

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2019

CORAM :

The Hon'ble Mr.JUSTICE Dr.VINEET KOTHARI

AND

The Hon'ble Mr.JUSTICE C.SARAVANAN

W.P.Nos.34653 of 2018 and 23573 of 2019  
and WMP Nos.40186 and 40187 of 2018

W.P.No.34653 of 2018

Realty Associates,  
rep by its Partner,  
Mr.Chandraprakash Kishanlal,  
21, Dr.Muniyappa Road,  
Kilpauk,  
Chennai

.... Petitioner

-vs-

The Assistant General Manager & Authorised Officer,  
M/s Canara Bank,  
Asset Recovery Management Branch,  
2<sup>nd</sup> Floor, Circle Office Building,  
563/1, Anna Salai, Teynampet,  
Chennai - 600 018

... Respondent

W.P.No.23573 of 2019

The Assistant General Manager & Authorised Officer,  
M/s Canara Bank,  
Asset Recovery Management Branch,  
2<sup>nd</sup> Floor, Circle Office Building,  
563/1, Anna Salai, Teynampet,  
Chennai - 600 018

... Petitioner

vs

1. The Presiding Officer,  
DRT-I, Chennai,  
Deva Towers, 6<sup>th</sup> Floor,  
Anna Salai,  
Chennai - 600 002

2. M/s Esjaypee Impex Private Limited,  
Represented by its Director  
Mr.Mahendrakumar Parmar  
No.186, Govindappa Naicken Street,  
Chennai - 600 079 also at  
Old No.23, New No.2, Rajarathinam Street,  
Kilpauk, Chennai - 600 010

... Respondents

W.P.No.34653 of 2018 Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the letter dated 12.12.2018 passed by the respondent in Ref.No.ARM ESJAYPEE 438 2018 PS and to quash the same as illegal and without jurisdiction and to consequently direct the respondent to refund the sum of Rs.5,11,00,000/- (Rupees five crores and eleven lakhs only) paid by the petitioner as EMD together with interest thereon at 18% per annum.

(Prayer amended vide order dated 14.03.2019 made in WMP No.5938 of 2019 in WP No.34653 of 2018).

W.P.No.23573 of 2019:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the first respondent to dispose of S.A.No.139 of 2019 filed by the second respondent in an expeditious manner to secure the ends of justice.

In W.P.No.34653 of 2018

For Petitioner : Mr.P.S. Raman. SC  
for Mr.P. Krishnan

For Respondent : Mr.M.L. Ganesh

For impleading petitioner:Mr.Rahul Balaji

In W.P.No.23573 of 2019

For petitioner : Mr.M.L. Ganesh

R.1 : Tribunal

R.2 : Mr.V.R. Kamalanathan  
for G.Desingu

For impleading petitioner:Mr.Rahul Balaji

COMMON ORDER

(Order of the Court was made by Dr.VINEET KOTHARI,J.,)

After hearing the learned counsel on either side, both the writ petitions are disposed of by the Common Order.

2. W.P.No.W.P.No.23573 of 2019 has been filed by The Assistant General Manager & Authorised Officer, M/s Canara Bank. This Court on 16.09.2019 has passed the following Order and the same is quoted here for ready reference:

" This case is peculiar, in the sense that the lender Canara Bank has filed this Writ Petition despite the fact that the learned Chief Metropolitan Magistrate passed an order under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, "the Act") in its favour to handover the possession of the secured asset to the Canara Bank on 22.4.2019. But, since the borrower filed S.A.No.139 of 2019 against the order under Section 14 of the Act, which is pending before the Debts Recovery Tribunal-I, Chennai, the Canara Bank contends that the Debts Recovery Tribunal-I is dragging the matter from 27.5.2019 till date with the status quo order passed in the said S.A. filed by the borrower and thus, Bank is unable to proceed further for the recovery.

2. The bank has already sold the secured asset in question to the auction purchaser, namely Realty Associates. However, because of the status quo order granted by the learned Tribunal, the possession of the property could not be transferred to the auction purchaser, who is said to have paid Rs.5.11 Crores as against the auction price of Rs.20.44 Crores. This has given rise to the present petition, namely W.P.No.23573 of 2019, filed by

the lender/Canara Bank seeking a mandamus from this Court to direct the Debts Recovery Tribunal-I, Chennai, to pass final orders in S.A.No.139 of 2019 filed under Section 17 of the Act by the borrower, as expeditiously as possible.

