IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2018

CORAM:

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

W.P.No.18588 of 2017
and
W.M.P.Nos.20131 & 28126 of 2017

1.Sai Naveen Kumar
2.Margaret Sugirthabai .. Petitioners

Vs.

1.The Authorised Officer,
UCO Bank,
Korattur Branch,
25 Shanthi Nagar Main Road,
2nd Street, Korattur,
Chennai - 600 080.

2.UCO Bank,
Korattur Branch,
rep. by Branch Manager,
25 Shanthi Nagar Main Road,
2nd Street, Korattur,
Chennai - 600 080. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records of the 1st respondent, quash its possession notice dated 16.05.2017, direct the respondents to receive amounts needed to regularise the account bearing Current A/c.No.09640500000661 having in respondent bank in the name of Southern Gasket Products and restore the same to its original status.

For Petitioners : Mr.P.Raghunathan
for M/s.T.S.Gopalan and Co.

For Respondents : Mr.L.Chandrakumar for
M/s.N.Naganathan

ORDER

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

First petitioner is the son of R.Sai Sankar and the second petitioner is the mother of the first petitioner. First Petitioner's father R.Sai Sankar, with one Mrs.B.Banumathi, as partners, carried on the business under the name and style of Southern Gasket Products. On 13.05.1981, they opened an account in UCO Bank, Purasawakkam Branch. Subsequently, the account was changed to UCO Bank, Korattur Branch. On 03.05.1992, the said partners of the firm, jointly purchased a land measuring 3000 Sq.ft. in Padavettamman Nagar, Korattur Village, for putting up a factory shed thereon.

2. In 1995, the firm approached UCO Bank, Korattur Branch, for sanction of credit facilities to them. Upon sanction, the firm put up an industrial shed over the property and started manufacturing activity in the said premises. The firm also mortgaged the said factory, land and building to the bank to secure the credit facilities. Above said firm was dissolved on 6.12.2001. A deed of dissolution was also recorded. The business of the firm would be carried on by the first petitioner's father as its proprietor and the credit facilities sanctioned by the bank and mortgage created in favour of the bank, would enure to the benefit of the first petitioner's father.

3. First petitioner has further contended that his father had also furnished all the copies of the said deed of dissolution to the bank. Bank had recognised the deed of dissolution and relieved Mrs.B.Banumathi from all her liabilities of the bank as partners and co-mortgagor. Bank continued the account in the name of style of Southern Gasket Products, now a proprietorship and continued to make credit facilities to Southern Gasket Products.

4. Petitioner has further contended that the bank reviewed the credit facilities during the year 2006. The Bank required first petitioner's father to record and register a memorandum of deposit of tittle deeds to secure the credit facility of Rs.18,50,000/-. On 28.08.2006, the first petitioner's father executed an agreement in favour of the bank in relation to the deposit of title deeds in the standard format adopted by the bank.

5. Accordingly, the first petitioner's father registered the said document in the office of the Sub-Registrar of Assurance, Villivakkam, as document No.2454 of 2006. According to the first

petitioner, he was also involved in the business along with his father, for more than 15 years. On 21.01.2016, his father R.Sai Sankar died. The petitioners, being the son and wife of R.Sai Sankar, are legal heirs. The petitioners approached the bank that they would produce legal heir certificate.

6. Though the credits availed were within limits, bank directed the petitioners to produce the title deed in respect of the property in the name of the petitioners and also insisted the petitioners to produce other financial documents. Bank freezed the account. When the matter stood thus, bank issued notice dated 03.02.2017 under Section 13(2) of the SARFAESI Act, 2002, to the petitioners calling upon them to repay the liabilities of late Mr.R.Sai Sankar, within 60 days. Responding to the notice, petitioners sent a reply dated 11.04.2017. Petitioners have further contended that vide letter dated 24.04.2017, bank directed them to produce all the necessary financial papers/documents, valid title deeds to property and documents required for change of proprietor, failing which, the bank would proceed with SARFAESI action. Thereafter, under Rule 8(1) of the SARFAESI Interest Enforcement Rules, 2002, bank has issued possession notice dated 16.04.2017.

7. It is the case of the petitioners that, on 05.06.2017, they submitted all the papers for regularising loan and also paid a sum of Rs.40,000/- to keep the account in order. Petitioners have also requested the bank to permit them to operate the account bearing Current A/c.No.09640500000661. In the above said circumstances, instant writ petition has been filed to quash the possession notice dated 16.05.2017 and for a consequential direction to the respondents to receive amounts needed to regularise the account bearing Current A/c.No.09640500000661 in respondent bank in the name of Southern Gasket Products and restore the same to its original status.

