IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.06.2019

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.17307 of 2014
and
M.P.No.1 of 2014

1. R.Santhanagopalan

2. R.Ravindran ... Petitioners

Vs.

1. Bank of Baroda
82, Bank Road
Coimbatore - 641 018.

2. Industrial Investment Bank of India
Formerly known as
Industrial Reconstruction Bank of India
769, Anna Salai
Chennai - 600 002.

3. The Recovery Officer
Debt Recovery Tribunal
Cauvery Complex
1670, Trichy Road
Ramanathapuram
Coimbatore. ... Respondents

Writ petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records culminating order of attachment dated 08.05.2014 in R.P.No.3 of 2009 in DRC No.233 of 2008 in T.A.No.479 of 2002 issued by third respondent and quash the same.

For Petitioners : Mr.S.J.Jagadev

For Respondents : Mr.V.Bhiman
For M/s.Sampathkumar Associates

ORDER

(Order of the Court was delivered by V.BHAVANI SUBBAROYAN,J.)

The Writ Petition is filed praying to quash the records culminating order of attachment dated 08.05.2014 in R.P.No.3 of 2009 in DRC No.233 of 2008 in T.A.No.479 of 2002 issued by third respondent.

2. The petitioners in the affidavit filed in support of their petition would submit that the petitioners and their father were running a Mill in the name and style of M/s.Raveendra Mills Limited and at the time of starting the Mill, the petitioners availed financial assistance from the first respondent and they could not repay the loan amount due to business recession.

3. The petitioners would further submit that the first respondent bank initiated recovery proceedings against the petitioners and filed an application in O.A.No.783 of 1998 before Debt Recovery Tribunal, Chennai and the same was transferred to Debt Recovery Tribunal, Coimbatore and renumbered as T.A.No.479 of 2002 and since the petitioners had not appeared on 14.09.2007, an exparte order was passed in the said case.

4. Petitioners filed I.A.No.355 of 2008 in T.A.No.479 of 2002 to condone the delay of 111 days in filing a petition to set aside the exparte order dated 14.09.2007, and the same was allowed by the Debt Recovery Tribunal, Coimbatore on condition that the petitioners to remit a sum of Rs.41,00,000/- with the first respondent bank on or before 22.05.2008; Against which, the petitioners preferred an Appeal in M.A.No.145 of 2008 before the Debt Recovery Appellate Tribunal, Chennai and the same was dismissed on 13.10.2008 directing the petitioners to deposit Rs.41,00,000/- in two instalments, each at Rs.20,50,000/- the first one to be paid on or before 12.11.2008 and the second one on or before 12.12.2008.

5. The petitioners would further contend that aggrieved by the order of the Debt Recovery Appellate Tribunal, in confirming the order of the DRT, directing to deposit a sum of Rs.41 lakhs as a condition precedent to condone the delay of 111 days in filing the application to set aside the ex-parte recovery certificate, the petitioners preferred revision in CRP.(PD). No.1605 of 2009 before this Court and the same was allowed on 03.08.2012, on condition that petitioners pay a sum of Rs.10,000/- within four weeks from the date of receipt of the said order. The petitioners came to know the order of this Court dated 03.08.2012 only when the recovery proceedings notice was received by them and therefore, they approached this Court

with a petition for extension of time in M.P.Sr.No.44103 of 2014 in CRP No.1605 of 2009 and the same is yet to be numbered.

6. The petitioners would further state that the petitioner Mill was declared by the BIFR as Sick Company and the BIFR recommended this Court to wind up the company and the Appeal filed by the petitioners before AAIFR was also dismissed. BIFR and the Official Liquidator, High Court of Madras have filed C.P.Nos.197 of 1996 and 226 of 1999 and the same were disposed of.

7. The petitioners would also submit that in the mean while, the winding up proceedings filed by the Official Liquidator is pending in C.A.No.927 of 2006, in which the first respondent bank filed counter. The first respondent bank suppressed the above facts of the company petition and company application before the Debt Recovery Tribunal and the exparte order was passed and subsequently, the Debt Recovery Tribunal, Coimbatore, served notice of recovery proceedings dated 08.05.2014 on the petitioners for attachment and sale of the properties of the second petitioner and subsequently, the third respondent - Recovery Officer issued order of attachment dated 08.05.2014 of the secured properties. Challenging the said attachment order, the petitioners are before this Court.

