

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.08.2019

DELIVERED ON : 05.09.2019

CORAM :

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.16667 of 2014 and

W.M.P.No.12478 of 2019

M/s Paradise Textile Mills
Rep. by its Partner,
Mr. S.S.Anbuvel,
No.23, Marudhachalam Thottam,
Kannampalayam Post, Suler (Via)
Trichy Road,
Coimbatore - 641 402.

... Petitioner

v.

1. The Authorized Officer,
Indian Bank Circle Office,
No.359, Dr.Nanjappa Road,
Coimbatore-641 018.

2 R.S. Balu

3 S.Shanmugham

4 Nachimuthu

5 A. Senthil Kumar

6 The CEO and Executive Director,
M/s. Reliance Asset Reconstruction Company Ltd.
No.5 Haddows Road,
Nungambakkam
Chennai-006.

(R6 impleaded vide order dated
28/01/2019 made in W.M.P.No.35753/2018
in W.P.No.16667/2014)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue of Writ of Certiorari, calling for the records pertaining to the order dated 13.05.2014 in R.A. (S.A) No.35 of 2010 on the file of Debt Recovery Appellate Tribunal-Chennai confirming the order dated 10.06.2009 in S.A. No.58 of 2008 on the file of D.R.T. Coimbatore and quash the same.

For Petitioner : Mr. B. Ravi
For Mr. R. Subramanian

For Respondents : Mr. Jayesh B Dolia - for R1
Mr.P.Tamilvel - for R2 to R5
Ms. S.R.Sumathy - for R6

ORDER

VIJAYA K.TAHILRAMANI, CHIEF JUSTICE
AND
M. DURAISWAMY, J.,

The petitioner has filed the above Writ Petition to issue a Writ of Certiorari to call for the records pertaining to the order dated 13.05.2014 in R.A. (S.A) No.35 of 2010 on the file of the Debt Recovery Appellate Tribunal, Chennai, confirming the order dated 10.06.2009 in S.A. No.58 of 2008 on the file of the Debts Recovery Tribunal, Coimbatore and to quash the same.

2.1 It is the case of the petitioner-Textile Mill that on 04.04.2005, they obtained loan of Rs.1,19,30,000/- [Rupees one crore nineteen lakhs and thirty thousand only] from the respondent-bank. Since they defaulted in repaying the loan amount, the respondent-bank issued a notice dated 06.10.2007 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Thereafter, possession notice dated 13.02.2008 was issued under section 13(4) of the SARFAESI Act. Subsequently, the mortgaged property was brought to sale under a sale notice dated 05.03.2008.

2.2 Challenging the possession notice dated 13.02.2008, the petitioner preferred a Securitization Appeal in S.A.No.58 of 2008 before the Debts Recovery Tribunal, Coimbatore, on 08.04.2008.

3. The Debts Recovery Tribunal, Coimbatore, by order dated

10.06.2009, dismissed the appeal finding that the petitioner has filed the Securitization Appeal beyond the period of 45 days from the date of Section 13(4) notice.

4.1 As against the dismissal of the Securitization Appeal, the petitioner preferred an appeal before the Debt Recovery Appellate tribunal, Chennai in R.A. (S.A) No.35 of 2010.

4.2. The Appellate Tribunal, by order dated 13.05.2014, confirmed the order passed by the Debts Recovery Tribunal and dismissed the appeal. While dismissing the appeal, the Appellate Tribunal also took into consideration the prayer sought for in the Securitization Appeal filed by the petitioner and held that the petitioner has only challenged the possession notice dated 13.02.2008.

5. The learned counsel appearing for the petitioner submitted that the petitioner has also challenged the sale notice dated 05.03.2008 and therefore, the Securitization Appeal filed on 08.04.2008 is within the time.

6. The learned counsel appearing for the petitioner in support of his contentions, relied upon the following Judgments:-

(i) 2016 (12) SCC 18 [Axis Bank v. SBS Organics Private Limited and Anr.] wherein the Hon'ble Supreme Court held as follows:-

"... 21. The appeal under Section 18 of the Act is permissible only against the order passed by DRT under

Section 17 of the Act. Under Section 17, the scope of enquiry is limited to the steps taken under Section 13(4) against the secured assets. The partial deposit before DRAT as a precondition for considering the appeal on merits in terms of Section 18 of the Act, is not a secured asset. It is not a secured debt either, since the borrower or the aggrieved person has not created any security interest on such pre-deposit in favour of the secured creditor. If that be so, on disposal of the appeal, either on merits or on withdrawal, or on being rendered infructuous, in case, the appellant makes a prayer for refund of the pre-deposit, the same has to be allowed and the pre-deposit has to be returned to the appellant, unless the Appellate Tribunal, on the request of the secured creditor but with the consent of the

depositors, had already appropriated the pre-deposit towards the liability of the borrower, or with the consent, had adjusted the amount towards the dues, or if there be any attachment on the pre-deposit in any proceedings under Section 13 (10) of the Act read with Rule 11 of the Security Interest (Enforcement) Rules, 2002, or if there be any attachment in any other proceedings known to law. ..."

