BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.10.2018
Delivered on : 02.11.2018

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.(MD)No.20644 of 2018

M/s C.P.Spinning Mills Pvt. Ltd.,
rep. by its Managing Director,
Mrs.R.Indira,
W/o Mr.Ravichandran,
90/1, New Dharapuram Road,
Puliyampatti, Palani,
Dindigul District.

... Petitioner

Vs.

1.The Chairman and Managing Director,
The Catholic Syrian Bank Limited,
Registered Office,
Post Box No.502,
College View, ST.Mary's College Road,
Trichur, Kerala State.

2.The Zonal Manager,
The Catholic Syrian Bank Ltd.,
Zonal Office,
II Floor, SIMA Buildings,
Door No.41-A, Race Course Road,
Coimbatore.

3.The Chief Manager,
The Catholic Syrian Bank Ltd.,
Palani Road,
Dindigul District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent in his proceedings in No.CSB/DINDIGUL/31102017/2/2017 dated 31.10.2017 and quash the same and consequently direct the respondent bank to refund the maturity value of the nine fixed deposits viz.,

S.No.	Account No.	Deposited Amount	Maturity Amount	Deposited Date
1.FD	2002001	281849.00	281849.00	09.11.2007
2.FD	2002002	306622.00	306622.00	06.10.2006
3.FWD	2003124	499192.00	566255.00	01.10.2005
4.FWD	2004061	176193.00	197486.00	21.02.2007
5.FWD	2006035	260954.00	298335.00	03.04.2006
6.FWD	2006036	104988.00	129286.00	03.04.2006
7.FWD	2006037	74457.00	91689.00	03.04.2006
8.FWD	2006038	295838.00	364307.00	03.04.2006
9.FWD	2007010	690000.00	890655.00	13.02.2007
Total		2690082.00	3216483.00	

and the deposits in the current Account No.0175406213195001 to the tune of Rs.7,72,809/- along with interest till date either by issuing a demand draft for the above said amount drawn in favour of Asset Reconstruction Company (India) Limited, Mumbai or handover the said demand draft to the petitioner in order to enable them to forward the same to Asset Reconstruction Company (India) Limited, Mumbai.

For Petitioner : Mr.V.Vijayshankar
For Respondents : Mr.Pala Ramasamy

*****

ORDER

The writ petitioner is a company incorporated under the Indian Companies Act. The petitioner company was having business arrangements with the respondent bank. In the course of the business, in 2006-2007, the petitioner was levied with higher electricity tariff by the Tamil Nadu Electricity Board. This led to the petitioner company approaching this Court and there was a direction to furnish bank guarantee to the Electricity Board. Accordingly, several investments which were made by the petitioner company with the respondent bank by way of fixed deposits, were secured for the purpose of offering bank guarantee to the Electricity Board.

2.According to the petitioner, the respondent bank was also a party to the writ petition. Eventually, the litigation had gone up to the Hon'ble Supreme Court of India and finally, the Special Leave Petition filed by the Electricity Board came to be dismissed. According to the petitioner, in view of the dismissal of the Special Leave Petition by the Hon'ble Supreme Court of India, the bank guarantee provided to the electricity board was never encashed, which means that the various fixed deposits deposited with the respondent bank remained intact and not encashed at all.

3.According to the petitioner, the business of the petitioner company suffered serious loss due to adverse market conditions and therefore, the bank had proceeded against the company for recovery of various amounts advanced to the company under SARFAESI proceedings. Eventually, the petitioner company was declared as a sick company by BIFR and presently, the matter is referred before the Asset Reconstruction Company (ARC), which is negotiating the amounts payable by the petitioner company to the respondent bank.

4.According to the petitioner company, they have made several investments in the respondent bank by way of fixed deposits totally to the tune of Rs.26,75,000/- and those fixed deposits had matured long ago. While matter stood thus, it appears that the bank has adjusted the fixed deposit amounts against the amount due from the petitioner to the bank and when the petitioner approached the respondent bank for statement of account, they have not given proper statement of account nor any worthwhile information divulged in regard to what was due from the bank to the petitioner and what was due from the petitioner to the bank. From the various correspondence, it was seen that the bank guarantees, which were furnished earlier to the Electricity Board, appear to have been shown as liability when the fact of the matter was that the same was never encashed.

5.In the above circumstances, the petitioner has a legitimate and reasonable doubt as to the action taken by the respondent bank in adjusting the entire matured fixed deposit amounts towards the petitioner's liability and proceeding with the SARFAESI proceedings. Although the petitioner company admits that the company is liable to make good the amount due to the respondent bank, nevertheless the contention of the petitioner is that the bank is not willing to provide any detailed statement of account as to how much amount was adjusted on what date and what was the interest earned by the various fixed deposits deposited by the petitioner with the respondent bank. According to the petitioner, the fixed deposit had matured in 2007 and those deposits were remained as deposits and must have earned sufficient interest over the period and in which event, the petitioner is entitled to know as to what total amount which was adjusted by the bank towards the petitioner's liability. While so, the petitioner received a communication from the respondent on 31.10.2017 stating that the fixed deposit amount had been closed and adjusted towards loan amount. In the communication, dated 31.10.2017, it is shown as if, the four bank guarantees taken by the petitioner company had been invoked. This is contrary to the fact that there was no occasion for the petitioner company to invoke the bank guarantee, since the Electricity Board had failed before the Hon'ble Supreme Court and that the bank guarantees remained without being invoked and therefore, it cannot be shown as a liability at all. Therefore, the petitioner has reasonable apprehension that the respondent bank has randomly adjusted the deposits without disclosing the true statement of account regarding the liability of the petitioner towards the bank and also liability of the bank towards the petitioner. According to the petitioner, the company was not aware of how much interest the various fixed deposit earned over the long period of time when the said deposits were with the bank.

