IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.12.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALTHA

WP.No.33677 of 2019

1.Sri.P.S.Sivaperumal
2.Mrs.Periyaperatti .. Petitioners

Vs

1. Authorized Officer,
UCO Bank,
No.67, Mid Corporate Branch,
Burkit Road (Ground Floor)
T.Nagar, Chennai 600 017.

2. Shri.P.Nachiappan .. Respondents

PRAYER:-

Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorarified Mandamus calling for the records in I.A.No.208 of 2019 in AIR No.5 of 2019 on the file of the Debts Recovery Appellate Tribunal, Chennai and quash the order dated 25.03.2019 and permitting the petitioners to deposit a sum of Rs.10 crores in two instalments; and thereby direct the Debts Recovery Appellate Tribunal, Chennai to take the appeal on file and adjudicate the matter on merits without insisting on pre-deposit of any sum.

For Petitioner : Mr.S.R.Rajagopal
for Mr.Antony L.X.Selvam

For Respondents: Mr.Sundharer for R1
Mr.R.Thiyagarajan for R2

ORDER

[Order of the Court was made by M.SATHYANARAYANAN,J.,]

The Companies / Firms namely, M/s.Rathna Stores Private Limited, M/s.Rathna Stores (Firm) and M/s.Rathna Stores (Proprietorship) had approached the respondent Bank for availing loan/credit facilities and subsequently all their accounts became Non-Performing Assets. Since M/s.Rathna Stores Private Limited, M/s.Rathna Stores (Firm) defaulted in payment of dues, the respondent Bank had initiated proceedings by filing an Original Application under Section 19 of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 (hereinafter referred in short as 'RDDBFI Act') in O.A.No.649 of 2015 and the Recovery Certificate was issued against M/s.Rathna Store Private Limited for a sum of Rs.30,64,81,519.98.

2. After adjusting a sum of Rs.26 Crores, a direction that they have jointly and severally liable to pay principal with simple interest at the rate of 7.5% per annum from the date of Original Application till the date of realization and recovery certificate, was also issued by Debts Recovery Tribunal-2 vide order dated 14.09.2017. Accordingly the Debt Recovery Tribunal issued the Debt Recovery Certificate in DRC.No.73/2019 on 27.02.2019 for a sum of Rs.7,66,13,764.29. In O.A.No.380 of 2018, filed by the respondent Bank by invoking Section 19 of the RDDBFI Act against the M/s.Rathna Stores (firm), the Debt Recovery Tribunal at Chennai-II, vide order dated 23.10.2017 has passed an order for recovering a sum of Rs.18,38,36,049.06/- together with simple interest at the rate of 9% from the date of filing of original Application till the date of realization and also directed the issuance of the Recovery Certificate. To that effect, the Recovery Certificate in DRC NO.7 of 2018 dated 04.01.2018 was issued for a sum of Rs.21,10,12,456.98/-. It is to be noted at this juncture that the immovable properties at Chennai as well as in Kodaikanal were given as security in respect of the loan availed by M/s.Rathna Stores Private Limited, M/s.Rathna Stores (Firm), M/s.Rathna Stores (Proprietorship).

3. The respondent Bank choses to invoke the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act') and after issuing notice under Section 13 (2) and 13(4) of the Act, had issued e-auction sale notice under SARFAESI Act on 15.10.2018 and the said notice is available at page no.46 of the typed set of documents filed in support of this Writ Petition and as per the contents of the said notice, the amount outstanding in respect of M/s.Rathna Stores Private Limited was Rs.32,32,35,133.27; in respect of M/s.Rathna Stores (Firm), an amount was Rs.16,75,50,314.01 and in respect of M/s.Rathna Stores (Proprietorship), it was Rs.61,26,046.74 as on 19.04.2015. Challenging the legality of the impugned Sale Notice dated 15.10.2018 (wrongly stated as 16.10.2018), the guarantor namely Mr.P.S.Sivaperumal and Mrs.Periyaperatti had filed SARFAESI Application No.287 of 2018 before the Debt Recovery Tribunal -II by invoking Section 17 of the SARFAESI Act and pending disposal of the same prayed for stay of all further

proceedings in pursuant to the said notice.

