

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.16667 of 2018

1. M/s.Yes Vee Brothers,
Rep. by its Partner Mrs.S.Vasantha,
No.331, Women Industrial Park,
SIDCO, Thirumullaivoyal,
Chennai - 600 062.

2. Mrs. S.Vasantha

3. Mr.R.Selvaraj

4. Mr.Manohar Selvaraj Petitioners

vs.

1. Debts Recovery Appellate Tribunal,
Rep. by its Registrar,
4th Floor, Indian Bank Circle Office,
No.55, Ethiraj Salai, Chennai - 600 008.

2. The Authorised Officer,
State Bank of India,
SME Branch,
Ambattur, Ambattur Industrial Estate,
86A & B, II Main Road,
Chennai - 600 058.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, calling for the records of the proceedings dated 27.04.2018 in I.A.No.259 of 2018 and AIR (SA) No.100/2018 order dated 08.06.2018 on the file of the Debts Recovery Appellate Tribunal at Chennai, quash the same and direct the Debts

Recovery Appellate Tribunal, Chennai to restore the appeal in AIR (SA) No.100/2018 and dispense the same in accordance with law.

[Prayer amended as per order dated 16.07.2018 by SMKJ & SPJ in WMP No.20522 of 2018 in WP No.16667 of 2018]

For Petitioners : Mr.K.A.Ramakrishnan

For Respondents : Mr.M.L.Ganesh (for R2)

ORDER

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

On 05.07.2018, upon hearing the learned counsel for the petitioner, we passed the following orders:-

"M/s.Yes Vee Brothers has availed cash credit and term loan facility from State Bank of India through its SME Ambattur Branch, Chennai. Smt.Vasantha, Shri.K.Selvaraj and Shri S.Manohar Selvaraj are the partners of M/s.Yes Vee Brothers. There was default. Bank has issued notice dated 24.04.2017 under Section 13(2) of the SARFAESI Act, 2002, demanding a sum of Rs.9,37,22,212/- as on 24.04.2017, with further interest from 25.04.2017 and incidental charges & costs to be paid, failing which, measures under Section 13(4) of the said Act, would be taken. Bank has issued possession notice dated 28.07.2017. Description of the immovable property mentioned in possession notice dated 28.07.2017 is as follows:

ITEM : 1 Property belongs to Yes Vee Brothers (Covered under the Doc.No.5430/2010)

All that piece and parcel of land measuring 4800 sq.ft. known as Plot No.:47-B (SP) in the Industrial Estate, Ambattur, Chennai - 600 058, comprised in Survey No.219 part of Mannur Village, Ambattur Taluk, Thiruvallur District, Sub Registration District of Konnur.

Boundaries: Measuring
North by: Plot No:48 North to South on the Eastern Side -64 feet
South by: Plot No.47-C North to South on the Western Side -64 feet
East by: Plot No.47-C East to West on the Northern side -75 feet
West by: 88'0 Road East to West on the Southern side -75 feet

ITEM : 2 Property belongs to R.Selvaraj (Covered under the Doc.No.807/1985)

All that piece and parcel of vacant land comprised in Survey No.144 part of Renganatha Nagar, Korattur Village, Ambattur Taluk, Thiruvallur District, Sub Registration District of Villivakkam situated at Plot No.16, (Shop) measuring to an extent of 2227 sq.ft., bounded on the:

Boundaries:

North by : 20 feet Road

South by : Plot No.1, Ranganatha Nagar extn (S.No.228/2)

East by : 30 feet Road

West by : Land belongs to S.No.:145

ITEM : 3 Property belongs to Yes Vee Brothers (Covered under the Doc.No.2133/2015)

All that piece and parcel of of the land measuring 0.99 acres or 4000 sq.mt known as developed Plot No:102 in the SIDCO Womens Industrial Park at Thirumollaivoyil, comprised in Survey No.153 part and 154 part of Vellanur Village, Ambattur Taluk, Thiruvallur District, Registration District of Chennai South and Sub Registration District of Avadi, bounded on the:

Boundaries:

North by : 12.00m wide SIDCO Road,

South by : Public purpose land

East by : Developed Plot No.101

West by : Developed Plot No.103

ITEM : 4 Property belongs to R.Selvaraj (Covered under the Doc.No.3775/1995)

All that piece and parcel of land measuring nil ground and 880 sq.ft or thereabouts in Survey No.160 part of Villivakkam Village, situated in the sanctioned plan of Twin House No.169, Imayam Colony, Anna Nagar West Extn., Ch-101, Madras District, bounded on the

Boundaries:

