BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 16.03.2018

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The Hon'ble Mr.Justice T.S.Sivagnanam

&

The Hon'ble Mr.Justice Dr.G.Jayachandran

W.P (MD No.21260 of 2016

and

W.M.P.(MD)No.15196 of 2016

Indian Bank,
Represented by its Assistant General Manager,
Madurai Main Branch,
No.100-101, East Avani Moola Street
Madurai - 625 001. ...Petitioner

Vs.

1. The State of Tamilnadu,
   Represented by its Chief Secretary
   Fort St. George,
   Chennai.

2. The District Collector,
   Madurai District,
   Madurai.

3. The Deputy Superintendent of Police,
   Melur,
   Madurai District.

4. The Deputy Superintendent of Police
   Prohibition Enforcement Wing,
   Madurai, Madurai District.

5. M/s. PRP Exports
   A Registered Partnership Firm
   Represented by its Managing Partner
   Mr.P.R.Palanichamy
   Therkkutheru Village
   Melur, Madurai - 625 122. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to issue direction or in the nature of clarification that the petitioner/Bank is entitled to sell the hypothecated movables, such as finished goods/semi finished goods/raw materials etc., in public auction.

For Petitioner : Mr. Jayesh B. Dolia, for
M/s. Aiyar and Dolia

For Respondents 1 to 4 : Mr. B.Pugalendhi,
Additional Advocate General
Assisted by Mr. T.N.Rajagopalan
Government Advocate

For Respondent-5 : No Appearance

O R D E R

(Order of the Court was delivered by T.S.Sivagnanam, J.,)

Heard Mr.Jayesh B. Dolia, the learned counsel appearing for the petitioner/Bank and Mr.B.Pugalendhi, the learned Additional Advocate General, assisted by Mr. T.N.Rajagopalan, the learned Government Advocate for the respondents 1 to 4. Though the fifth respondent has entered appearance through Counsel, viz. M/s.Vast Law Associates, none appears on their behalf.

2. The petitioner, Indian Bank has filed this Writ Petition, praying for issuance of a writ of mandamus, to issue direction, or in the nature of clarification that they are entitled to sell the hypothecated movables, such as finished goods/semi finished goods/raw materials etc., in public auction.

3. Mr.Jayesh B. Dolia, the learned counsel appearing for the petitioner/Bank has submitted that, on account of the recent amendment to Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (SARFAESI Act) viz., Section 20 E, the secured creditor shall have precedence over all dues, over the Central and the State Government, and therefore, the petitioner/Bank, being a secured creditor, has right over the hypothecated property and entitled to sell the property to recover the dues. The respondents 1 to 4 cannot prevent the petitioner/Bank from exercising their right to bring the hypothecated movables for sale, for recovery of the advances made to the fifth respondent.

3.1 Further, the learned counsel submitted that, by way of Enforcement of Security Interest and Recovery of Debts and Laws and Miscellaneous Provisions (Amendment) Act, 2016, Section 31B was inserted into the Principal Act, viz., Recovery of Debts and Bankruptcy and Financial Interest Act (RD & BFI Act), and in terms of the newly inserted Section, 'notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts, due and payable to them, by sale of assets, over which security interest is created, shall have priority, and shall be paid in priority over all other debts and Government dues, including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority'.

3.2) Thus, by referring to the newly introduced Section 31B, it is submitted that, the respondents 1 to 4 herein would fall within the definition of 'State Government', and whatever, is claimed by them, have to be termed as 'Government Dues', and in such case, they have no priority, over and above the secured creditor like that of the borrower. Therefore, the petitioner/Bank is entitled to a direction for sale of hypothecated movables, such as finished goods/semi finished goods, raw materials, etc., and realize the sale proceeds. To buttress his contention, the learned counsel has referred to the decision of the Full Bench of this Court, in Assistant Commissioner (CT) Anna Salai-III Assessment Circle Vs. The Indian Overseas Bank and another in W.P.No.2675 of 2011 etc., dated 10.11.2016.