8. The first respondent bank filed counter affidavit and stated that the petitioners are the directors of the company M/s.Raveendra Mills Ltd., which has since been liquidated. The petitioners are the guarantors for the loans advanced in the year 1992 and they became non-performing assets. A notice demanding repayment was issued on 23.01.1998 followed by recovery application and in that application, exparte final order was passed, as the petitioners though entered appearance through counsel and filed their reply statements, failed and neglected to appear subsequently.

9. The first respondent Bank would further state that in the condone delay petition filed by the petitioners to condone the delay of 111 days in filing the petition to set aside the exparte order, a conditional order was passed directing the petitioners to deposit Rs.41 lakhs as condition to condone the delay, as more than Rs.4 crores had to be recovered with interest from March 1998. The Appeal preferred by the petitioners against the said order was also dismissed. Even though the CRP filed by the petitioners before this Court was allowed on condition to pay a sum of Rs.10,000/- as costs within four weeks for condoning the delay, the petitioners have not paid the cost till date, which shows their intention to delay the proceedings. Since the petitioners did not pay the costs and the order of this Court had worked itself out, the Recovery

Officer proceeded with the execution and passed orders of attachment on 08.05.2014. Challenging the same, the petitioners have approached this Court.

10. The first respondent Bank would also submit that the petitioners have no locus standi to approach this Court against the order of Recovery Officer of Debt Recovery Tribunal and they have other statutory remedies available under the Recovery of Debts due to Banks and Financial Institutions Act (RDDB & FI Act). In this case, though an interim order was granted on 02.07.2014 for eight weeks, it has not been extended further. Moreover, the contentions raised by the petitioners are already under challenge before the District Munsif Court, Coimbatore, in O.S.No.1900 of 2010 and O.S.No.260 of 2014, which are now pending for adjudication. The amount now to be recovered is more than Rs.4 Crores and the petitioners were evading the process of service and refusing to pay the dues of the bank despite having sufficient means to pay the same and the petitioners have been prolonging the proceedings from 1998. Though the order was not extended in view of the pendency of the above writ proceedings, the Recovery Officer has not taken any steps to proceed further. Hence, prayed for dismissal of the above Writ Petition with costs.

11. Heard both sides and perused the available materials on record.

12. It could be seen from the records that the Writ Petitioners had availed financial assistance from the first respondent bank and had defaulted in paying the money and due to the failure to repay the amount advanced, the bank has filed O.A.No.783 of 1998 before the Debt Recovery Tribunal, Chennai. In the said proceedings, the petitioners had entered appearance through counsel and filed written statement. Later, when the matter was posted for further hearing, neither the petitioner's company nor the petitioners have appeared and due to which, the Debt Recovery Tribunal had set the petitioners exparte on 14.09.2007, and passed the exparte recovery certificate. Aggrieved against the same, the petitioners had filed an application in I.A.No.354 of 2008 in T.A.No.479 of 2002 for condoning the delay of 111 days in filing the petition to set aside the exparte final order and exparte recovery certificate. The said application was allowed by the Debt Recovery Tribunal, Coimbatore, with a condition to deposit a sum of Rs.41 lakhs as found in the Recovery Certificate on or before 22.05.2008, in default of said payment, the application shall stand dismissed automatically. The petitioners had assailed the said order, by way of the Appeal before the Debt Recovery Appellate Tribunal, Chennai, in M.A.No.145 of 2008 and in the said M.A.No.145 of 2008, the Debt Recovery Appellate Tribunal, by order dated

13.10.2008, has directed the petitioners to deposit Rs.41 lakhs as directed by the Debt Recovery Tribunal, however, in two equal instalments and on such deposit, directed the Debt Recovery Tribunal, to restore T.A.No.479 of 2002 (O.A.No.783 of 1998) and dispose of the same within two months from the date of deposit of the amount.

13. It could be further seen that, aggrieved by the aforesaid order of the Debt Recovery Appellate Tribunal, the petitioners had filed CRP.(PD).No.1605 of 2009 before this High Court and this Court, by order dated 03.08.2012, while setting aside the order of the Debt Recovery Tribunal and Debt Recovery Appellate Tribunal, had passed the following order:-

> "6. Therefore, on a careful consideration of the entire factual matrix, We are of the view that the Debt Recovery Tribunal was not correct in imposing the conditional payment of Rs.41 lakhs for the purpose of condoning the delay.
>
> 7. Accordingly, the order passed by the Debt Recovery Tribunal as confirmed by the order dated 13.10.2008 in M.A.No.145 of 2008 on the file of Debt Recovery Appellate Tribunal is set aside meaning thereby that the application filed by the petitioner to condone the delay of 111 days in filing the application to set aside the exparte recovery certificate is allowed and the delay is condoned, subject to the petitioner pays a sum of Rs.10,000/- as costs. The said payment shall be made within a period of four weeks from the date of receipt of a copy of this order, failing which the application for condoning the delay shall stand automatically dismissed.
>
> 8. Since We have condoned the delay, the Debt Recovery Tribunal is directed to take up the application filed by the petitioner to set aside the exparte recovery certificate, after the receipt of payment of costs of Rs.10,000/- as directed above."

