



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2018

CORAM:

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.(MD) No.16109 of 2018

and

W.M.P.(MD) Nos.14352 & 14353 of 2018

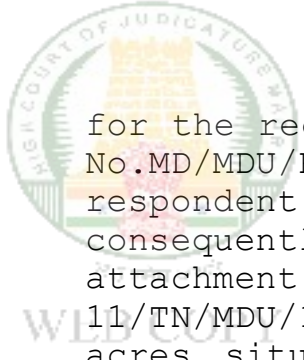
M/s.Asset Care and Reconstruction
Enterprise Limited (ACRE)
Registered and Corporate Office
2nd Floor, Mohan Dev Building
Tolstoy Marg, New Delhi 110 001
rep.by its constituted attorney
Parijatha Business Solution Pvt Ltd.,
having its registered office at
430, 3rd Cross, 5th Block, HBRLayout
Bangalore-560043
Through its Managing Director and
CEO P.Krishnan

... Petitioner

vs.

1. The Regional Provident Fund Commissioner,
Empoloyees Provident Fund Organization,
Regional Office,
Chinna Chokkikulam, Madurai.
2. The Recovery Officer,
Employees Provident Fund Organization,
Regional Office,
Chinna Chokkikulam, Madurai.
3. Sri Venkatesa Paper and Boards Limited,
rep.by its Managing Director,
Swaminathapuram, Udumalpet,
Madathukulam, Tamilnadu-642 113
4. The Sub-Registrar,
Keeranur-624617
PalaniTaluk,
Dindigul District.

... Respondents



for the records pertaining to the 1st respondent in his Proceedings No.MD/MDU/RO/RECY/11266/ACRE/ 2018 dated 27.06.2018 of the 1st respondent and quash the same as illegal and arbitrary and consequently direct the 2nd respondent to raise the order of attachment of immovable properties in his proceedings No.Ref.No.M-11/TN/MDU/11266/RECY/RO/2008 dated 04.08.2008, measuring 82.41 acres situated at Midapadi Village, Swaminathapuram Village and Pushpathur Village, Palani Taluk, Dindigul District.

For Petitioner : Mr.S.Sethuraman

For Respondents: Mr.V.S.V.Venkateshwaran

Standing Counsel for R1 & R2

Mr.S.Muthumalairaja for R3

Mr.M.Murugan

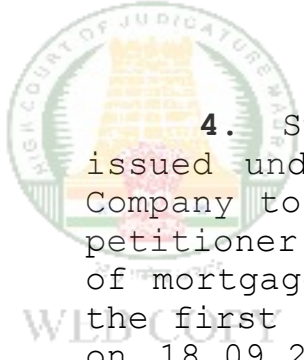
Government Advocate (Civil Side) for R4

O R D E R

The third respondent has availed certain credit limits from various Banks and LIC of India aggregating to Rs.7,460 Lakhs, during 1997. In respect of the credit limits sanctioned to the third respondent, their properties, namely, factory land and building, measuring 277.12 ½ Acres, situated in Midapadi Village, Swaminathapuram Village and Pushpathur Village, Dindigul District, were given as security.

2. The third respondent had committed default in making their contribution towards Employees Provident Fund and on 13.10.2001, a certificate was issued on behalf of the respondents 1 and 2 in this regard. During March, 2002, the third respondent - Unit was declared as a "Sick Unit" and in view of such declaration, E.P.F. Contribution could not be paid from the month of October, 1999. For the period from 11.03.2002 till 13.12.2006, a certificate was issued on behalf of the respondents 1 and 2 indicating that a sum of Rs.1,55,60,378.95 is due and payable by the third respondent. Thereafter, the second respondent, by order dated 04.08.2008, attached the third respondent's property, measuring 193.90 Acres, for the above said default amount.

3. While matter stood thus, on 30.03.2010, the creditor Banks had assigned their debts to the petitioner - Company and thereafter, the petitioner - Company had taken over the third respondent's liability of clearing the debt. On 28.02.2011, a notice was issued, under Section 13(2) of SARFAESI Act, demanding the amount due from the third respondent - borrower. On 18.03.2011, the Life Insurance Corporation of India also assigned its debt to the petitioner - Company, under the provisions of SARFAESI Act and a separate demand notice was issued in that regard.



