

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 5/6/2018
C O R A M
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.12976 of 2018

M/s. Idan Media Works India Pvt Limited
rep. By its Authorised Person
Mr.Bexel Jacob
No.2, 100 Feet Scheme Road
Avarampalayam Road
Siddhapudur Post
Coimbatore 44. Petitioner

Vs

1. The Authorised Officer
M/s. Pallavan Grama Bank
No.6 Yercaud Road
Hasthampatti
Salem 636 007.
2. The Registrar
Debt Recovery Tribunal
Coimbatore. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorarified mandamus calling for the records of the second respondent dated 2/5/2018 in I.A.No.1072 of 2018 in S.A.No.99 of 2018 and quash the same and directing the first respondent to consider the OTS letter dated 19/4/2018.

For petitioner ... Dr.S.N.Amarnath

ORDER

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

M/s. Idan Media Works India Pvt Limited, has borrowed loan from Pallavan Grama Bank, Salem, first respondent herein. As there was default, Bank has issued notice, dated 23/8/2017, under Section 13 (2) of the SARFAESI Act, 2005, demanding a sum of Rs.2,71,94,667/-. According to the petitioner, vide, letter, dated 19/10/2017, they sought for two months time to regularise

the loan account, which was acknowledged by the Bank. Being aggrieved by the possession notice, dated 2/11/2017, issued under Section 13 (4) of the SARFAESI Act, petitioner filed S.A.No.342 of 2017 along with a stay petition I.A.No.2246 of 2017. Respondent Bank issued a sale notice, dated 3/3/2018, and subsequently, on 5/3/2018, paper publication was ordered, to bring the mortgaged property, by way of auction, on 23/3/2018. and therefore, the petitioner was constrained to file S.A.No.99 of 2018.

2. Petitioner has further contended that vide order, dated 22/3/2018, in I.A.No.652 of 2018, Tribunal granted interim stay of the auction, on condition that the petitioner pays a sum of Rs.73 lakhs, each, in two instalments on or before 23/4/2018 and 22/5/2018 respectively. Due to financial constraint, petitioner could not pay the said amount. However, made OTS proposal, dated 19/4/2018, which was not accepted by the Bank. Therefore, the petitioner filed another application, I.A.No.1072 of 2018 in S.A.No.99 of 2018, to stay all further proceedings, in pursuance of the sale notice.

3. After hearing the learned counsel appearing for the petitioner and the Bank, vide order, dated 2nd May 2018, in I.A.No.1072 of 2018, Debts Recovery Tribunal, Coimbatore, has dismissed the same, as hereunder:-

I.A.No.1072 of 2018: (Stay Petition) - This petition has been filed by the petitioner/applicant to stay all further proceedings in pursuance of the intended sale notice till the disposal of the SARFAESI Application.

The Ld. Counsel for the petitioner/applicant would submit that the petitioner/applicant has moved for an OTS settlement, which was rejected by the officials of the R/Bank and the R/Bank is very rigid in their approach. The Ld. Counsel further would submit that the petitioner/applicant could not mobilise funds and without any humanitarian consideration of the R/Bank is taking hasty steps to bring the property for sale. The Ld. Counsel seeks stay of the proceedings.

The Ld Counsel for the R/B strongly objects that this Tribunal in its earlier order in I.A.No.652 of 2018, dated 22/3/2018, has granted conditional stay, directing the petitioner/applicant to pay Rs.73 lakhs each, in two instalments, on or before 23/4/2018 and 22/5/2018, but the petitioner/applicant without making any payment, has come forward with the second stay application for the stay of the

operation of the first stay order, is totally unacceptable and it has to be objected in limine.

It is an admitted fact that this Tribunal granted stay in I.A.No.652 of 2018 dated 22/3/2018, till 23/5/2018, subject to payment of Rs.73 lakhs each, on or before 23/4/2018 and 22/5/2018, but the applicant without making nay payment, even after the rejection of the OTS proposal has come forward with the present application. The prayer is such that it is in the form of a stay of the previous stay order which cannot be countenanced at all. The petitioner/applicant is directed to comply with the order passed in I.A.No.652 of 2018, dated 22/3/2018. Hence this petition is dismissed. No costs."

4. Order made in I.A.No.1072 of 2018, is challenged in the instant writ petition, on the following grounds:-

(i). Inspite of the offer for OTS proposal, the Bank did not entertain the initial talk itself.

(ii). The Bank wanted to sell the property (6 items) worth about Rs.24 crores for the due of Rs.2.74 crores, which is against natural justice.

(iii). The notice of intended sale itself is improper and illegal. The notice of intendant sale was issued on 3/3/2018, fixing the sale on 23/3/2018.

5. Though Dr.S.N.Amarnath, learned counsel for the petitioner inter alia contended that if six months time is granted, petitioner would discharge the loan and to that effect, petitioner is willing to file an affidavit in this Court, and further submitted that in view of the financial constraint, interim order could not be complied with, and prayed to quash the order impugned, we are not inclined to accept the submissions, for the reason that perusal of the order impugned makes it clear that on an earlier occasion when the petitioner sought for stay of all further proceedings of the auction notice, Tribunal in I.A.No.652 of 2018, dated 23/3/2018, has granted an order of stay, on condition that the petitioner should pay Rs.73 lakhs each, in two instalments, on or before 23/4/2018 and 22/5/2018, respectively. Petitioner has failed to comply with the conditional order. Thereafter, OTS proposal, dated 19/4/2018 has not been accepted by the Bank. Therefore, the prayer for stay in I.A.No.752 of 2018, has rightly been rejected and accordingly, petition has been dismissed.

6. Though the learned counsel for the petitioner placed reliance on a judgment of a Hon'ble Division Bench of Allahabad High Court, in Uma Shanker Vs. State of U.P & Ors {2013 (2) Bank J 174}, going through the same, we are of the view that the said judgment is not applicable to the facts of this case. In the reported judgment, learned counsel therein had contended that the entire amount would be paid, if time is granted by the Court, which the learned counsel for the Bank therein has agreed.

7. Reverting to the case on hand, Bank has not agreed for such proposal and OTS has been rejected. Judgment cited by the learned counsel is inapposite to the facts in hand and there is no manifest illegality in the order impugned.

8. In the light of the above discussion, instant writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Registrar
Debt Recovery Tribunal
Coimbatore.

+1 cc to Dr.S.N.Amarnath Advocate sr 34688

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W.P.No.12976 of 2018

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