3. The auction purchaser has also filed W.P.No.34653 of 2018 to quash the letter dated 12.12.2018 and for seeking the refund of Rs.5,11,00,000/- paid as EMD together with interest at 18%.

4. The auction purchaser (Writ Petitioner in W.P.No.34653 of 2018) by a letter dated 29.09.2018 had requested for time to pay the balance 75% of the remaining bid amount subject to outcome of the Criminal proceedings filed by the writ petitioner in W.P.No.23573 of 2019. The auction purchaser thereafter sent another request on 16.10.2018 seeking time to pay the remaining amount of Rs.14,33,00,000/- by 15.11.2018. Thereafter, the auction purchaser (Writ Petitioner in W.P.No.34653 of 2018) by an Email dated 05.12.2018 requested for grant of further extension of time for remitting the balance sale consideration in view of the status quo order granted to the writ petitioner (borrower).

5. By a reply dated 12.12.2018 the Canara Bank has informed to the auction purchaser (Writ Petitioner in W.P.No.34653 of 2018) that there was no such stay against the sale nor against the confirmation of sale and therefore expressed a doubt as to whether the auction purchaser (Writ Petitioner in W.P.No.34653 of 2018) indeed was serious in purchasing the property and whether extension of time and was asked with an eye on a future litigation.

6. We would not have interfered in the pending proceedings before the Debts Recovery Tribunal-I. However, it

seems from the proceedings of 27.5.2019, 28.5.2019, 17.6.2019 and 8.7.2019 in S.A.No.139 of 2019, which are produced before us, that the learned Tribunal has not only appointed one amicus curiae, Mr.Ravi, without notice to any party, but has unnecessarily prolonged the proceedings after ordering a status quo on 28.05.2019, even though the lender bank had filed the counter on the very first date.

7. The ground raised by the borrower in the aforesaid S.A.No.139 of 2019 mainly seems to be that the learned Chief Metropolitan Magistrate/District Magistrate passed the order under Section 14 of the Act, beyond the period of sixty days as prescribed under Section 14 of the Act, though the same was passed within the time allowed and in pursuance of the directions of the Division Bench in the order dated 18.3.2019. The said order was passed by the learned Chief Metropolitan Magistrate on 22.4.2019 directing the possession to be handed over to the bank/auction purchaser.

8. The Hon'ble Member, Mr.N.V.Badarinath, of the said Tribunal is said to be presiding over the said Bench.

9. In view of the peculiar facts of the case, we order as follows by these interim directions:

- i. The operation of the status quo order of Debts Recovery Tribunal - I, Chennai shall remain stayed.
- ii. The auction purchaser, M/s.Realty Associates, shall deposit the entire balance auction price of Rs.15.33 Crores within a period of four weeks from today with the lender/Canara Bank, as undertaken by the learned senior counsel Mr.P.S.Raman appearing for the auction purchaser, upon instructions from them as they are present in this Court. It is made clear

that no extension of time beyond 4 weeks shall be granted for this purpose;

- iii. The possession of the property in question shall be taken from the borrower and handed over to the auction purchaser on payment of the aforesaid balance amount of Rs.14,33,00,00/- by the auction purchaser. All the authorities of Bank and State, including the police officials, if police aid is needed, are directed to act in the aid of the implementation of this order;
- iv. The aforesaid directions and their implementation shall remain subject to the final orders to be passed by this Court in the present case;
- v. Irrespective of the aforesaid directions, the learned Debts Recovery Tribunal-I, Chennai is directed to pass final orders on the merits of S.A.No.139 of 2019 filed under Section 17 of the Act, after giving an opportunity to the parties concerned, within a period of four weeks from today and transmit a copy of the order to this court;
- vi. The parties may appear before the said Tribunal in the first instance on 26.9.2019. The copy of the final order to be passed by the learned Tribunal will be produced before this Court on the next date of hearing;
- vii. The possession of property and payment to be made as per this order will be without prejudice to the rights of the parties herein in the proceedings pending before the Debts Recovery Tribunal-I in S.A.No.139 of 2019 and without prejudice to the rights of the petitioner Canara Bank.

