IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.01.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.28984 of 2017
and
WMP No.31207 of 2017

R.Ananda Sivaji ... Petitioner

vs.

1. Indian Overseas Bank,
Pearl City Branch,
rep. by its Chief Manager & Authorised Officer,
3-C, Balavinayagar Koil Street,
Near Cruz Fernando Statue,
Tuticorin, Pin-628 002.

2. The Debts Recovery Tribunal-III, Chennai,
Dewa Towers, V-Floor,
770-A, Anna Salai,
Chennai - 600 002. ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, to call for the records pertaining to the order dated 19.9.2017 passed in S.A.No.131/2017 by the Debts Recovery Tribunal-III, Chennai and quash the same and directing the Debts Recovery Tribunal-III, Chennai to pass an order in the main application on merits after hearing both sides.

For Petitioner :Mr.Gurumurthy for M/S.P.Thiagarajan

ORDER

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

On 14.11.2017, we passed the following order.

"SA No.131 of 2017, has been filed challenging possession notice dated 30.03.2017, issued under Section 13(4) of the SARFAESI Act, 2002 read with 8(1) of the Security Interest (Enforcement) Rules, 2002. On 21.04.2017, DRT-III, Chennai has granted interim stay of further proceedings pursuant to possession notice dated 30.03.2017, on condition subject to realisation of cheques for Rs.25 Lakhs each dated 28.04.2017 and remittance of demand drafts totalling a sum of Rs.50 Lakhs to the credit of the borrower's loan account with respondent bank. DRT-III, Chennai has further ordered that in the event of default, interim order granted shall stand automatically vacated and the bank is at liberty to proceed further in accordance with law.

2. Material on record discloses that the writ petitioner has filed a memo dated 30.05.2017, stating that payments have been made and given credit. Subsequently, when S.A.No.131 of 2017, came up for further hearing, submission has been made that the writ petitioner is ready to remit a sum of Rs.20 Lakhs to the respondent bank in terms of his proposal for one time settlement. Learned counsel for the writ petitioner seemed to have requested the tribunal a week's time for making payment and for continuing negotiation with the respondent bank for amicable settlement. By observing that time has already been granted till 19.09.2017 and that the learned counsel for the writ petitioner has conceded that there are no infirmities in the procedure adopted by the respondent bank while issuing the possession notice, vide order dated 19.09.2017, in S.A.No.131 of 2017, DRT-III, Chennai has dismissed the application filed under Section 17 of the SARFAESI Act, 2002. However, DRT-III, Chennai has granted liberty to the writ petitioner to continue his negotiation with the respondent bank in terms of the undertaking given before the tribunal. While doing so, the tribunal has vacated the stay of possession notice.

3. According to the learned counsel for the petitioner, at the time of hearing of the case on 19.09.2017, having regard to the submission of the learned counsel for the writ petitioner that the matter would be settled, SIA No.634 of 2017 in SA No.131 of 2017 was passed over and since the learned counsel for the bank was not present, the tribunal wanted to ascertain as to whether there was any talks of settlement, however, when the matter was called again, as the bank counsel was not available, the tribunal has passed the abovesaid impugned order. According to the writ petitioner, arguments were advanced only in SIA No.634 of 2017, filed for stay of possession notice and not on the appeal.

4. Before this Court, Mr.P.Thiagarajan, learned counsel for the petitioner submitted that a sum of Rs.1 Crore would be remitted into the account within two weeks from today. Submission of the learned counsel is placed on record.

5. Writ petitioner is directed to deposit Rs.1 Crore in the loan account with Indian Overseas Bank, Pearl City branch, Tuticorin, within two weeks from today.

6. Issue notice to the respondent through Court and privately returnable by 28.11.2017.

7. Material on record discloses that pending SA, possession notice has been stayed, on condition, which according to the writ petitioner, has been complied with. While that be the case, the tribunal ought to have extended the interim order and heard the appeal on merits. However, the tribunal seemed to have proceeded on the premise that learned counsel for the petitioner had conceded that there are no irregularities in possession notice, which the petitioner refutes. In view of the above, there shall be an interim stay of further proceedings of the possession notice dated 30.03.2017, till 29.11.2017.

8. Post on 28.11.2017."

2. Subsequently, on 04.12.2017, this Court passed the following order

"Though, on 14/11/2017, Mr.P.Thiagarajan, learned counsel for the petitioner submitted that a sum of Rs.1 crore, would be remitted to the account, within two weeks, from the said date and for the reasons stated, we granted interim stay of further proceedings of the possession notice, dated 30/3/2017 till 29/11/2017.

2. On this day, when the matter came up for further hearing, we are informed by Mr.F.B.Benjamin George, learned counsel for the Bank that the order, dated 14/11/2017, has not been complied with.

3. Per contra, the learned counsel appearing for the petitioner submitted that petitioner has been hospitalised for some time and therefore, could not mobilise funds. He further submitted that within ten days from today, the said amount would be remitted into the account.

4. Placing on record the submissions, time to deposit is extended to ten days from today. In the event of failure to comply with the directions, dated 14/11/2017 and extension of time by this order, interim stay granted would stand vacated, without any further reference to the orders of this Court.

