinafter referred to as DRAT for brevity), Chennai, aggrieved by the conditions imposed by the DRT, Coimbatore for grant of interim stay in the aforesaid order dated 20.03.2018 in I.A.No.556 of 2018 in S.A.No.36 of 2018. The petitioner had also filed a petition bearing I.A.No.421 of 2018 to waive pre-deposit of amount for entertaining that appeal. The DRAT, Chennai, by proceedings dated 23.04.2018, in AIR (SA) No.205 of 2018, in that appeal passed the following order :-

"Heard on IA.421/2018 application for waiver of pre-deposit.

Appellant has challenged the order dated 20.03.2018 of DRT, Coimbatore, by which IA.556/2018 in S.A.No.36/2018 was allowed regarding grant of stay on condition of payment.

Counsel for appellants fairly concedes that Bank has issued a notice under Section 13(2) of the SARFAESI Act for recovery of Rs.4.49 Crores on

03.11.2017. Counsel submits that after receiving Section 13(2) notice, till date no amount has been paid, however, today he is ready with some Bank Drafts. Counsel further submits that this Appeal has not been preferred against any final order and prays to presume the debt amount to be the condition amount imposed by PO of DRT.

On the other hand, Counsel for Respondent Bank submits that since 03.11.2017, Bank is waiting for recovery of Rs.4.49Crores and the appellant has not paid even a single paisa. Further, submits that DRAT cannot entertain any appeal without ensuring the pre-deposit of 50% of the debt amount, which cannot be reduced to less than 25% in any case.

Whatever has been averred by the counsel of the parties shall be considered at the time of final hearing of this matter. However, for the purpose of this appeal, I presume that the debt amount to be Rs.4.49 Crores and direct the appellants to make a pre-deposit of Rs.1,30,00,000/- [Rupees One Crore Thirty Lakhs only] with the Registrar of this Tribunal within a period of four weeks from today.

It is made clear that in the event of default to pay the pre-deposit amount, within the stipulated period, the appeal shall automatically stand dismissed without reference to this Court.

I.A.No.421/2018 is disposed of.

List for confirmation of pre-deposit of Rs.1.30 Crores on 22.05.2018. "

6.These Writ Petitions have been filed challenging the aforesaid order dated 23.04.2018 in the proceedings in AIR SA.No.205 of 2018 passed by the DRAT, Chennai.

7.Mr.V.Ragavachari, learned counsel appearing on behalf of the petitioner vehemently urged that the DRAT committed gross error in ignoring the pointed submission made on behalf of the petitioner that the appeal preferred by the petitioner, was not against any final adjudication, but was only in respect of condition imposed for staying the auction sale and hence, the petitioner could not have been directed to make a prer-deposit of Rs.1,30,00,000/- far in excess of the sum of Rs.1,14,000/- directed to be deposited by the DRT as a condition for interim stay of the auction sale. It is further contended that in any event, the DRAT ought to have applied its mind and determined

the rival submissions in that petition for waiver of pre-deposit to be made and ought not to have postponed the same till the time of final hearing, losing sight of the matter actually in issue in the appeal before the DRAT.

8.Learned counsel, Mr.J.Pothiraj for Mrs.S.R.Sumathy, who has taken notice on behalf of the first respondent, submitted that the order passed by the DRAT, directing pre-deposit of sum of Rs.1,30,00,000/- as against the total claim of Rs.4,49,00,000/- towards debt due is reasonable and does not require to be interfered with.

9.We have heard both sides and perused the material placed on record and we are of the considered view that the impugned order of the DRAT requires interference. As rightly pointed out by the learned counsel appearing on behalf of the petitioner, it was incumbent upon the DRAT to have first determined the issues relating to the petition for waiver of pre-deposit and on that basis, determined the amount to be pre-deposited and could not have postponed the consideration of the same to the time of final hearing of the matter.

10.In order to prove the bonafides of the petitioner, learned counsel for the petitioner submitted that the petitioner is ready to make immediate payment of sum of Rs.57,00,000/- to the first respondent directly without prejudice to the other contentions to be decided in the appeal pending before the DRAT.

11.In the aforesaid circumstances, if the petitioner deposits a sum of Rs.57,00,000/- (Rupees Fifty Seven Lakhs Only) to the first respondent on or before 18.05.2018, the impugned order dated 23.04.2018 in I.A.No.421 of 2018 in AIR (SA) No.205 of 2018 passed by the DRAT, Chennai shall stand set aside and the said application for waiver of pre-deposit made by the petitioner shall be decided afresh by the DRAT, Chennai on merits and in accordance with law, after affording opportunity to both parties, during the hearing on 22.05.2018 or such other date as may be adjourned. The DRAT shall ensure that the appeal is disposed of expeditiously and in any event on or before 31.07.2018.

12.It is made clear that if the aforesaid sum of Rs.57,00,000/- (Rupees Fifty Seven Lakhs Only) is not deposited by the petitioner to the first respondent directly by the said date, the impugned order passed by the DRAT shall automatically stand confirmed without any further reference to this Court and the appeal shall be disposed by the DRAT accordingly, on the next hearing on 22.05.2018.

13.Inasmuch as the subject matter of appeal before the DRAT

is only against the interim order imposing the condition for staying confirmation of sale, there is no impediment for the DRT, Coimbatore to proceed with the adjudication on merits and in accordance with law for the disposal of S.A.No.36 of 2018, following the prescribed rules after affording opportunity to both parties and it is expected that such exercise shall be completed expeditiously and in any event on or before 31.08.2018, without awaiting the outcome of the proceedings in DRAT in the aforesaid appeal.

14.The Writ Petitions shall stand disposed of on the aforesaid terms. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar/Vacation Officer

//True Copy//

Sub Assistant Registrar

gya

To

1. The Presiding Officer,
Debt Recovery Tribunal, Coimbatore.
2. Authorised Officer,
State Bank of India, Pudur Privu Branch,
Two Win Chambers, Dharapuram Main Road,
Tirupur 641 608.
3. The Presiding Officer,
The Debt Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
Wellington Estate, 55, Ethiraj Salai, Egmore,
Chennai-8.
4. Thiru.M.Senthil Kumar,
Partner of M/s.Anu Akshaya Traders,
4/245, Selvalakshmi Nagar,
Veerapandi Post, Tirupur 641 604.
5. Thiru.M.Senthil Kumar,
Partner of M/s.Anu Akshaya Traders,
Door No.5&6, Vaikal Thottam,
Near Kamatchiyamman Temple,
Sheriff Colony,Tiruppur 641 604.

+1cc to M/s.J.Pothiraj, Advocate in sr.no.33573
+2ccs to M/s.P.J.Rishikesh, Advocate in sr.no.33606, 33607

W.P.Nos.12197 & 12198 of 2018

NRI (CO)
CS/14/05/18



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