

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.23796 of 2018 and
W.M.P.Nos.27740 & 31301 of 2018

- 1.M/s.G.K.K.Exports Pvt. Ltd.,
rep by its Managing Director M.S.G.Bhuvan Kumar
No.40/7, Ramakrishna Street,
T.Nagar, Chennai - 600 017.
 - 2.M/s.Taurus G.K.K. Leathers Private Limited
(Formerly known as M/s.Taurus Leathers Pvt. Ltd.,)
rep by its Managing Director M.S.G.Bhuvan Kumar
No.40/7, Ramakrishna Street,
T.Nagar, Chennai - 600 017.
 - 3.M/s.MGM Exports,
rep by its Managing Director M.S.G.Bhuvan Kumar
No.40/7, Ramakrishna Street,
T.Nagar, Chennai - 600 017.
 - 4.M.S.Gunasekaran
 - 5.M.S.G.Bhuvan Kumar
- .. Petitioners/Petitioners

Vs.

Union Bank of India
rep by its Authorized Officer,
Assets Recovery Branch,
Union Bank Bhavan,
Ground Floor, No.139, Prakasam Road,
Broadway, Chennai - 600 108.

.. Respondent/Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus calling for the records of the Debt Recovery Appellate Tribunal, Chennai in respect of the order dated 27.08.2018 in I.A.No.823 of 2018 in AIR (SA).No.442 of 2018 in SA.No.171 of 2018 and quash the same culminated in Sale notice number Nil dated 05.07.2018 and consequently, declare all connected and pending proceedings on the file of the Debts Recovery Tribunal - II, Chennai in abeyance.

For Petitioners: Mr.AR.L.Sundaresan, Senior Counsel
for Mr.P.V.Balasubramaniam

For Respondent : Mr.K.Muthuperiyasamy

O R D E R

(Order of the Court made by M.DURAISWAMY,J.)

The petitioners have filed the above Writ Petition to issue a Writ of certiorarified mandamus to call for the records of the Debt Recovery Appellate Tribunal, Chennai in respect of the order dated 27.08.2018 in I.A.No.823 of 2018 in AIR (SA).No.442 of 2018 in SA.No.171 of 2018 and to quash the same culminated in Sale Notice dated 05.07.2018 and consequently, to declare all connected and pending proceedings on the file of the Debts Recovery Tribunal - II, Chennai in abeyance.

2.Challenging the order passed in S.A.No.171 of 2018 on the file of the Debts Recovery Tribunal - II, Chennai, the petitioners filed an appeal in AIR (SA).No.442 of 2018 with a application in I.A.No.823 of 2018 for waiver of pre-deposit.

3.The respondent - Bank issued notice dated 24.12.2010 under Section 13(2) of the SARFAESI Act and a notice dated 27.12.2010 for recovery of a sum of Rs.30,33,52,250/-

4.Taking into consideration the amount claimed in the Section 13(2) notice, the Debt Recovery Appellate Tribunal directed the petitioners to make a pre-deposit of Rs.10 crores. Challenging this order the petitioners have filed the above Writ Petition.

5.The learned senior counsel appearing for the petitioners submitted that the petitioners have deposited a sum of Rs.18.75 crores during the last eight years, however, the Debt Recovery Appellate Tribunal has not taken into consideration the payments made by the petitioners while fixing the pre-deposit amount.

6.The learned counsel appearing for the respondent - Bank submitted that in W.P.No.2133 of 2012, the petitioners consented to pay a sum of Rs.38,67,36,918.53. Further, the learned counsel submitted that as per the respondent - Bank's letter dated 26.02.2013, the petitioners were to make a payment of Rs.26.50 crores (i.e.) 50% of the OTS before 15.03.2015 and balance of Rs.13.25 crores before 31.05.2014 with interest. Further, it was agreed that on payment of the 1st installment, either the property at Poonamallee or the property mentioned in the SARFAESI Appeal (i.e.) T.Nagar property may be released in favour of the petitioners. Since the petitioners have paid the 1st installment and at their request, the Poonamallee property

was released on 22.04.2013. However, the petitioners have not paid the 2nd installment inspite of several extensions granted to them.

7.Since the petitioners have not complied with the OTS proposal, they once again approached the respondent - Bank with a fresh proposal for Rs.9.50 crores paying Rs.25 lakhs as upfront amount on 11.02.2017. Thereafter, the petitioners improved the offer to Rs.10 crores. However, the same was not accepted by the respondent - Bank. On 22.06.2018, the petitioners gave a fresh OTS proposal for Rs.8.50 crores. In these circumstances, the Debt Recovery Appellate Tribunal has directed the petitioners to make a pre-deposit of Rs.10 crores.

8.According to the respondent - Bank, as of today, the total outstanding payable by the petitioners is more than Rs.25 crores and further submitted that the petitioners' property was sold in auction on 25.07.2018 for a sum of Rs.8 crores.

9.The learned counsel appearing for the respondent - Bank also submitted that the Sale Certificate has been issued in favour of the auction purchasers.

10.The learned senior counsel appearing for the petitioners submitted that since the property has been sold in the auction, the petitioners may be permitted to withdraw the S.A.No.171 of 2018 on the file of the Debts Recovery Tribunal - II, Chennai with liberty to challenge the sale before the Debts Recovery Tribunal.

11.Since the Debt Recovery Appellate Tribunal rightly took into consideration the outstanding amount for fixing the pre-deposit amount, we are not inclined to interfere with the order passed by the Debt Recovery Appellate Tribunal. We do not find any error or irregularity in the order passed by the Debt Recovery Appellate Tribunal. The Writ Petition is devoid of merits and the same is dismissed.

12.The petitioners have filed an application in W.M.P.No.31301 of 2018 to implead the auction purchasers as respondents in the Writ Petition. Since we are dismissing the Writ Petition, we give liberty to the petitioners to file appropriate application before the Debt Recovery Appellate Tribunal for impleading the auction purchasers.

13.So far as the request made by the learned senior counsel for the petitioners is concerned, we give liberty to the petitioners to file appropriate application before the Debt Recovery Appellate Tribunal for withdrawing the appeal in

S.A.No.171 of 2018 on the file of the Debts Recovery Tribunal - II, Chennai with liberty to challenge the sale made in favour of the auction purchasers before the Debts Recovery Tribunal. If the petitioners file such applications, the same shall be decided by the Debt Recovery Appellate Tribunal on merits and in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

- 1) The Authorized Officer,
Union Bank of India
Assets Recovery Branch,
Union Bank Bhavan,
Ground Floor, No.139, Prakasam Road,
Broadway, Chennai - 600 108.
- 2) The Debts Recovery Tribunal II,
Chennai.

+lcc to Mr.B.F.S.Legal Advocate, S.R.No. 70225
+lcc to Mr.M.Muthu Periyasamy, Advocate, S.R.No. 70327

सत्यमेव जयते

W.P. No.23796 of 2018 and
W.M.P.Nos.27740 & 31301 of 2018

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PVS (CO)
GN(24/10/2018)