IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2019

CORAM

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

W.P.No.34186 of 2019

Sri Nataraja Modern Rice Mill
Rep. by its Partner Sri T.Gunasekaran
No.23, Gandhi Road
Kallakurichi 606 202
Villupuram District .. Petitioner

-vs-

1. Debts Recovery Appellate Tribunal
4th Floor, Indian Bank Circle Office
55, Ethiraj Salai
Chennai 600 008

2. Debts Recovery Tribunal -1
Spencer Tower
770-A, Anna Salai
Chennai 600 002

3. Indian Bank
Rep. by its Authorised Officer
Kallakurichi Branch
Kallakurichi .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records of the first respondent in respect of the order passed in AIR No.348 of 2019 dated 28.11.2019 and quash the same.

For Petitioner :: Mr.M.D.Thirunavukkarasu

For Respondents :: Mr.M.Praveenkumar for
Mr.P.V.Murlidhar for R3

ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J.)

The petitioner had availed credit facilities from the third respondent Bank to the tune of Rs.530.89 lakhs as OCC, MTL I, II, III, FITL I, FITL II and on account of the non-payment/non-settling of debts, the said accounts were classified as 'Non Performing Asset' (NPA) on 31.10.2018 and a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Security Interest Act, 2002 (for short, "the SARFAESI Act") was issued on 5.11.2018. According to the third respondent Bank, within sixty days time frame/window granted to the petitioner, he did not take any steps to regularise the accounts and accordingly, possession notice was issued under Section 13(4) of the SARFAESI Act on 19.1.2019. The petitioner filed SARFAESI Appeal in S.A.No.75 of 2019 on the file of the Debts Recovery Tribunal-I at Chennai, challenging the legality of the said notice, in which the third respondent Bank has filed a counter affidavit. The petitioner also filed S.A.No.176 of 2019 against the sale notice dated 6.3.2019, which was published on 8.3.2019, with a delay of 17 days in filing the application.

2. S.A.No.75 of 2019 filed by the petitioner, challenging the possession notice dated 19.1.2019, came to be dismissed vide order dated 26.6.2019 by the Debts Recovery Tribunal-I, Chennai and the said Tribunal had also dismissed S.A.No.176 of 2019 vide order dated 24.9.2019, which was preferred against the sale notice. The petitioner, aggrieved by the dismissal of S.A.No.176 of 2019, filed A.I.R.No.348 of 2019 before the Debts Recovery Appellate Tribunal, Chennai and filed I.A.No.995 of 2019 praying for complete waiver of the mandatory deposit of 50% of the outstanding dues to the respondent Bank and also filed yet another interlocutory application for stay of the proceedings. The Debts Recovery Appellate Tribunal vide proceedings dated 28.11.2019, had taken note of the relevant statutory provisions and directed the petitioner/appellant therein to make the pre-deposit of Rs.1.20 crores with the Registrar of the Tribunal in two installments, out of which the first installment of Rs.60 lakhs, has to be deposited within a period of four weeks from the date of the order and the second installment of Rs.60 lakhs, has to be deposited in next four weeks thereafter with the default clause and challenging the legality of the said order dated 28.11.2019, the present writ petition is filed.

3. The learned counsel for the petitioner would submit that during the pendency of the S.A.No.176 of 2019, a conditional order of status quo was granted and accordingly, the petitioner has deposited a sum of Rs.64 lakhs in compliance of the same and it was also further directed to deposit another sum of Rs.50 lakhs, towards which, the petitioner had paid a sum of Rs.14 lakhs, aggregating to a sum of Rs.78 lakhs, despite great difficulty and financial hardship, and therefore, the impugned conditional order passed by the Tribunal, requires some modification.

4. The Court heard the submissions of the learned counsel for the third respondent Bank also stating that since the petitioner did not comply with the order, steps have already been taken to take possession of the secured assets by invoking Section 14 of the SARFAESI Act.

5. Section 18 of the SARFAESI Act deals with an appeal to the Appellate Tribunal and as per the second proviso, no appeal shall be entertained unless the borrower has deposited to the Appellate Tribunal 50% of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less and as per the third proviso also, that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than 25% of debt referred to in the second proviso. In the light of the submissions made in paragraph-5 of the affidavit filed in support of the writ petition as well as paragraph-5 of the interlocutory application filed for waiver of pre-deposit and other facts and circumstances, this Court modifies the impugned order of the Debts Recovery Appellate Tribunal, as follows:-

> "The petitioner is directed to deposit a sum of Rs.25 lakhs to the credit of the A.I.R.(SA) No.348 of 2019 on the file of the Debts Recovery Appellate Tribunal within a period of three weeks from the date of receipt of a copy of this order and another sum of Rs.25 lakhs within three weeks thereafter and a further sum of Rs.25 lakhs within three weeks thereafter (Rs.75 lakhs totally in nine weeks time) and on compliance of the said conditions, the Debts Recovery Appellate Tribunal may entertain the appeal and give a disposal. It is also made clear that if the petitioner/appellant before the Appellate Tribunal fails to comply with any one of the above stipulated

conditions, the appeal stands dismissed and the order passed by the Tribunal vide impugned order would stand restored."

6. The writ petition stands disposed of, accordingly. Consequently, W.M.P.Nos.34816 & 34818 of 2019 are closed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ss
To
1. The Registrar
   Debts Recovery Appellate Tribunal
   4th Floor, Indian Bank Circle Office
   55, Ethiraj Salai
   Chennai 600 008

2. The Registrar
   Debts Recovery Tribunal -1
   Spencer Tower
   770-A, Anna Salai
   Chennai 600 002

3. The Authorised Officer
   Indian Bank
   Kallakurichi Branch
   Kallakurichi

+1cc to Mr.M.D.Thirunavukkarasu , Advocate SR.No. 102483
+1cc to Mr.P.V.Murlidhar , Advocate SR.No. 102817

W.P.No.34186 of 2019

A.SK(11/12/2019)