IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 9/8/2018
C O R A M
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.17741 and 18263 of 2018

Mr.P.Muthuvelraj ... Petitioner in W.P.No. 17741 of 2018

a n d

1. P.M.R.Educational Trust
rep. By its Managing Trustee
Mr.P.Muthuvelraj
Plot No.2036, 15th Main Road
Anna Nagar West
Chennai 600 040.
2. P.Muthuvelraj
3. Mrs.M.Sangamitra
4. P.Markkanthas ... Petitioners In WP 18263/2018

Vs

1. State Bank of India
Industrial Finance Branch
rep. By its Assistant General Manager
Stressed Assets Management Branch
Red Cross Buildings
32 Montieth Road
Egmore
Chennai 600 008.
2. The Chairperson
Debts Recovery Appellate Tribunal
4th Floor, Indian Bank Circle office
55 Ethiraj Salai
Chennai 600 008. ... Respondents in both the writ petitions

Prayer in W.P.No.17741 of 2018: 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 with regard to the impugned order, dated 9/1/2018 and proceedings dated 12/12/2017 passed in A.I.R.No.531of 2017, on the file of the Debts Recovery Appellate Tribunal, Chennai and quash the same.

Prayer in W.P.No.18263 of 2018: 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 with regard to the impugned proceedings dated 13/11/2017 passed in I.A.No.1562 of 2017 in A.I.R.No.554 of 2017 and order dated 12/12/2017 passed in A.I.R.No.554 of 2018 on the file of the Hon'ble Debt Recovery Appellate Tribunal, Chennai and quash the same.

(Prayer in W.P.No.18263 of 2018, amended as per order, dated 24/7/2018, by SMKJ & SPJ, in W.M.P.No.22054 of 2018 in W.P.No.18263 of 2018)

For petitioner ... M/s. N.V.Srinivasan
T.S.Rajeev Gandhi

For respondents ... Mr.M.Devaraj
for R.1

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C O M M O N   O R D E R

(Order of the Court was made by Subramonium Prasad,J)

W.P.No.17741 of 2018 has been filed to quash the order, dated 9/1/2018 and proceedings, dated 12/12/2017, passed in A.I.R.No.531 of 2017, on the file of the Debts Recovery Appellate Tribunal, Chennai.

2. W.P.No.18263 of 2018 has been filed to quash the proceedings, dated 13/11/2017, passed in I.A.No.1562 of 2017 in A.I.R.No.554 of 2017 and order, dated 12/12/2017, passed in A.I.R.No.554 of 2018, on the file of the Debt Recovery Appellate Tribunal, Chennai.

3. Both writ petitions are being disposed of, by this common order, for the reason that both the writ petitions arise out of same facts.

4. Petitioner in W.P.No.18263 of 2018 is PMR Educational Trust (hereinafter called as the 'Trust'). The said Trust, availed loan, for a sum of Rs.4,30,00,000/-, from State Bank of India/first respondent, for the purpose of infrastructure facilities, in a College, run by the Trust at Adayalampattu Village, Ambattur Taluk, Thiruvallur District. The said amount was credited to the account maintained in the name of M/s.P.M.R.Food Products Private Ltd., instead of the Trust. Petitioner in W.P.No.17741 of 2018 is the guarantor for the loan taken by the Trust. The guarantor had mortgaged premises bearing door no.25, plot no.2049, 5th street, H.Block, Anna Nagar West, Chennai 600 040 of an extent of 2 grounds and 100 sq.feet comprised in R.S.No.207 Part (S.No.207 part) of Koyembedu

Village.

5. State Bank of India/first respondent filed O.A.No.52 of 2015, before the Debts Recovery Tribunal - I, Chennai, against the Trust. Debts Recovery Tribunal - I, Chennai, by order, dated 30/6/2017, passed a decree, for a sum of Rs.4,78,70,164, together with further interest, at the rate of 12% p.a., from the date of application, till the date of realisation, along with cost of the application against the Trust.

6.Aggrieved by the order passed by the Debts Recovery Tribunal - I, Chennai, in O.A.No.52 of 2015, the Trust filed an appeal. in A.I.R.No.554 of 2017, before the Debts Recovery Appellate Tribunal, Chennai.