(ii) CDJ 2010 MHC 3903 [Hamosons Apparels Pvt. Ltd. v. Indian Bank and Anr.] wherein the Division Bench of this Court, held as follows:-

" .. 22. The impugned order in the writ petition is the order passed by the Appellate Tribunal upholding the measure taken by the first respondent Bank under Section 13 (4) of the Act. The contention raised in the writ petition with regard to the enforcement of the R.B.I. guidelines in respect of One-Time Settlement was not raised as a ground before the Appellate Tribunal. If the impugned order is otherwise valid in law, it cannot be set aside on a ground which was not taken before the Appellate Tribunal. On facts also, we have already seen that the proposals submitted by the petitioner were not in conformity with the guidelines issued by the Reserve Bank of India for One-Time Settlement and the petitioner is not entitled to seek for enforcement of the same. The impugned order of the Appellate Tribunal is not liable to be set aside. ..."

7. In view of the contention raised by the learned counsel appearing for the petitioner, it would be relevant to extract the prayer sought for in the Securitization Appeal, which reads as follows:-

"... Applicant therefore prays that this Hon'ble Tribunal may kindly be pleased to :

Pass an order to set aside the notice dated 06.10.2007 issued by the respondent under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and also consequentially set aside the possession notice dated 13.02.2008 issued by the respondent.

Direct the respondent not to take any further action as against the property of the applicant in furtherance to the notice dated 13.02.2008 seeking to have taken possession under section 13(4) of

the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Tender cum Auction sale notice dated 05.03.2008 by selling the same or in any other act which will be detrimental to the rights of the applicant. ..."

8. On a perusal of the prayer sought for in the Securitization Appeal, it could be seen that the petitioner has sought to set aside the notice dated 06.10.2007 issued by the respondent under section 13(2) of the SARFAESI Act and also the consequential possession notice dated 13.02.2008 issued by the respondent-bank. The petitioner also sought for a direction in the prayer column restraining the respondents from taking any further action as against the property in furtherance of the notice dated 13.02.2008 issued under section 13(4) of the SARFAESI Act and the Tender cum Auction sale notice dated 05.03.2008 by selling the same .

9. From the reading of the first prayer, it is clear that the petitioner has filed the Securitization Appeal to set aside the possession notice dated 13.02.2008. The second prayer is to restrain the respondents from selling the mortgaged property under the Tender cum Auction sale notice dated 05.03.2008.

10. In these circumstances, the Tribunals below have rightly come to the conclusion that the petitioner had only challenged the possession notice dated 13.02.2008 in the Securitization Appeal filed on 08.04.2008 and therefore, the same is beyond the period of limitation of 45 days.

11. There is no dispute that the pre-deposit amount deposited by the petitioner-appellant before the Debt Recovery Appellate Tribunal under section 18 of the SARFAESI Act can be withdrawn by the petitioner-appellant after the disposal of the appeal. If the petitioner-appellant had made any pre-deposit as contemplated under section 18 of the SARFAESI Act, then, they are entitled to get refund of the same, after the disposal of the appeal by the Debt Recovery Appellate Tribunal.

12. When the facts leading to the filing of the present Writ Petition standing as stated above, the ratio laid down in the said Judgments are not applicable to the present case.

13. When no challenge has been made in respect of the auction sale notice dated 05.03.2008, the Debt Recovery Appellate Tribunal as well as the Debts Recovery Tribunal have rightly dismissed the appeals on the ground of limitation.

14. In these circumstances, we do not find any ground to interfere with the concurrent orders passed by the Tribunals below. The Writ Petition is liable to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Rj

To

1. The Authorized Officer,
Indian Bank Circle Office,
No.359, Dr.Nanjappa Road,
Coimbatore-641 018.
- 2.The Chair Person,
Debt Recovery Appellate Tribunal, Chennai.
- 3.The Presiding Officer,
Debts Recovery Tribunal,
Coimbatore.

Copy to:

The Section Officer,
V.R Section,
High Court, Madras

- +1cc to M/s.Aiyar & Dolia, Advocate sr.77795
+1cc to Mr.P.Tamilavel, Advocate sr.76799
+1cc to Ms. S.R.Sumathy, Advocate sr.76691
+2cc to Mr. R. Subramanian, Advocate sr.77092 (13/11/2019)

Order in
W.P. No.16667 of 2014 and
W.M.P.No.12478 of 2019

gjii(co)
nr 03/10/2019