Measuring

North by: 30 ft Road North to South on the Eastern Side -22 feet

South by: Twin House No.212 North to South on the Western Side -22 feet

East by: Twin House No.168 East to West on the Northern side -40 feet

West by: Twin House No.170 East to West on the Southern side -40 feet

2. Said possession notice was withdrawn, followed by another dated 25.09.2017. While the description of the immovable property remained the same, the amount due and payable as on 21.09.2017 with interest thereon from 22.09.2017 and incidental expenses, charges, costs, etc., was Rs.10,13,93,457/-. Thereafter, bank has issued sale notice dated 04.10.2017, bringing the four items of property for sale on 10.11.2017. Details of the sale are as follows;

Date and time of e-Auction	10.11.2017 between 10.30AM & 11.30AM With auto time extension of five minutes each till sale is completed
Reserve Price Item No.1: Item No.2: Item No.3: Item No.4:	Rs.3,61,00,000/- (Rupees Three Crores Sixty One Lakhs Only) Rs.17,40,000/- (Rupees Seventeen Lakhs Forty Thousand Only) Rs.5,68,00,000/- (Rupees Five Crores Sixty Eight Lakhs Only) Rs.1,25,00,000/- (Rupees One Crore Twenty Five Lakhs only)
Earnest Deposit Item No.1: Item No.2: Item No.3: Item No.4:	Money Rs.36,10,000/- (Rupees Thirty Six Lakhs & Ten Thousand only) Rs.1,74,000/- (Rupees One Lakhs & Seventy Four Thousand only) Rs.56,80,000/- (Rupees Fifty Six Lakhs & Eighty Thousand Only) Rs.12,50,000/- (Rupees Twelve Lakhs & Fifty Thousand Only)
EMD Remittance	Deposit through NEFT/RTGS in the Account No.31519642009 Account Name : CCPC Parking account SBI SME Ambattur, IFSC Code: SBIN0014376 Bank & Branch Name: SBI, SME AMBATTUR
Bid Multiplier	Rs.50,000/- (Rupees Fifty Thousand only)
Inspection of Property	28.10.2017 from 11.00 a.m to 03.00 p.m (if any assistance required please may contact mobile : 9600215198)
Submission of online bid application with EMD	10.10.2017 onwards

Date and time of e-Auction	10.11.2017 between 10.30AM & 11.30AM With auto time extension of five minutes each till sale is completed
Last date for submission of online bid application with EMD	08.11.2017 upto 5.00p.m.

3. Being aggrieved by the possession notice dated 25.09.2017 and sale notice dated 04.10.2017, M/s.Yes Vee Brothers, represented by its partners Mrs.S.Vasanth and three others have filed SA No.272 of 2017 before Debts Recovery Tribunal-III, Chennai. After hearing the learned counsel for the parties, vide order dated 14.12.2017, DRT-III, Chennai, dismissed SA No.272 of 2017.

4. Being aggrieved M/s.Yes Vee Brothers represented by its Partner Mrs.Vasanth filed AIR SA No.100 of 2018, before the Debts Recovery Appellate Tribunal, Chennai. Alongwith the said appeal, IA No.259 of 2018, has been filed for waiver of pre deposit.

5. Taking note of the amount mentioned in the notice issued under Section 13(2) of the SARFAESI Act, 2002 for recovery of Rs.9.37 Crores, and the contention of the petitioner, that they have paid more than Rs.3.07 Crores, by sale of one of the mortgaged properties with the permission and consent of the bank and the further contention of the petitioners that sum of Rs.50 Lakhs has been deposited, in compliance with the interim order of the tribunal dated 08.11.2017 in SA No.272 of 2017, by observing that DRAT, cannot entertain any appeal without ensuring the pre-deposit of 50% of the debt amount, which cannot be reduced to less than 25% in any case, vide order dated 27.04.2018, Debts Recovery Appellate Tribunal, Chennai directed pre-deposit of Rs.1.20 Crores in two instalments. Appellate tribunal has further added that in the event of failure to comply with the order of pre-deposit, appeal would stand dismissed automatically for want of mandatory compliance. Registry of DRAT, Chennai was directed to post the matter on 25.05.2018 for confirmation of first instalment of pre-deposit of Rs.60 Lakhs.

6. On the said date, when there was non compliance, vide order dated 08.06.2018 in AIR No.100 of 2018, Debts Recovery Appellate Tribunal, Chennai dismissed the appeal for want of compliance.

7. Being aggrieved by the dismissal of AIR No.100 of 2018, dated 08.06.2018 instant writ petition is filed.

8. Mr.K.A.Ramakrishnan, learned counsel for the petitioner reiterated that a sum of Rs.3.07 Crores has already been paid to the bank, by way of sale and a further sum of Rs.50 Lakhs has been deposited pending SA No.272 of 2017 and the above amount represents more than 25% of the debt due and therefore, there is no need for further pre-deposit, for entertaining AIR (SA) No.100 of 2018.