8. Opposing the prayer sought for, Authorised Officer, Uco Bank, Purasawakkam branch, made a preliminary objection to the maintainability of the writ petition, contending inter alia that when there is an effective alternative remedy under the statute is available, writ petition is not ordinarily maintainable. According to the Authorised Officer, there is no such extraordinary circumstances, warranting the writ petition to be entertained. Notwithstanding the above, Authorised Officer, in his counter affidavit, has further submitted that the property mortgaged with the bank, was jointly purchased in the name of Mr.R.Sai Sankar and Mrs.B.Banumathi, erstwhile partners of the firm. Partners of the firm approached the bank for cash credit facilities and that both of them executed a mortgage deed in favour of the bank. Deposit of title deeds was also recorded.

9. Bank has denied the contention that upon dissolution of the partnership firm, father of the first petitioner became entitled to all the assets of the partnership firm. Though a Deed of Dissolution was furnished, bank had not recognised the deed nor relieved Mrs.B.Banumathi from all her liabilities to the bank as partner and co-mortgagor. Bank has further contended that the property given as a security for cash credit facility loan account, is a joint property of Mr.R.Sai Sankar, father of the first petitioner and Mrs.B.Banumathi. Bank has further contended that Mrs.B.Banumathi, is entitled to 1/2 share in the said property and that the petitioners have to obtain a Release Deed from her. Bank has contended that unless and until a valid title deed is produced by the petitioners, mortgaged property will always be treated as joint ownership. Having regard to the above contents of the sale deed, bank has directed the petitioners to produce legal heir certificate along with valid title deed of the property. According to the bank, property does not stand in the name of the firm and it stood in the name of both R.Sai Sankar, father of the first petitioner and Mrs.B.Banumathi. Bank has further submitted that account could not be regularised on the ground that the petitioners did not comply with the production of necessary documents.

10. Bank has further submitted that when the debt amount was not repaid within 60 days from the date of notice under Section 13(2) of the SARFAESI Act, 2002, bank is at liberty to take any one of the measures under Section 13(4) of the SARFAESI Act, 2002 and thus possession notice was issued. According to the bank, there is no manifest illegality in issuing possession notice.

11. Both the learned counsel for the parties, took us through the entire material record to substantiate their submissions.

12. Contending inter alia that Mrs.B.Banumathi, signatory in the sale deed dated 03.08.1991, is a proper and necessary party for the purpose of effective adjudication of the lis before us, bank has filed W.M.P. No.28126 of 2017 in W.P. No.18588 of 2017, for impleading, Mrs.B.Banumathi as party respondent to this writ petition.

13. Having regard to the rival submissions, on 20.10.2017, we passed the following order:

> Petitioner, son of the deceased/borrower has come forward to discharge the entire loan amount.
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> 2. Mr.L.Chandrakumar for Mr.N.Naganathan, learned counsel for the Bank, submitted that, as on today, Rs.32 lakhs is due. Bank is opposing for

release of property documents, which stands in the name of the deceased borrower and Ms.Banumathi, partners of Southern Gasket Products, who had availed loan.

3. According to the learned counsel for the writ petitioner, son of the deceased, who was one of the partners of Southern Gasket Products, mortgage deed was executed by the deceased, though the property stood in the name of both. Ms.Banumathi was not a mortgagor. He further contended that Banumathi has left the partnership firm long ago and she has not come forward to discharge the loan with interest, whereas, the petitioner is the only surviving legal heir, to the deceased borrower/partner, who has come forward to discharge the loan amount with interest and in such circumstances, notwithstanding the joint ownership of the property mortgaged, Bank in all fairness should release the document, no sooner, a portion of the amount is discharged. Even on 18/8/2017, when the matter came up for admission, learned counsel for the Bank fairly submitted that the petitioner would deposit 50% of the outstanding amount and that the petitioner would also offer security in respect of the loan account.

4. During the course of hearing, proposals given in the above said terms have been acknowledged by Mr.Chandrakumar for Mr.N.Naganathan, learned counsel for the Bank.

5. Today, Mr.P.Raghunathan, for M/s.T.S.Gopalan and Co., learned counsel for the petitioners submitted that Rs.16 lakhs representing 50% of the loan amount, as on date, would be deposited within four weeks, from the date of receipt of a copy of this order.