3.3) It is further submitted that the movables are granite blocks, slabs, finished goods/semi finished goods, raw materials, etc., which could be easily identified and valuation can be done, and the entire properties could be photographed and brought for sale, and this will be not only in the interest of the petitioner/Bank but also to the State, as, if the movable goods are left exposed to sun and rain, the value of the goods are bound to deplete, which would ultimately cause loss to the public exchequer.

3.4) The learned counsel has referred to the decision of the Hon'ble Supreme Court, in Sundarbhai Ambalal Desai Vs. State of Gujarat, reported in (2002) 10 S.C.C. 283. for the proposition that, the Court can take samples and the goods seized could be disposed of after preparing a panchnama, and such proceeding should be adopted in the case on hand.

4. The learned Additional Advocate General appearing for the respondents 1 to 4, by referring to the counter affidavit filed by the respondents 3 and 4 submitted that, there are 52 criminal cases registered in various Police Stations in Madurai District against the fifth respondent, their Associates, family members and their Firms for not quarrying granites in a lawful manner and also for carrying out illegal quarrying in the Government lands, Channels, Roads, etc., and committed large scale theft of granite blocks. The fifth respondent and their Associates also transported the illicitly quarried granite blocks to their Factory premises situated at Therkkutheru, Melur, Madurai District, where, granite slabs and titles were manufactured out of the illicitly quarried granite blocks. The accused have illegally extracted huge proportions of granite from Government lands and the illegally extracted granite was used as a legitimate product and the fifth respondent has accrued huge profits and wrongful gains, and thereby, caused tremendous loss to the Government and public exchequer.

4.1) Further, it is submitted that, during the course of action, it is seen that the Authorities of Geology and Mining inspected the quarries and Factory premises of the fifth respondent/Firm at Therkutheru, Melur, numbered the granite blocks found therein and seized the finished goods found in the Factory premises. The goods, which came up for sale have been seized by the Investigating Officer in the course of investigation. Thus, the seized granite slabs and tiles are under the custody of the concerned Criminal Courts and the petitioner/Bank, having no lien over the properties, cannot claim themselves as a secured creditor, as the granite slabs and titles are the case properties with respect to various criminal investigation.

4.2) Further, it is submitted that the fifth respondent has approached the Debts Recovery Tribunal (DRT) at Madurai, by filing S.A.No.39 of 2014, against the petitioner/Bank seeking permission to sell the stock of granite slabs and titles readily available in their Factory premises, instead of bringing their immovable properties for public auction, but the available stocks of the polished granite slabs and titles are the stolen property, involved in a case registered in Keelavalavu Police Station, and they have also been seized by the respective Investigation Officer. It is further submitted that, in order to stop the sale of the seized property, the Deputy Superintendent of Police, Melur, Madurai District, has filed an Interlocutory Application, in I.A.No.208 of 2014, in S.A.No.39 of 2014, seeking to implead him as party respondents in S.A.No.39 of 2014, and opposed the prayer sought for by the petitioner/Bank, for sale of stocks of granite, titles worth about Rs.134.03 crores, which have already been seized by the respective Investigating Officers, in the cases, relating to Crime No.142 of 2013, and the third respondent herein has appeared before the DRT on several dates and argued the case, and accordingly, the case filed against the fifth respondent has been closed.

4.3) Thus, the learned Additional Advocate General, reiterates that, there are 52 criminal cases registered by various Police Stations against the fifth respondent, their Associates, family members and the Firms for quarrying granites in a unlawful manner in Government Lands, Channels, Roads, etc. and the seized properties are part of criminal investigation and case properties. Therefore, it is contended that, if the petitioner/Bank is allowed to sell the properties, it would cause tremendous loss to the Government as also the public exchequer. Further, it is submitted that, it is the duty of the fifth respondent to repay the loan availed by them to the Petitioner/Bank, and for that reason, the sale, at the instance of the petitioner/Bank (secured creditor) cannot be permitted and it would cause irrecoverable loss to the Government.