4. Subsequently, on 29.02.2012, a possession notice was issued under Section 13(4) of SARFAESI Act by the petitioner - Company to the third respondent. Thereafter, it appears that the petitioner and the third respondent made arrangement for the sale of mortgaged properties and made a payment of Rs.1,18,72,000/- to the first respondent towards the contribution dues. Subsequently, on 18.09.2013, a further sum of Rs.39,94,678/- was paid by the petitioner to the first respondent towards the amount due. On 05.11.2013, once again, a sum of Rs.53,85,154/- was paid to the first respondent and in all, totally, the petitioner had paid a sum of Rs.2,12,51,382/-, including principal and interest. In view of the payment of principal and interest, the attachment order in respect of the landed property measuring an extent of 111.49 Acres out of 193.90 Acres was released by the first respondent.

5. Thereafter, on 01.11.2012, penal proceedings were initiated by the first respondent against the third respondent for the delayed payment and on completion of enquiry, a sum of Rs.10,12,379/- was imposed towards penal damages. Subsequently, on 19.12.2012, another penal proceedings were initiated by the first respondent against the third respondent and a sum of Rs.1,22,88,773/- was imposed towards penal damages. Thereafter, the first respondent passed an order, dated 22.10.2013, to remit a sum of Rs.53,38,076/- under Section 8(g) of the Employees Provident Fund Act towards penalty for the delayed payment. In all, a sum of Rs.1.84 Crores was demanded by the first respondent towards interest and damages for the delayed payment made by the third respondent towards E.P.F.contribution.

6. The orders claiming interest and damages were put to challenge by the third respondent before the Appellate Authority in A.T.A.Nos.742(13)/2013, 743(13)/2013 and 746(13) of 2013. The Appellate Authority, by order dated 29.11.2013, set aside the orders passed by the first respondent with regard to the penalty imposed against the third respondent - borrower. Aggrieved by the orders passed by the Appellate Authority, the first respondent filed writ petitions in W.P.(MD) Nos.1240, 10006 of 2015 and 7454 of 2018 before this Court, in which notice was ordered and the said writ petitions are pending. However, no interim orders have been passed by this Court in the said writ petitions. When such being the position, on 29.08.2016, the third respondent filed a writ petition requesting the first respondent to raise the order of attachment. On making further payment of Rs.7,84,571/-, an extent of 10.32 Acres of land was released by the first respondent, on 23.09.2016, retaining the attachment over the land, measuring 82.41 Acres.

<https://hcservices.ecourts.gov.in/hcservices/>
7. On 12.04.2018, the petitioner - Company made a representation to the first respondent requesting to raise the

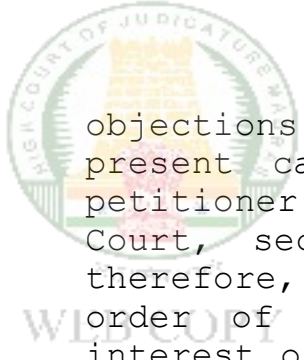


order of attachment with regard to the remaining extent of 82.41 Acres of land and also gave an undertaking that they would abide by the final decision in the above said writ petitions filed by the first respondent. Since the first respondent did not respond to the representation, the petitioner - Company was constrained to approach this Court by filing a writ petition W.P.(MD) No.9270 of 2018, in which on 25.04.2018, a direction was issued to the first respondent to consider the petitioner's representation on merits, after giving due opportunity to the petitioner as well as to the respondents 3 and 4 and any other person who may be interested in the in the subject matter, and take further action in accordance with law, within a period of four weeks from the date of receipt of a copy of the order. In pursuance of the direction of this Court, an order was passed, on 27.06.2018, by the first respondent refusing to accede to the request of the petitioner for lifting the order of attachment on the ground of pendency of the above writ petitions before this Court. Aggrieved by the order, dated 27.06.2018, passed by the first respondent, the petitioner is before this Court.

8. The learned counsel appearing for the petitioner - Company would submit that in the affidavit filed in support of the present writ petition, the petitioner - Company has given a clear undertaking that they would abide by the final decision in the above said writ petitions filed by the first respondent and in fact, such an undertaking was given to the first respondent vide their representation, dated 12.04.2018. Despite the clear undertaking given by the petitioner - Company, their request was turned down by the first respondent only on the ground of pendency of the writ petitions before this Court.