6. Having regard to the fact that the loan account has since been frozen, the petitioner is not able to raise funds. It is also his submission that having regard to the bona fides of the petitioner, coming forward to deposit Rs.16 lakhs, within four weeks, from the date of receipt of a copy of this order, Bank be directed to release the frozen accounts.

7. Though Mr.L.Chandrakumar, learned counsel for the Bank opposed the said plea, we are not inclined to accept the same.

8. Question as to whether the documents pledged with the Bank can be directed to be handed over to the writ petitioner and whether Ms.Banumathi is a necessary and proper party to the final

adjudication of this writ petition can be decided later. Now, at this juncture, submission of the learned counsel for the petitioner appears to be reasonable. Therefore, placing on record the submission, petitioner is permitted to deposit Rs.16 lakhs, being 50% of the loan amount, within four weeks from the date of receipt of a copy of this order. On such deposit, Authorised Officer, UCO Bank, Korattur, is directed to release the frozen account. Petitioner is permitted to raise with funds thereafter.

9. Post on 20/11/2017.

14. Upon further hearing, on 07.12.2017, we passed the following order:

On 20.10.2017, we permitted the petitioner to deposit Rs.16 Lakhs being 50% of the loan amount, within four weeks from the date of receipt of a copy of the order and on such deposit the Authorised Officer, UCO Bank was directed to release the frozen account.

2. On this day, when the matter came up for further hearing, submission has been made by Mr.Naganathan, learned counsel for the bank that 50% of the amount stated supra has been deposited on 20.11.2017. But then, the frozen account has not been released. According to him, certain documents have not been furnished.

3. Submissions of the learned counsel for the bank, is nothing but repetition made in the earlier proceedings. Despite the specific direction of this Court to release the frozen account, the same has not been done on the grounds that some documents are required.

4. Disobedience of the Authorised Officer, UCO Bank, Korattur Branch, Chennai, in implementing the directions of this Court, is apparent.

5. Registry is directed to issue notice to the respondents to explain as to why action should not be taken against them, under the Contempt of Courts Act.

6. Post on 21.12.2017.

15. Material on record discloses that Mrs.B.Banumathi and R.Sai Sankar, have entered into a Deed of Partnership on 13.05.1981, to start a partnership firm under the name and style "Southern Gaskets Products, with equal contribution of the capital. As pointed out, sale deed dated 03.08.1991 has been executed in favour of Mr.R.Sai Sankaran and Smt.B.Banumathi. The said property had been mortgaged with bank for availing the

loan. Deed of dissolution, dated 06.12.2001, enclosed in the typed set of papers duly signed by both Mr.R.Sai Sankaran and Mrs.B.Banumathi, shows that the parties, have mutually agreed to dissolve the partnership as and from the date of execution of the Dissolution of Partnership dated 06.12.2001. Clause 2 of the Dissolution of Partnership dated 06.12.2001 reads thus:

> 2. The books of account up to the date of dissolution of the firm have been scrutinized by all the partners. The amount due to the retiring partner after crediting her share of profit or loss up to the date of dissolution and after transfer of their capital and current account balance have been paid by the continuing partner to retiring partner as under:-
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> "i. Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand only) by Demand Draft No.432795 dated 04.12.2001 drawn on UCO Bank, Korattur, Chennai - 600 080.
>
> ii. Rs.50,000/- (Rupees Fifty Thousand only) by Demand Draft No.091509 dated 06.12.2001 drawn on UCO Bank, Korattur, Chennai - 600 080.
>
> The said sum is paid in full and final settlement of her claim of whatsoever in the partnership towards capital, current account, goodwill and fixed assets of the company. The retiring partner hereby admit and acknowledge the receipt of the above referred sum and in consideration thereof she relinquish all her interest, claim or whatsoever in the said partnership its assets and properties."

Reading of clause 2, makes it clear that Mrs.B.Banumathi, the retiring partner has admitted and acknowledged receipt of the above said sum and in consideration thereof relinquished all her interest, claim or whatsoever in the partnership firm, its assets and properties.