4. The respondent Bank had entered appearance and filed their counter affidavit and it is relevant to extract the following paragraph of the counter:

> ''XVI: It is further submitted that in the impugned Sale Notice dated 15.10.2018, the respondent bank has mentioned that a sum of Rs.32,32,35,133.27 is due as on 20.04.2015 together with interst for the credit facilities availed by M/s.Rathna Stores (P) Ltd., and a sum of Rs.15,75,50,314.01 is due and payable as on 20.04.2015 by M/s.Rathna Stores (Firm) and a sum of Rs.61,26,046.74 as on 20.04.2015 together with interest by M/s.Rathna Stores (Proprietorship) less subsequent payments. The repayments have been made towards the group accounts and the same was apportioned as requested by the borrowers. Hence the requirement under Rule 8(6)(b) has been complied with by mentioning the fact that total amount due is less the subsequent payments. Only by way of abundant caution, a corrigendum to the sale notice dated was published on 27.10.2018 stating that total amount outstanding as on 14.10.2018 was published. In the corrigendum notice dated 27.10.2018, it is clearly mentioned that a sum of Rs.32,64,19,189.44 as on 14.10.2018 together with interest fro the credit facilities availed by M/s.Rathna Stores(P) Ltd., and a sum of Rs.1,05,82,662.81 is due and payable as on 14.10.2018 by M/s.Rathna Stores (Firm) and a sum of Rs.5,32,929.83 as on 14.10.2018 together with interest by M/s.Rathna Stores (Proprietorship) and totally a sum of Rs.33,75,34,782.08/- (Rupees Thirty Three Crores Seventy Five Lacs Thirty Four Thousand Seven Hundred and Eighty Two and Paise Eight only) is due and payable by the borrowers/guarantors after adjustment of all repayments on various dates & exclusive of all other legal expenses / costs /other expenses, etc. Even in the sale notice it is clearly mentioned the amount of due as on 20.04.2015 less subsequent payments. The Corrigendum notice dated 27.10.2018 is more specific in the sense that amount due as on 14.10.2018 has been mentioned.''

5. The Debt Recovery Tribunal, vide order dated 03.12.2018 in S.A.No.287 of 2018, in and by which, a chance was afforded to the applicant to get back the property for their livelihood by paying the entire bid amount with simple interest at the rate of 7.5% from the date of e-auction till the date of payment and the auction purchaser is entitled to get back the deposited amount from the respondent Bank with simple interest @ 7.5% for the deposited amount and the applicants were further directed to pay

the entire bid amount of Rs.8,71,00,000/- for the Kodaikanal Property (item no.2 of Sale Notice) with simple interest @ 7.5% from the date of e-auction on or before 31.12.2018, failing which, the respondent Bank is at liberty to confirm the sale in favour of the auction purchaser Mr.P.Nachiappan for whom, Mr.R.Thiyagarajan, learned counsel is appearing.

6. Challenging the same, the applicants / guarantors invoked the appeal remedy before the Debt Recovery Appellate Tribunal and after entertainment of the appeal, a conditional order dated 25.03.2019 was passed and the said order was not complied with and therefore the said SARFAESI appeal came to be dismissed on 22.05.2019 and challenging the legality of the same, W.P.No.32814 of 2019 was filed and it was entertained and pending disposal of the same, an order of Status Quo was granted and the auction purchaser Mr.P.Nachiappan was also suo motu impleaded. The present Writ Petition is preferred against the order dated 23.04.2019 which pertains to pre-deposit.