9. The learned counsel for the petitioner - Company would further submit that in the appeals filed by the third respondent, the orders passed by the first respondent claiming interest and damages have been set aside by the Appellate Authority, against which, writ petitions have been filed before this Court by the first respondent, wherein no interim orders have been passed. When such being the position, as on date, there is no amount due to the first respondent and therefore, there is no legal impediment for the first respondent to raise the order of attachment. Further, it is certainly not open to the first respondent to cite the pendency of litigations before this Court for not raising the order of attachment, particularly, in view of the clear undertaking given by the petitioner - Company.

10. When the matter was taken up for hearing earlier, the learned Standing Counsel appearing for the respondents 1 and 2 would submit that the respondents 1 and 2 would not have any security, if the attachment order is lifted, in case they succeed before this Court in the pending writ petitions. However, such



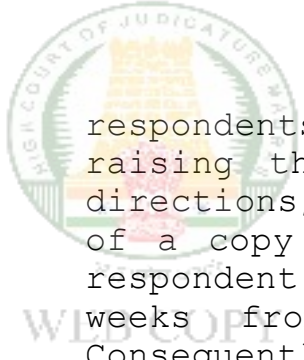
objections may be valid in the normal circumstances, but in the present case, in view of the clear undertaking given by the petitioner - Company, which in the considered opinion of this Court, secures the interest of the respondents 1 and 2 and therefore, not open to the respondents 1 and 2 to hold on to the order of attachment. But, however, in order to secure the interest of the respondents 1 and 2, the petitioner - Company was directed to file an undertaking affidavit.

11. Today (i.e.12.09.2018), when the matter was taken up for hearing, an affidavit of undertaking was filed on behalf of the petitioner - Company. The penultimate portion of the undertaking affidavit, namely, Paragraph No.3 reads as follows:

"3. I submit that in the affidavit filed in support of the above Writ Petition in Para No.11, it has been stated that the Petitioner is ready to given an undertaking to protect the interest of the 1st Respondent in the event of the 1st Respondent succeeding in the case (W.P.1240/2015, W.P.No.10006/2015 and W.P.No.7454/2018 filed against the order passed by Appellate Authority in Appeal ATA No.603(13)2013, Appeal ATA746(13) 2013 and Appeal ATA735(13)2013) of claiming damages. Accordingly, this affidavit of undertaking is filed reiterating that in the event of the 1st respondent succeeding in W.P.No.1240/2015, W.P.No.10006/2015 and W.P.No.7454/2018, the petitioner will protect the interest of the 1st respondent by depositing the sum of Rs.1.84 crores assessed by the 1st Respondent as damages under Section 14 B of the EPF&MP Act 1952 to secure the interest of the 1st Respondent."

12. What is to be seen in this writ petition is as to whether the interest of the Employees Provident Fund Organization has been safeguarded. In the teeth of the clear undertaking given by the petitioner - Company, the interest of the Employees Provident Fund Organization has been very much safeguarded and protected. Therefore, the order of attachment cannot be kept alive as against the interest of the petitioner - Company, when admittedly the interest of the first respondent is fully secured.

13. In view of the above observations, the writ petition is allowed and the order of the first respondent vide Proceedings No.MD/MDU/RO/RECY/11266/ACRE/ 2018, dated 27.06.2018, is hereby quashed. The respondents 1 and 2 are directed to raise the order of attachment in respect of the immovable properties, measuring 82.11 Acres, situated in Midapadi Village, Swaminathapuram Village and Pushpathur Village, Palani Taluk, Dindigul District. The



respondents 1 and 2 are directed to pass appropriate orders, raising the order of attachment, in compliance with the above directions, within a period of two weeks from the date of receipt of a copy of this order and communicate the same to the fourth respondent as expeditiously as possible, but not later than two weeks from the date of passing such orders. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar(CS-III)

To:

The Sub-Registrar,
Keeranur-624617,
Palani Taluk,
Dindigul District.

- + 1 CC TO Mr.V.KARTHIKEYAN, ADVOCATE IN SR No. 84194
- + 1 CC TO Mr.V.S.V.VENKATESHVARAN, ADVOCATE IN SR No. 83821
- + 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 84335

KRK
TE/PM/SAR-3 : 05/10/2018 : 6P/5C

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W.M.P.(MD) Nos.14352 & 14353 of 2018
12.09.2018