

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR  
and  
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.7813 of 2013  
and  
M.P.Nos.1 & 2 of 2013

R.Ramachandran

.. Petitioner

Vs.

1. Punjab National Bank,  
Rep. by its Chief Manager,  
No.21, Raja Annamalai Road,  
Purasawalkam, Chennai - 84.
2. The Debt Recovery Officer,  
Debt Recovery Tribunal - III,  
5th Floor, Deva Towers,  
770 A, Anna Salai, Chennai - 02.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the records of the respondents culminating in auction notice dated 19.02.2013 bearing number DRC No.9 of 2011, in daily newspaper, quash the same in so far as it deals with the properties in Item 4 of the auction notice and direct the respondents not to initiate any action contrary to the orders of the Debt Recovery Tribunal in O.A.No.97 of 2010.

For Petitioner : No appearance

For Respondents : No appearance

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O R D E R

(Order of the Court was made by S.MANIKUMAR, J.)  
On 02.02.2018, we passed the following order:

"Material on record discloses that Punjab National Bank, Chennai, first respondent, has filed O.A.No.97 of 2010, on the file of the Debts Recovery Tribunal - 3, Chennai, for the following reliefs:-

"1. Directing the defendants 1

to 4 jointly and severally to pay to the applicant a sum of Rs.3,76,27,308.23, together with interest at the rate of BPLR + 3% (presently 14% per annum) (along with penal interest) with monthly rest from the date of filing the application till the date of realisation.

2. Directing that the applicant bank who is the secured creditor shall have priority over the sale proceeds of the property hypothecated and mortgaged.

3. To pass an order for sale of the Schedule A immovable property and Schedule B movable property and to appropriate the proceeds of such sale towards the dues under this O.A and in case, of short fall to direct sale of the personal assets of the defendants 2 to 4.

4. For cost of application including incidental expenses, insurance premium and other expenses etc., which may be incurred by applicant subsequently, to filing of application before DRT.

5. For issuance of a certificate of recovery of the amount due from the defendants as per above under provisions of Act 51/93."

2. O.A has been filed against M/s.Soft Bankk Micro Systems Pvt. Ltd., Chennai, Mr.S.Sivasubramaniam, Mr.R.Ramachandran and Mr.P.Kishore, Directors of the said Company, as defendants. D.1, D.2 and D.4, have been set ex parte, on 30/7/2010. D.3 has been set ex parte, on 15/9/2010.

3. Upon considering the material on record and submissions of the Bank, Debts Recovery Tribunal - III, Chennai, vide order, dated 19/11/2010, Debts Recovery Tribunal - III, ordered as hereunder:-

"6. In the result, it is declared that

a. The applicant bank is entitled to a Recovery Certificate

as against the defendants 1 to 4 for recovery of the sum of Rs.3,76,27,308.23 together with interest @ 10% p.a., (simple) from the date of filing of the OA till the date of realisation of the amount.

b. The applicant bank is entitled to costs of the OA.

c. It is ordered that in case of default to pay the amount adjudged by the said defendants, the applicant bank is entitled to get the OA schedule mentioned hypothecated and mortgaged properties sold under execution of the Recovery Certificate and adjust the sale proceeds thereof towards the amount due.

d. If the sale proceeds are not found sufficient, after defraying the expenses of such sale for the payment of all such amounts, the defendants 2 to 4 are personally liable for the deficit of the adjudged amount with interest mentioned above until realisation.

e. It is further ordered that any amount remitted by the defendants or realised by the applicant bank during the pendency of OA, shall be given due credit to the amount adjudged against the defendants.

f. The schedule A & B properties in the OA shall form part of this order.

7. It is further ordered that 15 days time is granted to the applicant bank to file costs memo from the date of receipt of this order, so as to prepare the Recovery Certificate as directed above. In case, the costs memo is not filed within the above mentioned time, Recovery Certificate be prepared based on the available records and forwarded to the Recovery Officer for execution in accordance with

law."

