

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15/2/2019

C O R A M

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

C.R.P (PD) No.1768 of 2018
AND
Writ Petition No.8258 of 2018

C.R.P.(PD) No.1768 of 2018

1. M/s. Ind Solders & Alloys Private Limited
rep. By its Managing Director
Mr.T.R.Viswanathan
No.45 South Usman Road
T. Nagar
Chennai 600 017.

2. T.R.Viswanathan

3. S. Swaminathan

4. Mrs.S.P.Bhooma

सत्यमेव जयते

Petitioners

Vs

Indian Bank
rep. By its Chief Manager
Assets Recovery Management Branch
Tiruvanmiyur Branch
55 Ethiraj Salai
Chennai.

Respondent

Civil Revision Petition filed under Article 227 of the Constitution of
India praying to set aside the order dated 5/3/2018 made in M.A.No.116

of 2012 in I.A.No.369 of 012 in O.A.No.57 of 2011 on the file of the Hon'ble Debts Recovery Appellate Tribunal, Chennai.

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Writ Petition No.8258 of 2018

1. M/s. Ind Solders & Alloys Private Limited
rep. By its Managing Director
Mr.T.R.Viswanathan
No.45 South Usman Road
T. Nagar
Chennai 600 017.

2. Mrs.S.P.Bhooma ... Petitioners

Vs

1. Indian Bank
No.7 West Tank Street
Tiruvanmiyur
Chennai 600 041.

2. The Authorised Officer
Indian Bank
Circle Office
Ethiraj Salai
Chennai 600 008.

3. The Registrar
Debts Recovery Appellate Tribunal
IV Floor Indian Bank Circle office
55 Ethiraj Salai
Chennai 600 008.

4. Devaki Associates

5. M/s. Hanu Infra Developers

6. M/s. Raghavendra Builders
rep. By its Managing Partner
Mr.M.Chandrasekaran
Chennai 600 063.

7. R. Seshadri

8. T.N.Latha

9. M/s. Toshniwal Instruments (Madras)
Pvt Ltd
rep. By its Director
No.267 Kilpauk Garden Road
Chennai 600 010.

10. J. Nainamohammed. Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records pertaining to the order, dated 5/3/2018 in R.A(SA) No.116 of 2012 on the file of the Hon'ble Debts Recovery Appellate Tribunal, Chennai, Final Order of the Hon'ble Debts Recovery Tribunal - III, Chennai, made in S.A.No.108 of 2011 dated 30/7/2012 and quash the same.

For petitioners	...	Mr.R.Thiagarajan for Mr.K.Sankara Narayanan
For respondents	...	Mr.T.Sundar Raja for R.1

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COMMON ORDER

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

Aggrieved by an order, dated 5/3/2018, passed in RA (SA) No.116 of 2012, by the Debts Recovery Appellate Tribunal, Chennai, borrowers have filed W.P.No.8258 of 2018. Civil Revision Petition (PD) No.1768 of 2018 is directed against the order, dated 5/3/2018, passed by the Debts Recovery Appellate Tribunal, Chennai, in M.A.No.116 of 2012 in I.A.No.369 of 2012 in O.A.No.57 of 2011.

2. Since the Civil Revision Petition and Writ Petition arise out of the proceedings in S.A.No.108 of 2011 on the file of the Debts Recovery Tribunal - III, Chennai, they are being clubbed together and disposed of, by this common order.

3. The petitioners availed various credit facilities from Axis Bank, Chennai. Loans now stand assigned to Indian Bank. Since the loan was not repaid, demand notice, under Section 13 (2) of the SARFAESI Act, was issued, on 8/5/2009. This was followed by 5 Separate possession

notice for 5 properties on 22/8/2009 and a sale notice, dated 28/8/2009. S.A.No.108 of 2011 was filed. The petitioner filed S.A.No.108 of 2011 before DRT-III challenging the possession notice, dated 22/8/2009 and sale notice dated 28.8.2009. However Sale did not materialise, for want of bidders. A fresh sale notice was issued on 22/6/2010, fixing the date of sale to 28/7/2010. Items 3-5 out of the Properties mentioned in the sale notice were sold. Since the sale had taken place, pending the application, the auction purchaser was also impleaded as a party to S.A.No.108 of 2011.