14. Even though, the above order in CRP.(PD)No.1605 of 2009 was passed on 03.08.2012, directing the petitioners to pay a sum of Rs.10,000/- as costs for condonation of delay and such payment shall be made within four weeks from the date of receipt of a copy of that order, failing which, the application for condonation of delay shall stand automatically dismissed, the

petitioners had not paid the said sum within the specified period stating that the erstwhile junior counsel, who was taking care of the matter, had not communicated the said order to the petitioners and he left to his native place and chosen to practice there and hence, the order copy was not communicated to them in time.

15. The petitioners' contention is that they came to know of the order dated 03.08.2012 passed by this Court only when the recovery proceedings notice was received by them and immediately, they approached this Court and filed a petition in M.P.Sr.No.44103 of 2014 in CRP.No.1605 of 2009 for extension of time for payment of the said costs and the same is yet to be numbered.

16. The petitioners' further contention is that in main O.A.No.783 of 1998 filed by the first respondent bank, the petitioners herein have filed a detailed written statement, in which they categorically denied the mortgage dated 22.10.1982 and there was no document filed by the respondent bank to prove the alleged mortgage and therefore, the petitioners have valid defence.

17. It could be also seen that the petitioners' Mill has approached the BIFR under the Sick Industrial Companies Act, 1985 for seeking relief and the petitioners' Mill was declared as sick company and steps were taken to revive the same. The BIFR has recommended the Hon'ble High Court to wind up the said company. Hence, the first petitioner had preferred an Appeal before the AAIFR and the same was also dismissed. The BIFR and the Official Liquidator, High Court had filed Company Petitions in C.P.Nos.197 of 1996 and 226 of 1999 respectively and the same were disposed of. Thereafter, the Official Liquidator as Liquidator of the petitioners company had preferred Company Application in C.A.No.927 of 2006.

18. It is the further contention of the petitioners that the respondent bank has filed the proceedings before the Debt Recovery Tribunal, suppressing all the above facts, and obtained an exparte order and immediately, when the notice for attachment and sale of the properties was received by the petitioners on 08.05.2014, the petitioners approached this Court by way of Writ Petition.

19. All those above stated facts throw light on the issue on hand, wherein the petitioner company has taken loan long back and during 1998, the bank has filed an application in O.A.No.783 of 1998 before the Debt Recovery Tribunal, Chennai and it was later transferred to Debt Recovery Tribunal, Coimbatore in the year 2002, and renumbered as T.A.No.479 of 2002. From 1998 to

2012, when the order in CRP was passed, the petitioners have not taken any steps to pursue the matter as a bonafide citizens. The petitioners have borrowed money and have violated all the conditions and not repaid the said amount and defaulted in payment.

20. It could be seen from the counter, that the petitioners are liable to pay more than a sum of Rs.4 crores as early as 1998 and which amount would have gone more by the long pending years. It could be also seen that the petitioners, aggrieved by the order of the Debt Recovery Tribunal, have approached Debt Recovery Appellate Tribunal, which has also confirmed the order of Debt Recovery Tribunal and against which, when they approached this Court by way of CRP, this Court passed a conditional order and hence, they ought to have paid the conditional amount of Rs.10,000/-, but without paying the said amount and pursuing the matter, the petitioners approached this Court again by way of M.P.Sr.No.44103 of 2014 in CRP.No.1605 of 2009 for extension of time for payment of conditional amount, for the reason that the erstwhile junior has not received the order copy and not communicated the same to them, which cannot be accepted by this Court.

21. This Court has passed the order dated 03.08.2012 in CRP (PD).No.1605 of 2009, directing the petitioners to pay the conditional sum of Rs.10,000/- within a period of four weeks from the date of receipt of a copy of that order. But, the petitioners have not obeyed the said order, and instead of paying the said amount, they preferred a petition in the year 2014 in M.P.Sr.No.44103 of 2014 for extension of time to pay the said amount.

