

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.242 of 2018

Sivakumar Enterprises Pvt Ltd.,
represented by its
Managing Director, D.S.Sivakumar, ... Petitioner

vs.

The Authorised Officer / Assistant General Manager,
Divisional Office,
Door No.15, I Floor,
G.V.Farms building,
Mampazhapattu Road, Villupuram,
Tamil Nadu - 605 602 ... Respondent

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the respondents to grant approval for the sale of all hypothecated machineries installed in the business premises of the petitioner's company for a sum Rs.50,00,000/- (Rupees Fifty Lakhs only) in discharge of their liability towards buyers credit machinery loan.

For Petitioner : Mr.M.Vijayakumar
For Respondent : Mr.AV.Radhakrishnan

ORDER

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

Sivakumar Enterprises Private Limited, Villupuram has availed (1) Cash Credit Open Loan of Rs.3 Crores on 23.10.2014, (2) HPL for Rs.85,00,000/- on 23.10.2014 and Machinery for value of Rs.2.15 Crores on 23.10.2014. According to the Company, a sum of Rs.2.50 Crores has been paid towards the credit facilities. Petitioner has also stated that a sum of Rs.25 Lakhs was paid on 26.04.2017. Due to demonitization and natural calamity, petitioner company could not repay the loan amount.

While that be so, Karur Vysya Bank, Villupuram, issued a notice dated 05.08.2017, under Section 13(2) of SARFAESI Act, 2002. It is the contention of the petitioner that loan agreement has been violated, by exceeding the sanctioned limit of Rs.3 Crores into Rs.4.5 Crores for closure of buyers credit limit (Raw material procurement) without the consent of the company. Petitioner has also contended that bank had breached its promise. Bank initiated proceedings without considering prospective buyers, for selling the hypothecated machineries. Coming to know of the same, petitioner submitted a letter dated 27.11.2017 of the proposed purchaser willing to purchase all the hypothecated machineries for a spot price of Rs.50 Lakhs. Petitioner company also preferred a petition dated 02.12.2017 to the bank seeking approval of sale of the hypothecated machineries for the abovesaid sum. The said request has not been considered. Hence, left with no other alternate, petitioner has filed the instant writ petition for a mandamus directing the bank to grant approval for sale of all hypothecated machineries installed in the business premises of the petitioner's company for a sum of Rs.50 Lakhs, discharge their liability towards buyers credit machinery loan and for further orders.

2. On 17.01.2018, when the matter came up for hearing, representation has been made on behalf of the bank that bank has received a proposal from a prospective buyer, quoting Rs.1 Crore to purchase the hypothecated machineries.

3. Responding to the above, Mr.M.Vijayakumar, learned counsel for the petitioner submitted that if there is a higher offer for purchase of hypothecated machineries, he would not press the prayer sought for. Having regard to the above submissions, we directed the bank to file an affidavit with supporting material to prove the higher quotation.

4. Reverting the Assistant General Manager, Assets Recovery Branch-Chennai, Karur Vysya Bank, has filed an affidavit dated 18.01.2018, wherein, he has furnished the details of loan availed, default classification of the account as non performing asset, issuance of notice under Section 13(2) of the SARFAESI Act, 2002 and also contended that as on 26.07.2017, the outstanding amount due and payable by the writ petitioner is Rs.7,52,08,161.82p.

5. As regards the submission of higher quotation for purchase of the hypothecated machineries, Assistant General Manager, Assets Recovery Branch, Chennai, Karur Vysya Bank, at paragraph Nos.10 and 13 of the affidavit dated 18.01.2018, has stated that though, the writ petitioner has handed over a letter of the proposed purchaser willing to purchase all the hypothecated machineries for spot price of Rs.50 Lakhs, as

against the same, bank has received a quotation from another prospective purchaser M/s.Mahalakshmi Agro Foods Private Limited, who has quoted Rs.1 Crore for the purchase of hypothecated machineries.

6. Mr.AV.Radhakrishnan, learned counsel for the Bank has also stated that the above proposal from M/s.Mahalakshmi Agro Foods Private Limited, has been communicated to the writ petitioner. He further stated that if the machineries are permitted to be sold on a low price of Rs.50 Lakhs as quoted by the writ petitioner, bank would be put to loss. Therefore, bank has contended that when there is an offer for higher value, prayer sought for should not be granted.