7. Mr.S.R.Rajagopal, learned counsel appearing for the petitioners would submit that as per the Debt Recovery Certificate dated 27.02.2019 in respect of M/s.Rathna Stores Private Limited, the total sum payable was Rs.7,66,13,764.29/- as on that date and in respect of M/s.Rathna Stores (Firm) is concerned, as per the e-auction sale notice dated 15.10.2018, the amount quantified was Rs.16,75,50,314.01 as on 19.04.2015, however, as per the notice published in the Corrigendum of Indian Express dated 27.10.2018, the amount due in respect of M/s.Rathna Stores (Firm) was Rs.1,05,82,662.81 and the Tribunal, in all fairness, ought to have directed the writ petitioners/ guarantors to make the payment of 25% of the said sum.

8. Per contra, Mr.Sundharar, learned counsel appearing for the 1st respondent would submit that as far as apportionment is concerned, even in the counter affidavit filed before the Tribunal, as per the request made by the Principal borrower, a sum of Rs.26,00,00,000/- paid was apportioned between three accounts and would further add that with great difficulty, M/s.Rathna Stores property was sold in favour of auction purchaser and still crores and crores of bid money is due from the Firm as well as from the Guarantors. The Tribunal, in the facts and circumstances of the case, has rightly exercise it's jurisdiction and passed the impugned order and hence prays for dismissal of this Writ Petition.

9. Mr.R.Thiyagarajan, learned counsel appearing for the 2nd respondent would submit that he was a successful bidder in respect of Kodaikanal Property for a sum of Rs.8,71,00,000/- and the sale certificate was executed on 03.01.2019 and registered on 11.04.2019 and on account of the subsistence of interim order

in W.P.No.32814 of 2019, he is unable to get possession and prays for listing and disposal of W.P.No.32814 of 2019.

10. This Court has carefully considered the rival submissions and also perused the materials placed before it.

11. It is an admitted fact that in respect of M/s.Rathna Stores Private Limited, as per the Recovery Certificate dated 27.02.2019, the amount was quantified at Rs.7,66,13,764.29 and insofar as M/s.Rathna Stores (Firm) is concerned, as per the notice published in the Corrigendum of Indian Express dated 27.10.2018, the amount due in respect of the Firm was Rs.1,05,82,662.81. The Tribunal, while disposing the impugned order, has taken into consideration the calculation given in paragraph no.7 of the counter affidavit filed by the respondent in AIR.No.5 of 2019 dated March 2019 and therefore directed the appellants to make pre-deposit of Rs.10 crores to the Registrar, Tribunal at two instalments, out of which 1st instalment of Rs.5 crores is to be deposited within a period of four weeks and 2nd instalments of Rs.5 crores to be paid within a period of four weeks thereafter.

12. In the light of the above facts and circumstances, the impugned order passed by the Tribunal is modified as follows:

The writ petitioners/ Original Applicants/guarantors are directed to pay 25% of Rs.7,66,13,764.29., in respect of M/s.Rathna Stores Private Limited and 50% of Rs.1,05,82,662.81 in respect of M/s.Rathna Stores (Firm) to the credit of AIR.No.5 of 2019 on the file of Debt Recovery Appellate Tribunal at Chennai within a period of three weeks from the date of receipt of a copy of this order, failing which the impugned order would stand automatically revived and it is also made clear that the observations / findings made herein are only for the purpose of disposal of this Writ Petition and this Court has not ventured into the merits of the claim projected by the petitioners in the Original Application to be numbered.

13. The Writ petition is disposed of with the above directions. No costs. Consequently connected miscellaneous petitions are closed.

Call on 06.01.2020 ''For Reporting Compliance''.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sk

To

1. The Debts Recovery Appellate Tribunal-II,
   Chennai.

2. Authorized Officer,
   UCO Bank, No.67, Mid Corporate Branch,
   Burkit Road (Ground Floor)
   T.Nagar, Chennai 600 017.

Copy To
The Section Officer,
Writ Section, High Court,
Madras-104

(To post the case for reporting compliance
on 06.01.2020)

+1cc to Mr.V.Sudhakar, Advocate, S.R.No.101130
+1cc to Mr.Antony L.X.Selvam, Advocate, S.R.No.100497

WP.No.33677 of 2019

VGI(CO)
CS/09/12/2019