List the matter on 24.10.2019.

Again on 24.10.2019, the following Order is passed:

" Learned counsel for the Petitioner-Bank Mr.M.L. Ganesh submitted that possession of the property in question has been taken over with the police aid and handed over to the auction purchaser and the DRT has passed final order under Section 17 of the SARFAESI Act (S.A.No.139 of 2019 dated 14.10.2019), a copy of which has been placed on record.

2. The learned counsel Mr.G. Desingu appearing for Respondent No.2/Borrower pray for some time to argue the case on merits.

3. Though a remedy by way of Appeal to the DRAT is available to the Borrower against the said order dated 14.10.2019, passed by the learned DRT, let the matter be adjourned for two weeks.

Put up after two weeks."

3. Mr.P.S. Raman, learned Senior Counsel appearing on behalf of M/s Realty Associates, the petitioner in W.P.No.34653 of 2018 submits that the possession of the property in question has been taken over by the Bank with the police aid and handed over to the auction purchaser and therefore, the writ petition in W.P.No.34653 of 2018 filed by M/s Realty Associates is not required to be pressed on merits and he may be permitted to withdraw the same as the writ petition has become infructuous.

4. Mr.M.L. Ganesh, learned counsel appearing on behalf of the respondent bank submits that the possession has been handed over to the auction purchaser viz.,M/s Realty Associates. But, the tenants of the property as well the persons viz. Mr.Trishul Kumar and Mrs.Madhubala Parmar, represented by Mr.Raghul Balaji were not heard earlier in the matter and they have filed impleading petitions in WMP No.32270 and 32271 of 2019 before this Court.

5. Though the tenants of the said property and the impleading parties have filed Miscellaneous Petitions to implead themselves as necessary parties in WP No.34653 of 2018, since possession has already been handed over to the auction purchaser, viz.,M/s Realty Associates, nothing is required to be done in W.P.No.34653 of 2018 and the same is dismissed as having become infructuous. Consequently, impleading petitions in WMP No.32270 and 32271 of 2019 are also closed.

6. Coming to WP No.23573 of 2019, filed by Canara bank, Mr.V.R. Kamalanathan, learned counsel appearing for the borrower viz., M/s Esjaypee Impex Private Limited submits that Special Leave Petition was filed before the Hon'ble Supreme Court against the Order passed by this Court on 16.09.2019 and the matter is pending before the Hon'ble Supreme Court as the Hon'ble High Court vide Order dated 25.10.2019 has observed that "Learned Senior Counsel for the Petitioner seeks adjournment in order to assail the order passed in the other Writ Petition also since it is a composite order. List after two weeks when the needful is done."

7. The learned counsel appearing for the petitioner/bank submits that in pursuant to the direction of this Court on 16.09.2019, the Debts Recovery Tribunal has passed final Order in S.A.No.139 of 2019 on 14.10.2019 and remedy under Section 18 of the SARFAESI Act is available to the aggrieved party against the said Order of DRT for aggrieved parties, including the purported owner, who is the second petitioner Mrs.Madhubala Parmar, before the Debts Recovery Tribunal in S.A.No.139 of 2019 besides the borrower Company viz., M/s Esjaypee Impex Private Limited, of which, her husband Mr.Mahendra Kumar Parmar was the Managing Director.

8. Since these parties in the present case before us are seeking impleadment by way of filing applications in WMP Nos.32272 and 32275 of 2019, they can, now avail the alternative remedy by way of an Appeal before the Debts Recovery Appellate Tribunal against the order passed by DRT in disposing of S.A.No.139 of 2019 dated 14.10.2019 under Section 18 of SARFAESI Act, 2002.

