IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2018

CORAM

**THE HONOURABLE MR. JUSTICE S.MANIKUMAR**
**AND**
**THE HONOURABLE MR. JUSTICE SUBRAMONIAM PRASAD**

**Cont.P.No.3053 of 2014**
**Sub Application No.151 of 2017**

M/s.Vamadev Exports,
Rep., by its Partner,
V.Vignesh .. Petitioner

Versus

1. Mr.Sushil Jain,
Executive Vice President & Head - FRR,
M/s.Indusind Bank Ltd.,
701, Solitaire Corporate Park,
167 Guru Hargovindji Marg,
Andheri (E), Mumbai 400 093.

2. Mr.Varadaraj,
Executive Vice President & Zonal Head - FRR,
M/s.Indusind Bank Ltd.,
Secunderabad Branch, 1-10-72, 3rd Floor,
Ashoka Janardhana Chambers,
Begumpet, Hyderabad 500 016. .. Respondents



**Prayer in Cont.P.No.3053 of 2014**: This Contempt Petition filed under Section 11 of the Contempt of Court Act, 70/71 to punish the respondents for having committed contempt of Court for disobeying the order, dated 05.12.2012, made in W.P.No.8398 of 2012.

**Prayer in Sub Application No.151 of 2017:** This petition is filed under Section 151 CPC, for a direction to the respondents herein to release the Drawback Demand Draft (reissued) sum of Rs.2,88,000/- received from M/s.Indian Bank, in the month of July' 2014, along with subsequent interest accrued till the date of payment.

For Petitioner : Mr.P.J.Rishikesh

**O R D E R**

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

Alleging disobedience of the order made in W.P.No.8398 of 2012 dated 05.12.2012, contempt application is filed.

2. Earlier, W.P.No.8398 of 2012, has been filed, challenging the order of the Debts Recovery Appellate Tribunal, made in M.A.No.299 of 2011 in S.A.No.86 of 2011, confirming the order of interim stay made in I.A.No.579 of 2011 in S.A.No.86 of 2011, dated 11.07.2011, granted against the action of M/s.Pegasus Asset Reconstruction Pvt. Ltd., Mumbai, in taking out an application in C.M.P.No.1339 of 2011, on the file of the learned Chief Judicial Magistrate, Coimbatore, under Section 14 of the SARFAESI Act, 2005.



3. In the said writ petition, M/s.Pegasus Asset Reconstruction Pvt. Ltd., Mumbai, was arrayed as 1st respondent, in lieu of the Assignment deed, dated 03.06.2010, wherein, Indusind Bank had assigned all the dues and outstanding recoverable along with all collateral security, interest, pledges and guarantees of the petitioner company to M/s Pegasus ARC. Indusind Bank was arrayed as the 2nd respondent. Subsequently, all the parties in the

aforesaid writ petition had arrived at a settlement and filed a joint memo of compromise, dated 05.12.2012. This Court recorded the same and closed the said writ petition, by its order, dated 05.12.2012. Relevant portion of the order is extracted which is as follows:

> *"1. The parties have arrived at a settlement and filed a joint memo of compromise. The memo filed by the petitioner and the respondents 1 and 2 shall form part of the order of this Court. As pe r the terms of the memo of compromise, the 1st respondent is permitted to withdraw the amount of Rs. 300 Lakhs with accrued interest lying with the Debts recovery Tribunal, Coimbatore and on settlement of the accounts, the 2nd respondent shall not have any claim over the petitioner as well as on any o f the guarantors.*
>
> *2. Recording the said submission of the learned counsel for the 2nd respondent, the above writ petition is closed. No costs."*

4. It is the case of the petitioner that on 27.11.2013, a Drawback demand draft, bearing No.225028, dated 15.05.2004, for a sum of Rs.2,88,000/-, issued by M/s.Indian Bank, in their favor, had not been given credit to, by M/s Indusind Bank. Upon checking with the Indian Bank, they were informed that the unrealized Demand Draft, for a sum of Rs.2,88,000/-, had been transferred to Reserve Bank of India, as per the relevant rules, for unclaimed drafts / deposits. The petitioner was also informed that Indian Bank

would be in a position to reissue the Demand Draft, if Indusind bank issues a NOC / letter, stating that the DD sum was not given credit to in any account or filed into any court proceedings.

5. The petitioner, by letter, dated 27.11.2013, requested for such an NOC from Indusind Bank. Despite the receipt of the request, Indusind bank has not taken any interest in the matter, inspite of various reminders sent by the petitioner, dated 28.11.2013, 20.12.2013, 02.01.2014 and 10.01.2014 respectively. Therefore, a complaint before the Banking Ombudsman was preferred against Indusind bank, which was registered as 201314006006169, on 28.02.2014, by the banking ombudsman.