4. The Respondents further issued sale notice no. 23.8.2010 fixing date of auction on 28.9.2010 for the remaining properties. M.A.S.A.125/2010 was filed challenging the said sale notices seeking stay. In M.A.S.A.125/2010 the Debts Recovery Appellate Tribunal directed the Debts Recovery Tribunal - II, to dispose of S.A.No.108 of 2011, within hundred days. The same was challenged before this Court, in C.R.P.No.3186 of 2010, which was disposed of, by an order, dated 12/1/2011, clarifying that stay of auction, under the SARFAESI Act, was granted only for 100 days and the Tribunal is entitled to proceed with the

disposal of the S.A.No.108 of 2011, even though the same had not been disposed of. The order of the High Court was challenged before the Hon'ble Supreme Court of India, in S.L.P (Civil) No.5191 of 2011, wherein the Hon'ble Supreme Court, by an order, dated 22/2/2011, directed the first petitioner to deposit a sum of Rs.1 crore, on or before 24/2/2011 and another sum of Rs.4 crores, within four weeks. Petitioners did not deposit the said amount of money, resulting in the dismissal of Special Leave Petition.

5. Another Sale Notice was issued by the bank on 7.4.2011 for two properties, fixing the date of sale, as 12/5/2011. Both properties were sold on two different dates. The 1st Property was sold on 12/5/2011 and sale with respect to 2nd Property was deferred to 16/5/2011.

6. Debts Recovery Tribunal allowed S.A. 108/2011 by order dated 30.07.2012, by giving the following findings:-

(i). Possession notice has not been affixed, on the outer door or at such conspicuous place of the property.

(ii). Possession notice has not been published in two leading newspapers, one in vernacular language, having sufficient circulation in the locality.

(iii). No valuation report is obtained to fix the upset price just prior to the sale.

(iv) Date of sale notice is defective.

The Debts Recovery Tribunal set aside the possession notice dated 22.08.2009 and sale notice dated 28.8.2009.

7. The bank filed an appeal before the Debts Recovery Appellate Tribunal. The Debt Recovery Appellate Tribunal found that borrowers have diverted the funds. It found that the writ petitioners are willful defaulters. It was found that the Possession notice was served on the respondents, on 26/8/2009 and photographs have been produced to show that service has been affixed. It was also held by the Appellate Tribunal that when the sale was conducted, the representatives of the borrowers participated in the proceedings. The Appellate Tribunal held that the demand notice and possession notice have been challenged, after a long

period, which is not correct. The Appellate Tribunal was of the opinion that technical objections have been raised only to defeat the proceedings, they were only dilatory tactics and that the defaulters were only trying to borrow time and have not even cared to comply with the orders of the Hon'ble Apex Court. Publication has been done in newspapers, in compliance with the Security Interest (Enforcement) Rules. Slight variations in the name does not amount to non-compliance of the mandatory provisions. The appeal filed by the Bank was allowed by the Appellate Tribunal, by order, dated 05.03.2013. It is this order, which is under challenge, in W.P.No.8258 of 2018.

8. Bank had also initiated proceedings, for recovery of money, by filing O.A.No.57 of 2011. Same is pending before the Debts Recovery Tribunal - III, Chennai, for recovery of Rs.15,68,88,928.99. Bank in the said O.A., filed I.A.No.369 of 2012, seeking permission to file photographs and videographs taken at the time of taking possession of the machineries and stock and for sale of mortgage properties.

9. Debts Recovery Tribunal, by a short order dated 7.8.2010, dismissed the application, stating that these documents were available with the respondents, at the time of filing of O.A., and no reason has been given as to why the same was being filed at a belated stage. This order was challenged, in M.A.No.116 of 2012, before the Debts Recovery Appellate Tribunal, Chennai. Debts Recovery Appellate Tribunal, by the impugned order dated 5.3.2018 allowed the appeal and permitted the Bank to file those documents. This order is under challenge in C.R.P.(PD) No.1768 of 2012.

10. It is pertinent to mention that the petitioners have also filed an application in O.A.No.57 of 2011, before the Debt Recovery Tribunal on 02.07.2018 to permit them to cross-examine in OA.No.57/2011, the Bank officials who were involved, at the time when the possession of the premises was taken.

11. Heard Mr.R.Thiagarajan, learned counsel for the petitioners and Mr.T.Sundar Rajan, learned counsel for the first respondent and perused the materials available on record.

12. Borrowers have availed various credit facilities, from Axis Bank, to the tune of Rs.16.06 crores and executed mortgage deeds, to secure the loan. The loan now stands assigned to the respondent Bank. Account of the petitioners was classified, as Non-Performing Asset, on 30/4/2009. Demand notice, under Section 13 (2) of the SARFAESI Act, was issued, on 8/5/2009. Objection was made by the petitioners to the demand notice, which was duly replied to, by the respondent Bank. Five possession notices, under Section 13 (4) of the SARFAESI Act were issued, on 22/8/2009 and a sale notice was issued on 28.08.2009. Material on record shows that valuation report for all the properties were obtained, by the respondent Bank, through approved valuers, before issuance of sale notice. Possession notice-cum-sale notice was widely published, in "Indian Express" and "Dinamalar". Record also shows that since the first sale notice did not fructify due to want of bidders, second sale notice was issued, on 22/6/2010, fixing the auction date, as 28/7/2010. The said notice was served and affixed on the secured assets.