6.In the above stated circumstances, the learned Counsel Mr.V.Vijayshankar appearing for the petitioner would strenuously contend that what the petitioner interested to know is that the true statement of account in detail as to the interest earned by the fixed deposits deposited by the petitioner company and also the exact liability of the petitioner towards the bank.

7.The learned counsel for the petitioner would submit that the bank at least may be directed to furnish the detailed statement of account in this regard detailing as to the interest earned by the various fixed deposits deposited by the petitioner company and the liability of the petitioner towards the bank and what was ultimately adjusted. Only then, the petitioner company will know the extent of its liability and also the extent of liability of the bank towards the petitioner company.

8.The learned counsel would submit that obviously, there is something wrong with the statements, as contained in the impugned communication dated 31.10.2017, since the four bank guarantees as shown, have been invoked which is contrary to the facts and records. Therefore, in such view of the matter, the learned counsel would implore this Court to issue a direction to the bank for furnishing a detailed statement of account and he would be satisfied if such direction is issued in the writ petition.

9.Notice was ordered and Mr.Pala Ramasamy, learned standing counsel entered appearance on behalf of the respondents.

10.The learned counsel appearing for the respondent bank would submit that there is SARFAESI proceedings pending against the petitioner and the petitioner is aware of the extent of liability towards the bank. In any case, the impugned communication dated 31.10.2017 is on the basis of the account summary maintained by the respondent bank and also the same was prepared on the basis of the records maintained by the respondent bank. Therefore, the present apprehension by the petitioner to file the writ petition questioning the legitimate action taken by the respondent bank towards realization of the loan amount is not maintainable.

11.This Court has given its anxious consideration to the rival submission on behalf of the parties.

12.*Prima facie*, it appears to this Court that the impugned communication dated 31.10.2017, does not reflect the true account statement, since it is ascertained on behalf of the petitioner on affidavit that the bank guarantees were never invoked. When such is the position, this Court does not understand as to how the bank can show the bank guarantee as liability on the part of the petitioner. Therefore, obviously something is incorrect in the statement furnished by the bank. Therefore, this Court is of the considered view that the doubt expressed by the petitioner about the correctness of the statement of accounts is legitimate and on reasonable basis.

13.Moreover, as rightly contended by the learned counsel for the petitioner that the bank has not come forward with any detailed statement of accounts and what interest earned by the various fixed deposits deposited by the petitioner company and how long those fixed deposits were earning interest and what was the final amount adjusted towards the loan amount. In the absence of such details, the petitioner could not know about the extent of his liability or extent of the liability of the bank towards him in case if there is any.

14.In the said circumstances, the prayer as sought by the learned counsel appearing for the petitioner appears to be reasonable and acceptable since the petitioner is only interested in knowing about the extent of mutual liability and the doubt expressed by the petitioner has to be cleared in the interest of both the parties. Therefore, this Court is in agreement with the submission of the learned counsel for the petitioner.

15.The direction as proposed to be issued hereunder cannot be objected by the learned counsel appearing for the respondent bank on legitimate grounds, though no counter has been filed on behalf of the respondent bank within the time limit granted by this Court.

16.For the above said reasons, the writ petition is disposed of by directing the respondent bank to furnish a detailed statement of accounts to the petitioner indicating *inter alia* the extent of liability of the bank towards repayment of fixed deposits to the petitioner on its maturity with interest and when the amounts were transferred and adjusted towards the loan amount. If the fixed deposits were adjusted towards loan amount subsequent to its maturity whether such fixed deposits were allowed to earn increment during the said time. The respondent bank is also directed to submit a detailed statement of liability of the petitioner to the bank for having defaulted in repaying the loan amount and also address the issue of non-invocation of bank guarantee by the petitioner on the basis of assertion in the proceedings before this Court. The bank is directed to furnish a detailed statement of accounts to the petitioner with reference to the relevant record and on giving statement to the petitioner, the bank may clarify the statement of account given to the petitioner. The respondent bank is directed to issue a detailed statement of account as indicated within a period of four weeks from the date of receipt of a copy of this order and on such receipt of statement of account, it is open to the petitioner to clarify and explain their stand on the said statement.

The writ petition is disposed of as above. No costs.

Sd/-
Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar(CS-IV)

+ 1 CC TO Mr.PALA RAMASAMY , ADVOCATE IN SR No.94583.
- 1 CC TO Mr.B.PRAHALAD RAVI , ADVOCATE IN SR No.94658.
-
- SKN
- DS RP SAR4 24 12 2018 6P 3C

order made in

W.P.(MD)No.20644 of 2018