22. Till the date of hearing of this petition, in the year 2018, the petitioners' counsel was not in a position to say what happened to the extension petition filed in the above C.R.P.

23. Learned counsel Mr.S.J.Jagadev appearing for the petitioners contended that by order, dated 03.08.2012, made in C.R.P.No.1605 of 2009, this Court had directed the petitioners to pay Rs.10,000/- within a period of four weeks, and thereby, set aside the exparte recovery certificate.

24. Here is a case, where the recovery proceedings were initiated by the first respondent in O.A.No.783 of 1998 for recovery of the loan amount extended to the petitioners, which case was transferred to DRT, Coimbatore and renumbered as T.A.No.479 of 2002.

25. It could also be seen from the records that O.A. for recovering the loan amount was initiated in the year 1998. The

petitioners have filed a reply as early as January 1999. Thereafter, the DRT Tribunal at Coimbatore had passed an exparte final order on 14.09.2007 by allowing the application filed for recovery. The DRT, Coimbatore in the exparte order has held as hereunder:-

> "(a) that the defendants 1 to 4 jointly and severally do pay the above said sum of Rs.53,93,175.85 due under Cash Credit (Hyp), Rs.9,36,462.50 due under Cash Credit (PI), Rs.47,54,334.00 due under Bills Purchased, Rs.1,34,77,052.70, Rs.25,28,935.00, Rs.21,90,805.00, Rs.21,25,764.00, Rs.18,17,672.00, Rs.13,28,009.00, Rs.19,07,742.00, Rs.38,78,030.00 due under Term Loan and Rs.7,92,793.00 due under Demand Loan facilities in total Rs.4,10,30,775.05 (Rupees Four crore Ten Lakhs Thirty Thousand and Seven Hundred Seventy Five and Paise Five only) together with simple interest @ 9% per annum thereon from 21.03.1998, the date of TA, till realization and also its proportionate costs to the applicant bank.
>
> (b) It is further ordered that the defendants 1 to 4 do make their payment towards the Debts Recovery Certificate liability to the applicant bank and in default, the applicant bank is at liberty to sell the schedules "I" to "III" mentioned properties, and to adjust the sale proceeds towards the amount due under Debts Recovery Certificate; and
>
> (c) if the sale proceeds is insufficient after defraying the expenses of such sale for the payment of all such amounts, defendants 2 to 4 are personally liable to pay the amount of such deficiency with simple interest @ 9% per annum until realization;"

26. Subsequent to the above order, the petitioners filed an application to set aside the exparte order along with a condone delay petition to condone the delay of 111 days in filing the application to set aside the exparte order, and the DRT, Coimbatore, directed the applicants therein/petitioners herein to deposit a sum of Rs.41,00,000/- as pre-condition to condone the delay of 111 days. Challenging the same, the petitioners have filed M.A.No.145 of 2008 before DRAT, Chennai and the DRAT, by its order dated 13.10.2008, directed the petitioners to pay a sum of Rs.41,00,000/- as fixed by the DRT, Coimbatore, in two installments and the 1st installment shall be paid on or before 12.11.2008 and the 2nd installment on or before 12.12.2008.

27. The order passed by the DRAT in M.A.No.145 of 2008 dated 13.10.2008 was challenged before this Court in C.R.P.(PD).

No.1605 of 2009 and this Court, by an order dated 03.08.2012, taking a very lenient view on the petitioners, had set aside the order passed by the DRAT in M.A.No.145 of 2008 and condoned the delay of 111 days subject to the condition that the petitioners pay a meager amount of Rs.10,000/- as costs within a period of four weeks from the date of receipt of a copy of that order. By condoning the said delay, this Court directed the DRT, Coimbatore, to take up the application filed by the petitioners to set aside the exparte recovery certificate, after the receipt of payment of Rs.10,000/- as directed above. However, the petitioners, despite securing such lenient order from this Court, failed to comply with the said condition, but, challenging the recovery proceedings in R.P.No.3 of 2009 in DRC No.233 of 2008 in T.A.No.479 of 2002 issued by the third respondent, filed this Writ Petition.

28. We are unable to accept the contentions raised by the petitioners' counsel in challenging the recovery order passed by the third respondent herein. This Court has in various cases held that it cannot interfere with the orders issued especially under the SARFAESI proceedings. The Hon'ble Supreme Court has categorically held that only under exceptional circumstances, (i.e.) when such order is passed exceeding the jurisdiction or failure to follow the procedures contemplated under Statute, the High Courts can interfere. However, the petitioners herein are not liable to avail such leniency, that too, at this point of time.