13. Material on record also discloses that attempt by the petitioners to get stay of sale - failed and further, the second sale notice

was also published, in “Indian Express” and “Dina Malar”. The second sale was conducted where three items were sold. Borrowers have also made attempts to delay the proceedings. They did not comply with the order of the Hon'ble Supreme Court, directing them to deposit a sum of Rs.5 crores. Material on record further discloses that two more properties have been sold, in an auction, on 16/5/2011 and 12.05.2011.

14. We have perused the records as filed by the parties and satisfied that there is no infirmity in the sale proceedings and the order of the Debts Recovery Appellate Tribunal, in setting aside the possession notice, dated 22/8/2009, passed under Section 13 (4) of the SARFAESI Act, does not warrant any interference.

15. One of the main grievance in O.A.No.57 of 2011 is that possession has been taken, without any proper inventory. Paragraph Nos.11, 16 and 17 of the reply to the O.A., are reproduced:-

“11. The defendants state that the applicants took possession of a running concern/business/factory contrary to the provisions of the SARFAESI Act and without taking

any inventory list of moveables/machineries/stock/scrap/raw material. The defendants state that a FIR was registered against the bank officials for their unlawful acts in Crime No.615 of 2009 pursuant to the orders of the Hon'ble Madras High Court in Crl.O.P.No.2396/2009 dated 9/11/2009 and charge sheet is to be laid....

16. The defendants state that in Company Application No.1271 of 2010 in C.P.No.3 of 2010, the Hon'ble High Court by order dated 27/1/2011 directed the applicant to provide the defendants access to the books and records/accounts available at factory premises DP62, SIDCO, Thirumazhahisai, Chennai and take copies. The defendants state that again on 4/3/2011, the Hon'ble Madras High Court fixed the date for inspection to access to the books and records on 26/3/2011 at 10 a.m., in the presence of counsel for the applicant bank. The third defendant inspected factories DP62 & DP59, SIDCO, in the presence of Mr.M.D.Naziruddin, Manager, Indian Bank, ARM branch, Chennai and the defendants state that the entire premise have been reduced to rubbles windows and doors have been found in broken condition. No records are found. No stock of materials was available and the factory premise was completely looted. The protective covers are found broken. The defendants had reported in writing to the official of the applicant Bank.

The defendants have incurred a loss of Rs.8.30 crores of raw materials/tools and high value master ingots raw materials, Rs.3 crore worth of machineries, Rs.2 crore cash other items by looting factories apart from land and buildings worth Rs.8 crores.

17. The defendants state that the applicant seems to conduct auction under the provisions of SARFAESI Act in a dubious manner and the applicants are called upon to furnish the details of the auction sale, details of purchasers so as to enable the defendants to adjudicate the lis in the pending S.A.No.108 of 2011. The defendants state that such acts of the officials of the applicant are nothing but abuse of process of law and illegal. The defendants had filed W.p.No.12307 of 2011 before the Hon'ble Madras High Court to stay the auction sale dated 12/5/2011 and the above writ petition was dismissed as not pressed on 11/5/2011.”

16. It is therefore, imperative and necessary for the Tribunal to see the photographs and videographs taken, at the time of possession. In fact, even in the absence of any application by the Bank, Debts Recovery Tribunal could have on its own also call for these records, which are necessary for an effective adjudication of the issue of possession. We

therefore, see no infirmity in the order passed by the Debts Recovery Tribunal, in R.A.(SA) No.116 of 2012, dated 5/3/2018.

17. Mr.R.Thiyagarajan, learned counsel for the petitioners prayed that he should be permitted, to cross-examine the Bank witnesses and an application has been filed, on 2/7/2018, to this effect. It is for the Debts Recovery Tribunal, to take a decision on this and it will not be appropriate for us, to pass any order, permitting or rejecting the said prayer.

18. In view of the above, **Writ Petition and Civil Revision Petition stands dismissed**. No costs. Consequently, the connected Miscellaneous Petition Nos.9871, 10220 and 10221 of 2018 are closed.

(S.M.K.,J) (S.P.,J)
15/2/2019

mvs/pkn.

Index: Yes/No

Internet: yes/No

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To

1. Indian Bank
No.7 West Tank Street
Tiruvanmiyur
Chennai 600 041.
2. The Authorised Officer
Indian Bank
Circle Office
Ethiraj Salai
Chennai 600 008.
3. The Registrar
Debts Recovery Appellate Tribunal
IV Floor Indian Bank Circle office
55 Ethiraj Salai, Chennai 600 008.



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S.MANIKUMAR,J

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SUBRAMONIUM PRASAD,J

mvs/Pkn.



Pre-delivery common order
in
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and
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15/2/2019