6. In the said proceedings, officials of Indusind Bank orally agreed before the Ombudsman & the DGM, RBI (Banking Ombudsman cell) that the issue would be sorted out by issuance of a letter to Indian Bank. Subsequently, Indusind Bank, Avinashi branch, by letter, dated 18.03.2014, had written directly to the Indian Bank, confirming that the said DD was not credited in the petitioner's account and requested the Indian Bank to specify the procedure for reissuance of the DD, since the petitioner had approached the bank for the same. Indusind Bank, vide letter, dated



30.04.2014, has also written to the petitioner, stating that the DD had not been realized and that the issue has been taken up with M/s.Indian Bank.

7. It is the further case of the petitioner that after innumerous correspondences and visits in person to Indian Bank, they had finally managed to get reissuance of a duplicate Demand draft. The same was issued after many correspondences, Indemnity letters, etc exchanged in this regard by the petitioner, Indian Bank and Indusind Bank. After a formal letter, dated 24.06.2014, from the petitioner, the Indian Bank has sent the duplicate DD directly to Indusind Bank branch at Avinashi. However, when the petitioner has contacted the officials of Indusind Bank over the phone for payout, he was informed that the bank was contemplating adjustment of the said amount for losses in the Loan account, which had been closed.

8. Therefore, the petitioner sent a letter, dated 17.07.2014, to the 2nd respondent herein enclosing the order copy of this Court, dated 05.12.2013 in W.P.No.8398 of 2012 and sought to release of the DD sum, as there were no dues, to be paid nor any claim pending against them, in terms of the Joint memo of compromise, wherein, a huge sum of Rs.4,70,00,000 (Four Crore Seventy lakhs) was paid and settled. Instead of immediately releasing the sum, the 2nd respondent, by letter, dated 23.07.2014, has stated that the

DD was sent by the bank for collection to Indian Bank on 12.05.2004 and that a sum of Rs.2,88,000/- so received, is being adjusted for losses, suffered by the bank, prior to the settlement made in W.P.No.8398/2012. On the above facts, the petitioner has filed this contempt petition.

9. In this contempt petition, Sub-Application No.151 of 2017, has been filed by the petitioner, for a direction to the respondents herein to release the Drawback Demand Draft (reissued) sum of Rs.2,88,000/-, received from M/s.Indian Bank, in the month of July' 2014, along with subsequent interest, accrued till the date of payment.

10. Contempt has been alleged for violation of the joint compromise memo, dated 05.12.2012, which reads as follows:

"(a) The petitioners agree that the first respondent shall be entitled to receive the sum of Rs.300 lacs with accrued interest lying with the Debts Recovery Tribunal, Coimbatore, towards adjustment of the dues payable by them and in addition, agree to pay a sum of Rs.20 lacs in full and final settlement of all claims of the first respondent against them, apart from the payments already received by the first respondent.

(b) The first respondent agrees to receive the aforesaid payments from the petitioners as full and final settlement, as per the terms set out herein below and discharge the petitioners, Respondents 3 and 4 herein and the other guarantors of their debt to the first respondent.

(c) The petitioners agree that the first respondent shall immediately withdraw the sum of Rs.300 lacs with accrued interest lying with the Debts Recovery Tribunal, Coimbatore and the petitioners shall not have any claim on the said amount of Rs.300 lacs and the accrued interest and shall co-operate for the withdrawal of the said amount.

(d) The petitioners shall further make a payment of Rs.20 lacs to the first respondent within a period of 6 weeks from today, as a full and final settlement of all dues.

(e) The petitioners agree that the liability will not be extinguished till the aforesaid amounts are received by the first respondent as set out in clause (c) and (d) above.

(f) The parties mutually agree to withdraw all cases filed before the DRT, High Court and Civil Court in this regard.

(g) The SAs and OA pending before the DRT, Coimbatore will stand dismissed as settled out of court on realization of the entire amounts as set forth above.

(h) On the entire realization of the dues by the first respondent as set forth above, the first respondent shall restore possession of the secured asset, which is the



subject matter in S.A.No.76 of 2011 (filed by the petitioners) and S.A.No.95 of 2011 (filed by the respondents 3 and 4 herein) to the respective parties on as is where is basis and without any claims whatsoever by the parties on the first respondent.

(i) The first respondent shall release all the charged properties to the parties entitled thereto upon receiving the amounts stipulated above. It is agreed that no other / further sum apart from the above is payable by the petitioners & Guarantors to either the first or second respondent herein against the accounts of M/s.Vamadev Exports.

(j) After settlement and dismissal of the SA and OA, either of the parties shall not have any claim against others or any other party concerning the said loan account.

(k) In case there is any default of these terms and conditions, status quo ante will be restored and the first respondent will be entitled to proceed further under SARFAESI Act and realise the dues."



11. On the facts pleaded, the respondents-Bank has already approached the Ombudsman, for appropriate remedy. Going through the material on record, we are of the view that no prima facie is made out for invoking the provisions of the Contempt of Courts Act 70/71.

12. Hence, for the abovesaid reasons, contempt petition is dismissed. No costs.

SD/-
ASSISTANT REGISTRAR(COMM.CASES)

skm

//Certified to be true copy//

Dated at Madras this the day of 2019.

COURT OFFICER(O.S.)

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PS/23/01/2019