7. Bank initiated proceedings, under the SARFAESI Act, by issuing notice, dated 25/4/2015, under Section 13 (2) of the SARFAESI Act, 2002, followed by a possession notice, dated 2/7/2015. Sale notice, dated 8/12/2015, was issued, fixing the auction, on 19/1/2016. Guarantor (petitioner in W.P.No.17741 of 2018) filed S.A.No.2 of 2016, before the Debts Recovery Tribunal - I, Chennai, challenging the e-auction notice. By an order, dated 30/6/2017, challenge to the e-auction sale notice was rejected, by the Debts Recovery Tribunal - I, Chennai S.A.No.2 of 2016 was dismissed.

8. Aggrieved by the order, dated 30/6/2017, the guarantor filed an appeal, before the Debts Recovery Appellate Tribunal, Chennai, in A.I.R.No.531 of 2017.

9. In A.I.R.No.554 of 2017 the Trust filed 2 applications. I.A.No.1561 of 2017 was filed for condonation of delay of 45 days in filing the appeal. I.A.No.1562 of 2017 was filed to waive the condonation of pre-deposit.

10. The said applications (I.A.Nos.1561 & 1562 of 2017) came up for hearing on 13/11/2017. The Debts Recovery Appellate Tribunal, Chennai, condoned the delay and directed the Trust, to make a pre-deposit of Rs.1.20 crores, in two instalments, within eight weeks. Out of this, first installment of Rs.60 lakhs, was to be paid, within four weeks, from 13/7/2017 and the second installment of Rs.60 lakhs, was to be deposited, in the same manner, in the next four weeks. Order stipulated that if the appellant failed to deposit the first installment, Appeal would stand dismissed, without reference to Tribunal. Case was posted, on 12/12/2017, for confirmation of pre-deposit of the first instalment of Rs.60 lakhs. On 12/12/2017, since the Trust had not complied with the condition of first installment of Rs.60 lakhs, appeal was dismissed, for want of compliance of pre-deposit.

11. In the meantime, guarantor, who had challenged the e-auction-cum-sale notice, dated 8/12/2015 also filed an application, in I.A.No.1755 of 2017, for waiver of pre-deposit. The Debts Recovery Appellate Tribunal, by its order, dated 12/12/2017, directed the appellant therein, to deposit a sum of Rs.1.50 crores, in two instalments, within eight weeks, from 12/12/2017, keeping in mind that the demand notice, issued under Section 13 (2) of the Act, was for recovery of a sum of Rs.4.60 crores. Debts Recovery Appellate Tribunal had directed the guarantor to deposit a sum of Rs.75 lakhs, within four weeks, from 12/12/2017 and the balance of Rs.75 lakhs to be deposited, within four weeks, thereafter. Appeal was listed, on 9/1/2018, for confirmation of first installment of pre-deposit of Rs.75 lakhs. Since the pre-deposit had not been made, appeal was dismissed, by an order, dated 9/1/2018, for want of compliance of pre-deposit.

12. Against the dismissal of the appeals, viz., A.I.R No.554 of 2017 (filed by the Trust) and A.I.R.No.531 of 2017 (filed by the guarantor), Writ Petition Nos.18263 of 2018 and 17741 of 2018, respectively were filed by Trust and the guarantor.

13. It is pertinent to mention that the property was not sold on 08.12.2005. However, the property has been subsequently sold on 15.09.2017 after the dismissal of S.A.2 of 2016 by separate sale notice which is not under challenge in this instant proceeding.