4.4) Further, it is submitted that, as per the recovery proceedings initiated under the SARFAESI Act, the petitioner/Bank can neither claim nor sell the hypothecated properties, which were seized by the respective Investigating Officers, which are case properties in relation to various criminal investigation. In the counter affidavit, list of cases, which have been registered against the fifth respondent, their Associates, family members and Firms have been given and approximate amount of loss caused to the Government Exchequer has also been mentioned in a tabulated form.

5. Thus, for the above reasons, the learned Additional Advocate General appearing for the respondents 1 to 4 strenuously opposed the prayer sought for by the petitioner/Bank.

6. Mr.T.N.Rajagopalan, the learned Government Advocate substantiating the submission of the learned Additional Advocate General would submit that the respondent/State has filed an Appeal before the Hon'ble Supreme Court against the decision of the Full Bench, in Assistant Commissioner (CT) Anna Salai-III Assessment Circle Vs. The Indian Overseas Bank and another (referred supra) and the Special Leave Petition has been entertained and it appears that there is an interim order.

7. Heard the learned counsel appearing for the parties and perused the materials place on record.

8. The case before us is not a simple case, where, the petitioner/Indian Bank has approached the Court, exercising its right as a secured creditor to bring the hypothecated properties for sale for recovery of the dues and advances made to the fifth respondent/borrower. The decision of the Full Bench, in Assistant Commissioner (CT) Anna Salai-III Assessment Circle Vs. The Indian Overseas Bank (supra) though lays down a legal position and the effect of the newly inserted Section 31B to the Principal Act, (viz.,RD & BFI Act), it has to be seen, as to whether the said Full Bench decision could be applied to the facts and circumstances of the present case.

9. Admittedly, what was sought to be recovered by the Sales Tax Department, claiming a right qua the secured creditor, viz., Indian Bank was a lawful dues, payable to the Sales Tax Department, on account of the default committed by a registered dealer, i.e., fifth respondent/borrower. The question of the money or goods being tainted, were never the subject matter of the decision of the Full Bench in Assistant Commissioner (CT) Anna Salai-III Assessment Circle Vs. The Indian Overseas Bank and another (supra). Therefore, we cannot apply the decision of the Full Bench to the facts and circumstances of the instant case. As rightly pointed out by the learned Additional Advocate General, the granite blocks, finished goods /semi finished goods, raw materials, etc., have also been seized by the respective Investigating Offices in regard to 52 criminal cases, which have been registered against the fifth respondent, their Associates, family members and Firms etc. Once those goods have been seized, they become the case properties to be produced before respective Courts, where, Final Reports are filed by the respective Investigating Officers.

10. Hence, at this juncture, the petitioner/Bank cannot state that the hypotheca available with them are stock in trade, in the nature of finished/semi finished goods, for, it is yet to be decided as to whether they are lawful entitlements to the fifth respondent. This can be decided only subject to the outcome of the criminal

cases, which have been filed against the fifth respondent, which are stated to be 52 in number. Therefore, at this juncture, by way of Writ Petition, this Court cannot issue any direction, permitting the petitioner/Bank to sell the hypotheca, since it is yet to be decided as to whether at all, the fifth respondent/Firm have any semblance of right over those properties. Thus, it is too early for us to take a decision in the matter, especially, when the criminal investigation is concluded in filing of final reports in certain cases, and in other cases, investigation is going on.

11. For the above reasons, we are not inclined to grant the relief sought for by the petitioner/Bank at this juncture. Accordingly, we dismiss the Writ Petition, however, leaving it open to the petitioner/Bank to workout their remedy in the manner known to law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

To

1. The State of Tamilnadu
   Represented by its Chief Secretary
   Fort St. George, Chennai.

2. The District Collector
   Madurai District, Madurai.

3. The Deputy Superintendent of Police
   Melur, Madurai District.

4. The Deputy Superintendent of Police
   Prohibition Enforcement Wing,
   Madurai, Madurai District.

W.P (MD) No.21260 of 2016
16.03.2018

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KK/SKN RSK/23.04.2018/SAR-3/6P-5C