16. Paragraph No.6 of the Dissolution Deed dated 06.12.2001 further reads that Mr.R.Sai Sankar, would thus become the proprietor of the business of Southern Gasket Products, as a going concern with all assets including the immovable properties standing in the name of the firm and given as collateral security to Uco Bank for credit facilities enjoyed by the firm and liabilities. Clause 6 further reads that Mr.R.Sai Sankar, was at liberty to continue the said business using the same name i.e. Southern Gasket Products or some other names or names. As per clause 7 of the said deed, each of the parties thereto released others from all the proceedings, claims and demands in respect of the partnership themselves, subject to the provisions of the deed of dissolution. Paragraphs 6 and 7 of the Dissolution deed, read thus:

"6. The continuing partner (i.e.) R.Sai Sankar, hereto have thus become the proprietor of the business of Southern Gasket products as a going concern with all the assets including the immovable properties standing in the name of the firm and given as collateral security to the UCO Bank for the credit facilities enjoyed by the firm and liabilities at book value as at the close of the business on this date of instrument together with rights, telephones, book debts and other receivables, stock in trade, furniture and fittings, bank accounts, import and export licences, privileges, amenities, licences, concessions and enjoyments, quota rights and other including trade name either registered or unregistered, which have been enjoyed by the said firm hitherto. He do hereby make himself liable for all the liabilities and the outstandings of the said firm as at the close of the business on this date of instrument. He is also liable for all pending actions and contracts entered into by the said firm on or before the dissolution. He has at liberty to continue the said business with using the same name (i.e.) Southern Gasket Products/or some other name or names.

7. Each of the parties hereto releases the others from all proceedings, claims and demands in respect of the partnership themselves, subject to the provisions of this deed of dissolution."

17. In terms of the deed of dissolution dated 06.12.2001, Thiru.R.Sai Sankar seemed to have deposited the title deeds. To substantiate the same, petitioners have produced Encumbrance Certificate dated 27.04.2017, which shows that Thiru.R.Saisankar has mortgaged the property in favour of M/s.Uco Bank.

18. On 21.12.2017, we passed the following order:

Mr.L.Chandrakumar, learned counsel for the Uco Bank, submitted that on 20.12.2017, the bank has issued a sanction order, and the order dated 24.10.2017 is complied with.

2. Perusal of the same shows that the sanction ordered by the Bank is subject to certain terms and conditions, which according to the learned counsel for the UCO Bank, is that certain documents have to be produced.

3. Earlier, after hearing the arguments of the learned counsel for both parties, we ordered that on payment of Rs.16 Lakhs, the account, which stood in the name of the deceased, should be released. Insisting for production of the documents, is

nothing but a repetitive act of Mr.S.Ramachandran, Senior Manager, UCO Bank, Korattur Branch, who has issued the letter, dated 20.12.2017, which in our opinion, is contumacious.

4. Learned counsel for the UCO Bank, submitted that the terms and conditions, which are insisted in the letter, dated 20.12.2017, would be deleted, as soon as, a personal undertaking to discharge the bank liability, is furnished with the specimen signatures of the petitioner.

5. Learned counsel for the petitioner submitted that specimen signatures and other datas, such as, manufacturing activity, etc., as required by the bank, have already been furnished.

6.Hence, the respondent bank will permit the petitioners to operate the accounts. Post after vacation.

19. On 21.12.2017, learned counsel for the bank, submitted that the terms and conditions, which are insisted in the letter, dated 20.12.2017, would be deleted, as soon as, a personal undertaking to discharge the bank liability, is furnished with the specimen signatures of the petitioner. However, learned counsel for the petitioner reiterated that specimen signatures and other data, such as, manufacturing activity, etc. as required by the bank, have already been furnished by the petitioners. In view of the above, there is no impediment for the respondent bank to permit the petitioners to operate the accounts. Taking note of the dissolution of the firm impleading Mrs.B.Banumathi, is not required. Hence W.M.P. No.28126 of 2017 is dismissed.

In the result, the writ petition is allowed as indicated. Possession Notice dated 16.5.2017 is set aside. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

asr

To

1.The Authorised Officer,
UCO Bank,
Korattur Branch,
25 Shanthi Nagar Main Road,
2nd Street, Korattur, Chennai - 600 080.

2.UCO Bank,
Korattur Branch,
rep. by Branch Manager,
25 Shanthi Nagar Main Road,
2nd Street, Korattur,
Chennai - 600 080.

+2 cc to Mr.N.Naganathan, Advocate Sr.No.11627
+1 cc to Mr.T.S.Gopalan, Advocate Sr.No.11446

W.P.No.18588 of 2017
and
W.M.P.Nos.20131 & 28126 of 2017

VBA(CO)
CSL/04.01.2019