14. On 16/7/2018, this Court had passed the following order, in W.P.No.18263 of 2018:-

> "Noticing that the Debts Recovery Tribunal - I, Chennai, vide order, dated 30/6/2017, in O.A.No.52 of 2015, had issued a Recovery Certificate for Rs.4,78,70,164/-, and taking note of Section 18 of the Act, Debts Recovery Appellate Tribunal, Chennai, vide proceeding, dated 13/11/2017, in I.A.No.1562 of 2017, filed for waiver, has directed 25% of the decreed amount, i.e, Rs.1.20 crores to be deposited in two equal instalments, first of the said instalment be deposited within four weeks from 13/11/2017 and the second instalment, in next four weeks thereafter. By observing that waiver of pre-deposit has not been complied with, Debts Recovery Appellate Tribunal, Chennai, on 12/12/2017, dismissed the appeal, for want of compliance of pre-deposit.
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> 2. Being aggrieved, borrower-guarantor/Trustees of PMR Educational Trust,

represented by its Managing Trustee, guarantors have filed the present writ petition.

3. Inviting the attention of this Court, to a letter, dated 3/11/2017, issued by the Deputy General Manager, State Bank of India, Stressed Assets Management Branch, Chennai, addressed to M/s. PMR Educational Trust, Chennai, Mr.P.Karikalan, learned counsel for the petitioner submitted that after the disposal of O.A.No.52 of 2015, dated 30/6/2017, by the Debts Recovery Tribunal - I, Chennai, granting a decree against the defendants therein, to pay a sum of Rs.4,78,70,164/-, together with further interest, at the rate of 12% p.a., (simple) from the date of application, till the date of realisation along with costs of the application, State Bank of India, has sold the property at Door No.25, Plot No.2049, 5th Street, H Block, Anna Nagar West, Chennai 40 for Rs.7.50 crores, through e-auction, on 15/9/2017, by following the provisions of SARFAESI Act, 2002.

4. Learned counsel for the petitioners further submitted that by letter, dated 3/11/2017, bank has also informed that total dues of PET, as on 9/10/2017, was Rs.6,03,01,457/- (outstanding Rs.3,53,44,909.68 + Interest Rs.2,36,59,768.32 + charges expenses Rs.12,96,779) and TDS Rs.7,53,000/- 1% of sale proceeds was remitted to IT account of Shri.P.Muthuvelraj (PAN APGPM5212F), and after appropriation of sale proceeds there is an excess of Rs.1,42,45,543/- with the Bank. Excess amount of Rs.1,42,45,543/- will be adjusted towards PMR Food Products Pvt Ltd.

5. Having regard to the sale of the other property, towards realisation of the entire amount due and payable by the petitioners, learned counsel for the petitioners submitted that there is no need to make pre-deposit of Rs.1.28 crores, as directed. Petitioners have made out a prima facie case.

6. Petitioners to file amendment petition, challenging the interim order, dated 13/11/2017, passed by the Debts Recovery Appellate Tribunal, Chennai.

7. Post on 23/7/2018."

15. On 17/7/2018, this Court passed the following order in W.P.No.17741 of 2018:-

> "Challenging the order dated 9/1/2018 and proceedings dated 12/12/2017 made in A.I.R.(SA) No.531 of 2017 on the file of the Debts Recovery Appellate Tribunal, Chennai, trustees of PMR Educational Trust, Chennai, have filed W.P.SR.No.54092 of 2018 and we have permitted the petitioners therein/Trustees, jointly to file the writ petition.
>
> 2. In the case on hand, Managing Trustee of PMR Educational Trust, has challenged the very same order.
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> 3. Notice to the first respondent Bank through Court and privately, returnable by 7/8/2018.
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> 4. Learned counsel for the petitioner is permitted to serve the entire cause papers on Mr.M.Devaraj, learned counsel, who had appeared for the respondent Bank in Debts Recovery Appellate Tribunal, Chennai.
>
> 5. Upon filing proof of service, liberty is granted to the petitioner to seek for early disposal."

16. Counter affidavit has been filed by the Bank contending that the property had been sold. The bank supported the judgment of the DRAT by contending that the cause of action for the Trust is under the RODBACT where as for the guarantor is under the SARFAESI Act and the two are different.

17. Heard M/s.N.V.Srinivasan, T.S.Rajeev Gandhi for the petitioner and Mr.M.Devaraj for State Bank of India/first respondent in both the writ petitions.