4. Thereafter, Recovery Officer, has issued e-auction notice, dated 19/12/2013, fixing the auction, on 27/3/2013.

5. Proceeding, dated 19/2/2013, bearing D.R.C.No.9 of 2011, bringing the property for auction, notified in the newspaper, is impugned in the instant writ petition, with the prayer, to call for the records of the respondents, culminating in Auction Notice, dated 19/2/2013, bearing No.DRC No.9 of 2011, on daily newspaper, quash the same, in so far as, it deals with the properties, in Item No.4 of the auction notice, and direct the respondents, not to initiate any action contrary to the orders of the Hon'ble Debt Recovery Tribunal, in O.A.No.97 of 2010.

6. Record of proceeding of the instant writ petition shows that on 26/3/2013, in M.P.No.2 of 2013 in W.P.No.7813 of 2013, a Hon'ble Division Bench of this Court has passed the following order:-

"Notice of motion returnable in eight weeks. Private notice is also permitted. There shall be an order of interim stay on condition that the petitioner deposits a sum of Rs.1 crore within a period of six weeks from today. In the event of failure, on the part of the petitioner in paying the said amount, within the stipulated time, the stay granted by this Court shall stand dismissed without any further reference to this Court."

7. On 31/1/2018, when the matter came up for hearing, on behalf of the learned counsel for the petitioner, representation was made by Mr.Sasidharan that learned counsel for the petitioner, wants to revoke the vakalat. Hence we directed the Registry to post the matter, on 2/2/2018.

8. On this day, Mr.A.Yogeshwaran, learned counsel for the petitioner has filed a memo, dated 2/2/2018, and the same is extracted hereunder:-

"1. It is submitted that the counsel for the petitioner has been attempting to contact the petitioner Mr.Ramachandran through his known phone number

(9176829020) since as early as July 16, 2017 when SMS was sent regarding the listing of old cases before this Hon'ble Court and requesting him to provide instructions in the matter.

2. Subsequently, the present writ petition was listed on 25/1/2018 and has been listed thereafter before this Hon'ble Court and the petitioner has been informed by SMS about every listing and phone calls were not answered. Finally, on 31/1/2018, the petitioner responded to a phone call at 7.46 a.m., at the above number but did not provide any written instructions which could be relayed to this Hon'ble Court by us, despite informing him that we would be constrained to revoke our vakalt in the absence of instructions from him. He has thereafter, at 8.17 a.m., on 31/1/2018 sent an SMS asking the counsel not to proceed with the present case and to withdraw our vakalat.

3. In these circumstances, it is prayed that this Hon'ble Court be pleased to permit the counsel for the petitioner to revoke the vakalat entered on behalf of the petitioner in the present writ petition and pass such further order or orders as may be fit, proper and necessary in the facts and circumstances of the case."

9. Learned counsel for the petitioner also submitted that he is not aware as to whether the above conditional order, dated 26/3/2013, has been complied with or not. Auction was fixed, on 28/3/2013. Though auction notice can be challenged, under Section 17 (1) of the SARFAESI Act, 2002, a Hon'ble Division Bench of this Court has granted interim stay of auction scheduled, on 28/3/2013, on the direction that the petitioner should deposit a sum of Rs.1 crore, within a period of six weeks, from the date of passing of the interim order. If the said conditional order has not been complied with, petitioner is not entitled to any equitable remedy.

10. Taking on record the memo, dated 2/2/2018 and the oral submission of the learned counsel for the petitioner, permission is granted

for revocation of vakalat. As the petitioner is stated to have sent a SMS message, requesting the counsel, not to proceed with the present case and to withdraw the vakalat, it is for the petitioner to make necessary arrangements. We are not inclined to issue notice to the petitioner.

11. Registry is directed to delete the name of the counsel, instead, print the name of the petitioner and post on 7/2/2018."

2. As per the directions of this Court dated 02.02.2018, name of the writ petitioner is shown in the cause list. There is no representation either in person or through pleader.

3. In the light of the order dated 02.02.2018 and taking note of the non-appearance of the writ petitioner, we are constrained to dismiss the writ petition, for non-prosecution. Interim order granted stands vacated. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-  
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

1. The Debt Recovery Officer,  
Debt Recovery Tribunal - III,  
5th Floor, Deva Towers,  
770 A, Anna Salai, Chennai - 02.

W.P.No.7813 of 2013 and  
M.P.Nos.1 & 2 of 2013

nr 12/02/2018

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