9. Going through the prayer sought for, we find that the petitioner has challenged the dismissal of the AIR (SA) No.100 of 2018, but not chosen to challenge the interim order made in IA No.259 of 2018 dated 27.04.2018, by which directions have been issued. It is well settled interim order made in IA No.259 of 2018 dated 27.04.2018, merges with the final order and both require to be challenged. Petitioner to take appropriate steps to challenge the interim order, as well.

10. Post on 10.07.2018, under the same caption."

2. Subsequently, on 16.07.2018, vide order in W.M.P.No.20522 of 2018 in WP No.16667 of 2018, prayer in the writ petition was amended. Substituted prayer reads as follows:-

"To amend the prayer in Writ Petition as, Writ of Certiorarified Mandamus, calling for the records of the proceedings dated 27.04.2018 in I.A.No.259 of 2018 and AIR (SA) No.100/2018 order dated 08.06.2018 on the file of the Debts Recovery Appellate Tribunal at Chennai, quash the same and direct the Debts Recovery Appellate Tribunal, Chennai to restore the appeal in AIR (SA) No.100/2018 and dispense the same in accordance with law."

3. On this day, when the matter came up for further hearing, we heard Mr.M.L.Ganesh, learned counsel for the bank, who acknowledged the submission of petitioner that Item No.1 of the

property was sold for Rs.3.07 Crores with the consent of the borrower and guarantors.

4. AIR (SA) No.100 of 2018 is against the order made in SA No.272 of 2017 on the file of DRT-III, Chennai, by which the tribunal sustained the sale. Item No.2 has been sold for Rs.53.40 Lakhs, Item No.3, has been sold for Rs.5.685 Crores. Item No.4 of the property viz., house property was not brought for auction, in view of the conditional order of status quo dated 08.11.2017, by the Debts Recovery Tribunal-III, Chennai. Borrower/guarantors have been directed to deposit Rs.50 Lakhs. Sale notice included all four properties. Auction scheduled for bringing house property did not take place as there were no bidders.

5. As per the notice dated 24.04.2017, issued under Section 13(2) of the SARFAESI Act, 2002, debt claimed is Rs.9,37,22,212/-. As per sale notice issued under Section 13(4) of the SARFAESI Act, read with Rules 8 & 9 of the Security Interest (Enforcement) Rules, 2002 dated 04.10.2017, outstanding amount was Rs.10,14,84,791/-.

6. Respondent bank has realised a sum of Rs.3.07 Crores, by sale of item 1 of the properties, with the consent of petitioners, which is certainly more than 25% of the debt claimed. Added further borrower/guarantors have deposited Rs.50 Lakhs to the credit of SA No.272 of 2017 on the file of Debts Recovery Tribunal-III, Chennai. Rs.3.57 Crores is now secured by the bank, which represents more than 25% of the debt claimed. We are of the view that the borrowers / guarantors have satisfied the requirement under the proviso to Section 18 of SARFAESI Act, 2002, for entertaining the appeal

7. Though, proviso to Section 18 of the SARFAESI Act, 2002, reads that no appeal shall be entertained unless the borrower has deposited with the appellate tribunal 50% of the amount of debt, due from him as claimed by the secured creditors or determined by Debts Recovery Tribunal, whichever is less and the second proviso to the said section states that the appellate tribunal may for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent, of debt referred to in the second proviso in the case on hand, more than 30% of the amount has already been realised by the bank by way of sale with the consent of the borrower / guarantor, which in our considered view satisfies the requirement under the proviso.

8. Viewed from that angle, order impugned requires to be set aside and the borrowers / guarantors have to be given an opportunity to pursue the right of appeal in AIR (SA) No.100 of 2018. Therefore, impugned proceedings made in I.A.No.259 of 2018 dated 27.04.2018 and in AIR (SA) No.100 of 2018 dated 08.06.2018, is set aside.

9. Registry of Debts Recovery Appellate Tribunal, Chennai is directed to process AIR (SA) No.100 of 2018, if otherwise in order and assign a regular appeal number and place it before the Debts Recovery Appellate Tribunal, Chennai. Accordingly, writ petition is allowed. No Costs. Consequently the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar,
Debts Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
No.55, Ethiraj Salai, Chennai - 600 008.

2. The Authorised Officer,
State Bank of India,
SME Branch,
Ambattur, Ambattur Industrial Estate,
86A & B, II Main Road,
Chennai - 600 058.

+1cc to M/S.M.L.Ganesh, Advocate Sr.48406
+1cc to M/S.K.A.Ramakrishnan, Advocate Sr.47952

W.P.No.16667 of 2018

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srg 2/8/2018