IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 11.01.2019

CORAM
THE HON'BLE MR.JUSTICE S.MANIKUMAR
&
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.29113 of 2014
and
M.P.No.1 of 2014

Dr.Kailasam Kathirvel ... Petitioner

Vs.

1. M/s.Phoenix ARC Private Limited,
   Rep. by its Managing Director,
   VII Floor, Dani Corporate Park,
   No.158, C.S.T. Road,
   Kalina, Santa Cruz (East),
   Mumbai - 400 098.

2. The Indian Overseas Bank
   Salem Main Branch,
   No.6/671, Car Street,
   Salem - 636 001.

3. The Official Liquidator,
   High Court, Madras,
   As the Liquidator of
   Sree Uma Parameswari Mills Ltd.,
   (In Liquidation)

4. Dr.R.Subramanian
5. Mr.S.Ramanand
6. Mrs.S.Valloiammal

7. The Reserve Bank of India,
   Fort Glacis, No.16, Rajaji Salai,
   Chennai - 600 001. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in connection with its letter dated 24.02.2012 in Phoenix/RES2/1931/2011-12 and quash the same, and consequently, direct the 1st respondent to receive the funded amount of Rs.6.80 Crores with interest after deducting the sums already paid, in full quit and final settlement of the liabilities of the 3rd respondent.

For Petitioner : Mr.R.Srinivas

For Respondents : Mr.OM.Prakash
For Mr.F.B.Benjamin George

ORDER

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

This Writ Petition has been filed to call for the records of the 1st respondent dated 24.02.2012 in Phoenix/RES2/1931/2011-12 and quash the same, and consequently, to direct the 1st respondent to receive a sum of Rs.6.80 Crores with interest after deducting the amount already paid, in full quit and final settlement of the liabilities of the 3rd respondent.

2. The case of the petitioner as stated in the affidavit is as follows:

3. M/s.Uma Parameshwari Mills Limited., is a public limited company (hereinafter referred to as "the Company"), which engaged in the business of running textiles spinning mills at Kallikuchi Village, Ranji Nagar, Trichy. The said company became a sick company and it was directed to be wound up by BIFR, and later, which came to be confirmed by AIFR. As on date, a petition to wind up the said company is pending in this Court in C.P.No.207 of 2003.

4. The petitioner would contend that since the company had availed various loans/credit facilities, the 2nd respondent bank, initiated recovery proceedings by filing O.A.No.218 of 2003 at DRT, Coimbatore, which subsequently came to be transferred to DRT at Madurai as T.A.No.88 of 2009. The DRT, Madurai, had passed a final order in the said T.A., and based on which, recovery certificate dated 18.02.2010 was issued in favour of the 2nd respondent.

5. The petitioner would further contend that since he was interested to invest his money and resources to revive the said company, he approached the 2nd respondent bank, and the 2nd respondent bank also accepted and sent a letter dated 02.06.2010, agreeing to accept Rs.7.09 crores in full quit, towards the settlement of dues of the company. Thereafter, the petitioner deposited a sum of Rs.50 lakhs in a no lien account of the 2nd respondent bank and the same was also acknowledged by the bank. The balance amount of Rs.6.59 crores, the petitioner accepted to pay on or before 30.09.2010.

6. The petitioner would also contend that in order to mobilise the remaining amount of Rs.6.59 crores payable to the 2nd respondent bank, he approached the 1st respondent for funding and for the revival of the company, to which, the 1st respondent demanded professional service charge from the petitioner. The understanding between the petitioner and the 1st respondent was that the 1st respondent would fund the petitioner an amount of Rs.6.59 crores, and on release of the said amount, the petitioner would settle the 2nd respondent and get the company cleared from the liquidation proceedings, and thereafter, sell certain vacant lands around the company's mill and repay the 1st respondent and revive the company. The 1st respondent paid Rs.6.59 crores, towards the settlement of dues of the company, to the 2nd respondent bank.

7. Moreover, the petitioner would contend that trusting the 1st respondent, he gave consent for the assignment through the shareholders of the company, and accordingly, the 1st respondent paid the 2nd respondent the balance portion of IOB's OCS amount of Rs.6.80 crores and got a deed of assignment dated 30.12.2010 registered as Document No.714 of 2012 in the Sub Register Office (Joint), Trichy. After obtaining the assignment deed from the 2nd respondent bank, the 1st respondent issued a settlement letter dated 03.02.2011 to the petitioner and as well as the respondents 4, 5 and 6, as the 1st respondent accepted the one time proposal from the petitioner for a sum of Rs.7.5 crores with interest. As such, Rs.6.80 crores was paid by the 1st respondent to the 2nd respondent bank along with service charge of Rs.70 lakhs for future funding towards revival of the company.

8. The petitioner issued 15 postdated Cheques of IDBI Bank, Namakkal Branch, SB A/c No.321104000006576, to the 1st respondent. However, the 1st respondent bank, without informing the petitioner, approached DRT, Madurai, by substituting itself in the place of the 2nd respondent bank and made an attempt to recover the prior dues of the 2nd respondent bank. Thereafter, the 1st respondent sent a letter dated 24.02.2012 to the petitioner and the respondents 4 to 6, informing that due to the petitioner's telegram and emails, they had not presented the Cheques given by the petitioner, and therefore, the 1st respondent was revoking the settlement by invoking Clause 13 of the settlement and proceeding to recover the arrear due to it.