18. Section 21 of the Recovery of Debts and Bankruptcy Act, 1993, provides that where an appeal is preferred by any person from whom an amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal (fifty per cent) of the amount of debt so due from his as determined by the Tribunal. The proviso to Section 21 however grants discretion to appellate Tribunal to reduce the amount up to 25% of the amount liable to be deposited under section 21.

19. Amount due, as determined by the Debts Recovery Tribunal - I, Chennai, against the Trust, in O.A.No.52 of 2015, is Rs.4,78,70,164. 25% of the said amount roughly comes to about Rs.1.20 crores. Appellate Tribunal has directed the petitioner Trust, to deposit a sum of Rs.1.20 crores, which is

25% of the amount due, as determined by the Debts Recovery Tribunal, Chennai. This order cannot be found fault with and therefore, cannot be interfered with. This amount has to be deposited by the petitioner Trust, as a condition precedent for getting his appeal to be heard on merits.

20. Material on record discloses that sale was not conducted pursuant to the e-auction-cum-sale notice, dated 8/12/2015, fixing e-auction on 19/1/2016. In view of this, technically, A.I.R.No.531 of 2017 had become infructuous when the appeal came up for hearing. However, the findings rendered by the Debts Recovery Tribunal, challenging the e-auction-cum-sale notice would remain and this would come in the way of the mortgagor, to challenge the sale of the property, which has taken place on 15.09.2017, after dismissal of S.A.No.2 of 2016 and during the pendency of A.I.R.No.531 of 2017.

21. Section 18 of the SARFAESI Act, provides for an appeal before the Debts Recovery Appellate Tribunal, against any of the measures taken, under the SARFAESI Act. Section 18 of the SARFAESI Act, postulates that no appeal will be entertained by the Appellate Tribunal, unless the borrower has deposited with the Tribunal 50% of the amount due, as claimed by the secured creditor or as determined by the Debts Recovery Tribunal, which ever is less. Provisio to Section 18 of the Act gives the discretion to the Appellate Tribunal, to reduce the amount to a sum, not less than 25% of the amount due, as claimed by the secured creditors or as determined by the Debts Recovery Tribunal. Notice, under Section 13 (2) of the Act, was for recovery of a sum of Rs.4.60,41,218/-. Tribunal had directed the guarantor, to deposit a sum of Rs.1.50 crores. This order also cannot be found fault with. In case, guarantor seeks to challenge the sale, he has no other option, but to revive the appeal and take permission from the Appellate Tribunal, to challenge the subsequent sale notice and for a direction to the Debts Recovery Tribunal, to consider the challenge, without being influenced by any of the observations made by the Debts Recovery Tribunal in S.A.No.2 of 2016.

22. In the interest of justice and considering that under Section 18 of the Act, is the only statutory remedy available to the guarantor, to challenge the e-auction-cum-notice and also considering the fact that his right to challenge the sale would stand foreclosed by the observations made by the Debts Recovery Tribunal - I, Chennai, in S.A.No.2 of 2016, we permit the petitioner, to deposit the said sum of Rs.1.50 crores, within a period of 8 weeks, from the date of receipt of a copy of this order. The guarantor can then pray for Liberty to challenge the sale notice, before the Debts Recovery Appellate Tribunal, Chennai and a direction to the Debt Recovery Appellate Tribunal,

to consider the appeal uninfluenced by the observation made in S.A.No.2 of 2016. The Appellate Tribunal may consider the request, if any made before it, in accordance with law, uninfluenced by any of the observations made by us in the writ petitions.

23. With the above directions, these writ petitions are disposed of. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Assistant General Manager
State Bank of India
Industrial Finance Branch
Stressed Assets Management Branch
Red Cross Buildings
32 Montieth Road
Egmore
Chennai 600 008.

2. The Chairperson
Debts Recovery Appellate Tribunal
4th Floor, Indian Bank Circle office
55 Ethiraj Salai
Chennai 600 008.

+2cc to Mr.M.Devaraj, Advocate, S.R.No. 54660 & 54661
+6cc to Mr.NVS Associates, Advocate, S.R.No. 54865 & 54866

W.P.Nos.17741 and 18263 of 2018

SS(CO)
GN(01/10/2018)