9. Therefore, we dispose of W.P.No.23573 of 2019 with a liberty to the aggrieved parties to file appeal before the Debts Recovery Appellate Tribunal, Chennai against the Order passed in S.A.No.139 of 2019 dated 14.10.2019 within a period of four weeks from today and the Debts Recovery Appellate Tribunal shall dispose of the same on merits and in accordance with law, keeping in view the Division Bench Judgments of this Court in CRP (NPD) Nos.1492 of 2017 etc., batch dated 11.04.2019, (Sree Jeya Soundharam Textile Mills Pvt Ltd and Others vs Canara Bank and Others,) which has been followed by this Bench in the case of M/s.Ashok Wood Works and another v. Indian Overseas Bank (W.P.No.22981 of 2019 dated 30.9.2019), regarding the aspect of pre-deposit requirements.

10. With the above direction, W.P.No.23573 of 2019 is also disposed of. The impleading petitions in WMP Nos.32272 and 32275 of 2019 are also closed accordingly.

No costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sr

To

1. The Assistant General Manager & Authorised Officer,  
M/s Canara Bank,  
Asset Recovery Management Branch,  
2<sup>nd</sup> Floor, Circle Office Building,  
563/1, Anna Salai, Teynampet,  
Chennai - 600 018.

2. The Presiding Officer,  
DRT-I, Chennai,  
Deva Towers, 6<sup>th</sup> Floor,  
Anna Salai,  
Chennai - 600 002.

+2cc to M/s.M.L.Ganesh, Advocate Sr.94219 & 94220

+2cc to M/s.G.Desingu, Advocate Sr.93627

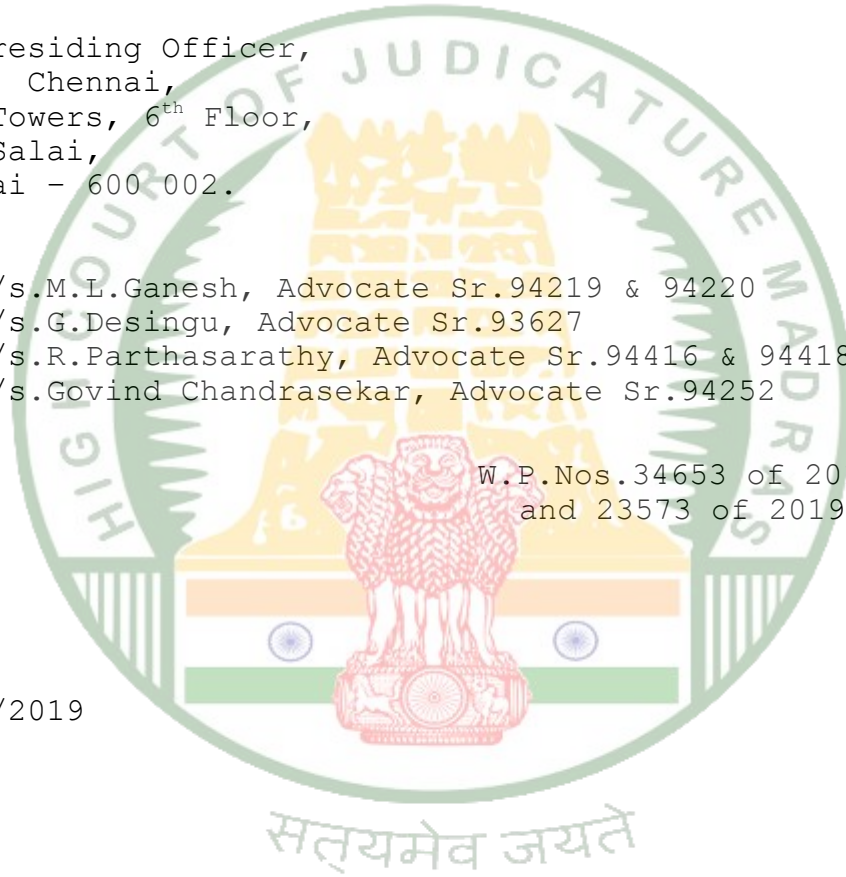
+2cc to M/s.R.Parthasarathy, Advocate Sr.94416 & 94418

+1cc to M/s.Govind Chandrasekar, Advocate Sr.94252

W.P.Nos.34653 of 2018  
and 23573 of 2019

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