7. In support of the above averments, bank has also filed a true copy of e-mail received from M/s.Mahalakshmi Agro Foods Private Limited. For the sake of convenience, the same is extracted hereunder.

"Greetings of the day

Kind attention to Mr.BalaSubramanian

As per the Telecon we are interested to Buy The Plant and Machineries of SIVAKUMAR ENTERPRISES PRIVATE LIMITED, as per the list sent by you (Total no of items 31) for the value of Rs.1 Crore, if any items missed / losses fully or partially that value will be deducted from the total cost.

This transaction would be completed within 10 weeks period from the date of written confirmation"

8. As rightly contended by Mr.AV.Radhakrishnan, learned counsel for Karur Vysya Bank, when there is a higher offer, duly supported by e-mail dated 17.01.2018, prayer sought for cannot be granted. Hence, the writ petition is dismissed. No Costs.

9. Though, Mr.M.Vijayakumar, learned counsel for the writ petitioner sought for a direction to the bank to complete the sale transaction, within a time period as may be fixed by this Court, the same cannot be issued, for the reason that it is for the vendor and purchaser to fix the terms of sale and complete the same.

Sd/-

Assistant Registrar (CS-iii)

//True Copy//

Sub Assistant Registrar

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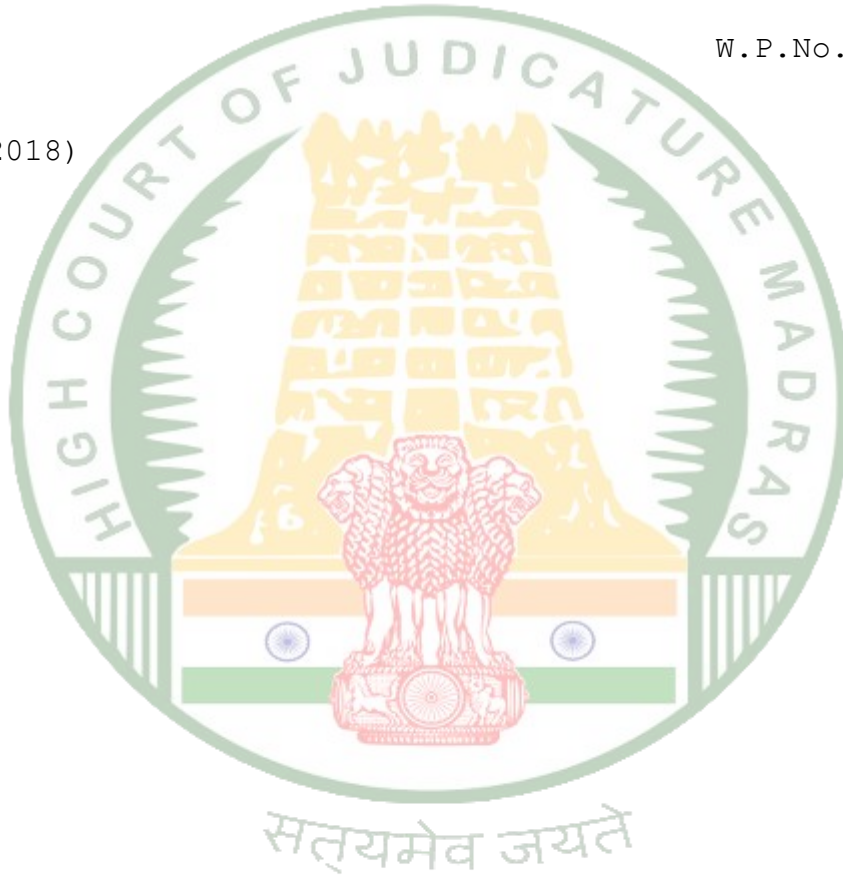
To

The Authorised Officer / Assistant General Manager,
Divisional Office,
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Mampazhapattu Road, Villupuram,
Tamil Nadu - 605 602

+1cc to Mr.A.V.RADHAKRISHNAN, Advocate, S.R.No. 3609
+1cc to Mr.M.VIJAYAKUMAR, Advocate, S.R.No. 3871

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GMI (CO)
TR(07/02/2018)



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