9. Furthermore, the petitioner would contend that the 1st respondent impleaded itself in the Company Petition pending in this Court and filed C.A.No.381 of 2012, and further, obtained an order dated 05.04.2013, by playing fraud to bring the property concerned to the possession and to auction the same under SARFAESI proceedings. Therefore, the petitioner filed O.S.A.No.206 of 2013 against the order dated 05.04.2013, which he ultimately withdrew, as the 1st respondent gave an assurance

that if he withdraws the O.S.A., the 1st respondent will revert back to the settlement. However, contrary to the assurance, the 1st respondent proceeded with the SARFAESI proceedings and issued a sale notice under Section 13(4) of the SARFAESI Act, to sell the movable and immovable properties of the company for an upset price of Rs.51.50 crores in total. Challenging the said proceedings, the petitioner has filed an application under the SARFAESI Act, which is pending before DRT, Madurai. Pending such proceedings, the petitioner has now approached this Court, challenging the letter dated 24.02.2012 issued by the 1st respondent.

10. Heard the learned counsel for the petitioner and the learned counsel for the respondents, and perused the materials available on record.

11. On a careful perusal of the documents filed by the parties and the arguments put forth by the learned counsel for the petitioner, it is not in dispute that the petitioner had entered into an agreement with the 1st respondent herein, accepting the settlement in respect of the financial facilities advanced by the Indian Overseas Bank to M/s.Uma Parameshwari Mills Limited, and the debts thereon in favour of the 2nd respondent bank. The petitioner, who has approached the 1st respondent to mobilise the amount of Rs.6.59 crores payable to the 2nd respondent, agreed to repay the same along with the service charges of Rs.70 lakhs, and the 1st respondent also accepted and paid the said amount to the 2nd respondent bank, towards the settlement of dues of the petitioner. However, the petitioner has failed to repay the amount to the 1st respondent, and therefore, the 1st respondent has approached DRT, Madurai, seeking to substitute itself in the place of the 2nd respondent, who initiated the recovery proceedings in O.A.No.218 of 2003 before DRT, Coimbatore, which was later on transferred to DRT, Madurai, as T.A.No.88 of 2009 and issued a letter dated 24.02.2012 informing the petitioner that they are invoking Clause 13 of the settlement for revoking the same.

12. The agreement between the petitioner and the 1st respondent in respect of default of payment, is as follows:-

> "13. On the occurrence of an Event of Default, Phoenix shall, without prejudice to any other remedies which it may have at law or otherwise, be entitled to take any or all of the following actions:
>
> > (a) To recover the Settlement Amount (less any amounts already paid by Dr.Kathirvel under the terms of this Settlement Letter) from Dr.Kathirvel and adopt such legal proceedings for the purpose as Phoenix may deem fit.

(b) To revoke the settlement granted by Phoenix under Paragraph 6 above and take steps (including legal proceedings) to recover the Entire Outstanding along with the accrued interest thereon from the Company and/or the Guarantors or any of them (under the Personal Guarantees);

(c) To enforce the Security Interests, whether in the exercise of Phoenix's powers under the SARFAESI Act or otherwise through the ordinary judicial process; and

(d) Initiate proceedings (civil or criminal) including proceedings under Section 138 of the Negotiable Instruments Act, 1882 (in the event of dishonour of the PDCs).

13. It is clear from the above Clause that the 1st respondent, in the event of default by the petitioner, has every right to revoke the settlement granted by the 1st respondent and also to enforce the security interests under the SARFAESI Act. It is no doubt that the petitioner has filed S.A.No.328 of 2014, which is pending before DRT, Madurai, and even that was filed only after the orders in Company Application No.381 of 2012 in Company Petition No.207 of 2003.

14. The learned counsel appearing for the respondents, brought to the knowledge of this Court that the above S.A.No.328 of 2014 finally came to be dismissed by DRT, Madurai, by its order dated 07.11.2014, holding that the petitioner herein, being the share holder, is not an aggrieved person under Section 17 of the SARFAESI Act and he has no locus standi to file the SARFAESI Application and it is not maintainable. As against the said order, the petitioner has filed an appeal before DRAT, Chennai, in RA.SA.No.151 of 2014, which also came to be dismissed by DRAT by its order dated 19.07.2017.

15. The petitioner has also filed Writ Petitions in W.P.No.1270 of 2018 to cancel the certificate of registration granted to the 1st respondent herein and consequently, blacklist the 1st respondent and W.P.No.1271 of 2018 to quash the deed of assignment dated 30.12.2010 registered as Document No.714 of 2012. This Court, by order dated 22.01.2018, dismissed both the Writ Petitions.

16. On a careful perusal of the order passed by this Court in W.P.Nos.1270 and 1271 of 2018, pleadings and submission made by the learned counsel for the petitioner in the present W.P.No.29113 of 2014 and the Securitisation Application filed by the petitioner in S.A.No.328 of 2014, which was dismissed by DRT, Madurai, by its order dated 07.11.2014 and later on, confirmed by DRAT, Chennai, by its order dated 19.07.2017, this Court affirms the order passed by the Appellate Tribunal, as the

present Writ Petition challenging the letter dated 24.02.2012 cannot be maintained at all.

17. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

raja

To

1. The Manager
   Indian Overseas Bank
   Salem Main Branch,
   No.6/671, Car Street,
   Salem - 636 001.

2. The Official Liquidator,
   High Court, Madras,

3. The Regional Director
   Reserve Bank of India,
   Fort Glacis, No.16, Rajaji Salai,
   Chennai - 600 001.

+2ccs to M/s.Ramalingam & Associates, Advocate, S.R.No.3708

W.P.No.29113 of 2014
and
M.P.No.1 of 2014

VBA(CO)

RRS(25/04/2019)