5. Post on 14/12/2017."

3. Again when the matter came up on 10.01.2018, taking note of the submission of Mr.B.Gurumurthy, this Court passed the following order.

"On 14/11/2017, an erstwhile counsel, Mr.T.Thiyagarajan, submitted that a sum of Rs.1 crore, would be remitted into the account, within two weeks, from the date of the said date. Placing on record the above, we directed the writ petitioner, to deposit the said sum, with Indian Overseas Bank, Pearl City Branch, Tuticorin, within two weeks, from 14/11/2017 and directed the Registry to post the matter, on 28/11/2017.

2. On 4th December 2017, we extended the time by ten days, indicating that in the event of failure to comply with the directions, dated 14/11/2017, interim stay granted earlier would stand vacated. We directed the Registry to post the matter, on 14/12/2017. Subsequently, on 2/12/2017, we directed the matter to be listed after vacation.

3. On 4/1/2018, Mr.B.Gurumurthy submitted that interim order has not been complied with and the writ petition be permitted to be withdrawn. However, there was no vakalat. Therefore, we direct the Registry to post the matter on some other day. Thus, it is listed today.

4. On this day, the learned counsel for the petitioner submitted that a sum of Rs.1 crore, as ordered earlier, is ready and would be deposited, within two days. Learned counsel for the Bank is agreeable for postponing the hearing of the writ petition.

5. Post on 12/1/2018, immediately, after motion."

4. Though, adequate time has been granted, on the basis of the submissions of the erstwhile counsel, Mr.P.Thiyagarajan that a sum of Rs.1 Crore would be remitted to the loan account and the further submissions of Mr.B.Gurumurthy, interim order dated 14.11.2017, has not been complied with. Though, the petitioner has not filed any application for extension of time for compliance of the interim order dated 14.11.2017, on oral request, time was extended.

5. In Prestige Lights Ltd., v. State Bank of India reported in 2007 (8) SCC 449, at Paragraphs 17, 18, 21 and 25, held as follows:

"17. But, there is an additional factor also as to why we should not exercise discretionary and equitable jurisdiction in favour of the appellant. It is contended by the learned counsel for the respondent-Bank that having obtained interim order and benefit thereunder from this Court, the appellant-Bank has not paid even a pie. The appellant is thus in contempt of the said order. The Company has never challenged the condition as to payment of amount as directed by this Court. Thus, on the one hand, it had taken benefit of the order of interim relief and on the other hand, did not comply with it and failed to pay instalments as directed. Neither it raised any grievance against the condition as to payment of instalments nor made any application to the Court for modification of the condition. It continued to enjoy the benefit of stay ignoring and defying the term as to payment of money. The Company is thus in contempt of the order of this Court, has impeded the course of justice and has no right of hearing till it has purged itself of the contempt.

18. As already noted, stay of dispossession was granted by this Court on mention being made on April 28, 2005. The matter was then notified for admission-hearing on May 6, 2005. A two-Judge Bench of which one of us was a party (C.K. Thakker, J.) passed the following order;

"Permission to file additional documents is granted.

Issue notice.

Subject to the petitioner's depositing an amount of Rs.20 lakhs per month in this Court, there will be stay of the operation of the impugned order. First of such payment shall be made by 6th June, 2005 and the subsequent payments by 6th of each succeeding month. In default of payment of any one instalment, the stay will stand vacated."

21. An order passed by a competent court interim or final- has to be obeyed without any reservation. If such order is disobeyed or not complied with, the Court may refuse the party violating such order to hear him on merits. We are not unmindful of the situation that refusal to hear a party to the proceeding on merits is a 'drastic step' and such a serious penalty should not be imposed on him except in grave and extraordinary situations, but some time such an action is needed in the larger interest of justice when a party obtaining interim relief intentionally and deliberately flouts such order by not abiding the terms and conditions on which a relief is granted by the Court in his favour.

25. That, however, does not mean that in each and every case in which a party has violated an interim order has no right to be heard at all. Nor the court will refuse to hear him in all circumstances. The normal rule is that an application by a party will not be entertained until he has purged himself of the contempt. There are, however, certain exceptions to this rule. One of such exceptions is that the party may appeal with a view to setting aside the order on which his alleged contempt is founded. A person against whom contempt is alleged must be heard in support of the submission that having regard to the meaning and intendment of the order which he is said to have disobeyed, his actions did not constitute a breach of it."

6. In the light of the above discussion and decision, stated supra, we are not inclined to extend the interim order. Further, going through the material on record, we are also of the view that no substantial grounds have been made for reversing the order of the tribunal dated 19.09.2017. Interim order is vacated. Writ petition is dismissed. No Costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar, Debts Recovery
Tribunal-III, Chennai,
Dewa Towers, V-Floor,
770-A, Anna Salai,
Chennai - 600 002.

+1cc to Mr.F.B.BENJAMIN GEORGE, Advocate, S.R.No. 3470

W.P.No.28984 of 2017
and
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RSI(CO)
TR(15/02/2018)