29. The petitioners have prolonged the litigation as the loan was obtained in the year 1982 and on 12.02.2018, they successfully completed the proceedings and the reasons stated by the petitioners to challenge the order of attachment by way of this Writ Petition cannot be entertained. We are unable to accept the contentions raised by the petitioners' counsel in challenging the recovery order passed by the third respondent.

30. The callous attitude of the petitioners, merely that the petitioners' father Mr.K.Ramachandran who was the second respondent in O.A.No.783 of 1998 had expired on 05.06.2011, was the cause for delay.

31. The petitioners made allegations on the counsel who had earlier appeared in C.R.P.(PD).No.1605 of 2009, wherein, this Court has granted a lenient order, condoning the delay to set aside the exparte recovery certificate subject to payment of Rs.10,000/-. This order was made as early as on 03.08.2012 and the petitioners, who kept quiet after securing the order, cannot blame the counsel who appeared by stating that the said order was not properly communicated to them by the erstwhile junior counsel who was taking care of their case. It is not only the

responsibility of the counsel to communicate the order or status of the case and it is also the duty and responsibility of the parties in approaching their counsel now and then and have brief knowledge regarding the status of the case initiated by them. On every occasion, the parties approaching this Court cannot raise an issue with non compliance of the interim order putting the blame on the counsel that they have not properly communicated the said order. It is the equal responsibility of the parties approaching this Court to keep in touch with their counsel and update the status of their case. Merely making an allegation on the counsel, without producing any substantial proof, cannot hold the petitioners to get an order from this Court against the impugned order.

32. The Catena of Judgments which have decided similiar issue have been perused. The Hon'ble Supreme Court in a case reported in 2010 (5) LW 193 (SC) (Union Bank of India .vs. Satyawati Tondon), has laid down certain principles that whenever dealing with the Writ Petition challenging the action taken for recovery of public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of grievances of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing any remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

33. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions as carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad AIR 1969 SC 556, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, shall pass appropriate interim order.

34. Regarding the pendency of C.A.No.927 of 2006 in C.P.Nos.197 of 1996 and 226 of 1999, bundles were called for and a status report has been filed by the Official Liquidator, from which it could be inferred that the said company was wound up by the orders of this Court dated 29.03.2001 and the Official Liquidator has been appointed as Liquidator of the petitioners' company in liquidation. As such, the official liquidator has taken charge of the assets and effects of the company in liquidation. This Court, by order dated 11.02.2003 in C.A.No.300 of 2002 has confirmed sale of land and building and plant and machinery of the company in liquidation for a sum of Rs.3,00,00,000/- in respect of land and building and for a sum of Rs.1,35,00,000/- in respect of plant and machinery totalling Rs.4,35,00000/-. In pursuance of various orders of this Court, a total dividend of 54% was paid to workmen creditors and secured creditors. The Bank of Baroda have taken out Company Application Nos.2252 & 2253 of 2006 and the claim of Bank of Baroda was re-adjudicated and the Official Liquidator filed his reply report dated 04.04.2008 before the Hon'ble Court with prayers to direct the IDBI and IIBI to remit the excess amount of Rs.5,51,024/- and Rs.55,72,522/- respectively paid to them and also to permit the Official Liquidator to pay a sum of Rs.66,16,737 to Bank of Baroda after recovering the excess amount paid to IDBI and IIBI as on 17.06.2002.

35. In the light of the above discussions, this Court is of the view that the petitioners have not made out any substantial grounds to interfere with the orders passed by the third respondent and thus, the Writ Petition deserves to be dismissed with costs.

36. Accordingly, the Writ Petition is dismissed, and the petitioners are directed to pay cost of Rs.10,000/- to the Advocate Welfare Fund, within a period of four weeks, from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mra/raja

To

1) The Recovery Officer,
Debt Recovery Tribunal,
Cauvery Complex,
1670, Trichy Road,
Ramanathapuram,
Coimbatore.

2) The Advocate Welfare Fund,
MHAA, High Court, Madras.

+1 cc to M/s.S.J.Jagadev, Advocate, S.R.No.46088

+1 cc to M/s.S.J.Jagadev, Advocate, S.R.No.47171

Writ Petition No.17307 of 2014

SJ(CO)
SSM(24/07/2019)