

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.02.2020	Pronounced on 20.02.2020
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CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HON'BLE MRS. JUSTICE R.HEMALATHA

WP.No.2881/2019 & WMP.No.3138/2019

M/s.Navashila Agro Private Limited
809, Parekh Market,
29, JSS Road, Near Kennedy Bridge
Opera House, Mumbai 400 008.
rep.by its Director

..
Petitioner

vs.

1.The Debts Recovery Appellate Tribunal
4th Floor – Indian Bank Circle Office
No.55, Ethiraj Salai, Egmore,
Chennai 600 008.

2,Priya Tea Industries
rep.by its Managing Partner
A.Chandran [Decd], Robroy Estate
Konavakorai Road, Kothagiri 643 217.

3.Mrs.Kali Chandran
Partner, Priya Tea Industries,
Robroy Estate, Konaakorai Road
Kothagiri 643 217.

4.Indian Bank
rep.by its Authorised Officer
359, Dr.Nanjappa Road
Coimbatore 641 018.

5.Indian Bank,
rep.by its Manager,
Conoor Branch
The Nilgiris.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the 1st respondent which culminated in the impugned order dated 03.10.2018 in RA [SA] No.163/2017 insofar as the direction in paragraph 13 of the order is concerned and to quash the same.

For Petitioner : Mr.A.K.Sriram
For RR2&3 : Mr.K.S.Sundar
For RR4&5 : Mr.R.Ramesh for RRK Associates
R1 : Tribunal

O R D E R

M.SATHYANARAYANAN, J.

- (1) The 3rd respondent in RA[SA] No.163 of 2017 on the file of the Debts Recovery Appellate Tribunal, at Chennai / the 1st respondent herein, is the writ petitioner herein. The petitioner / auction purchaser, aggrieved by the disposal of the said appeal with certain directions, vide impugned order dated 03.10.2018 passed by the 1st respondent herein, had filed the present writ petition.
- (2) The 2nd respondent herein, viz., Priya Tea Industries, had availed financial assistance/credit facilities in the form of OCC Limit for a sum of Rs.25 Lakhs, Additional Medium Term Loan-I for a sum of Rs.21 Lakhs and the Additional Medium Term Loan-II for a sum of Rs.14 Lakhs, in all, aggregating to a sum of Rs.60 Lakhs from the 5th respondent / Bank.
- (3) The Managing Partner of the 2nd respondent, viz., Mr.A.Chandran, had created equitable mortgage in respect of the land and building admeasuring to an extent of 2 Acres situate at RS.No.1310, 1379/1 to 3 [Part] of Kothagiri Village, Nilgiris District and also the land admeasuring to an extent of 6 cents along with the superstructure, bearing No.27/94A, Kothagiri Village, Nilgiris District.
- (4) According to the 5th respondent / Bank, the 2nd respondent herein had committed default in repayment of the dues and therefore, the Account has been classified as 'Non Performing Assets' [NPA] on 30.09.2005. The 5th respondent / Bank had initiated proceedings under the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in short 'SARFAESI Act'] by issuing a Demand Notice under Section 13[2] of the SARFAESI Act on 28.10.2005 and the respondents 2 and 3 herein had failed to

comply with the terms of the said Notice and therefore, the 4th respondent / Bank had issued Possession Notice under Section 13 [4] of the SARFAESI Act on 05.05.2006 and the symbolic possession of the secured assets was also taken.

- (5) The 2nd respondent herein filed WP.No.16355 of 2006 challenging the Possession Notice dated 05.05.2006 and it was entertained and initially an interim order was granted. The said writ petition was dismissed subsequently and the 4th respondent / Bank had taken physical possession of the secured assets on 26.10.2007. The secured assets were brought for sale on 27.12.2007 and it was preceded by a Sale Notice dated 19.11.2007.
- (6) The borrowers / respondents 2 and 3 herein, made a challenge to the said proceedings by filing Sponsoring Authority.No.142 of 2007 on the file of the Debts Recovery Tribunal, at Coimbatore and pending disposal of the appeal, filed IA.No.2605 of 2007 praying for the stay of the sale. A conditional interim order was passed and the borrowers/respondents 2 and 3 did not comply with the said order and therefore, the sale of the secured assets was conducted on 27.12.2007 and for want of bidders, the sale did not fructify.
- (7) The 4th respondent / Bank once again brought the secured assets for sale on 02.02.2008 and challenging the same, the 2nd respondent herein filed WP.No.3800 of 2008 and it was entertained and an interim order was passed by directing the Bank not to confirm the sale. The said writ petition was dismissed on 05.03.2008 and challenging the same, the 2nd respondent herein filed WA.No.476 of 2008 and it was also dismissed on 17.04.2008 by granting liberty to the 2nd respondent herein to avail the appellate remedy under section 17 of the SARFAESI Act. The 2nd respondent has filed an appeal in SA.No.100 of 2008 on the file of the Debts Recovery Tribunal at Coimbatore.
- (8) The petitioner herein had participated in the auction sale and was declared as the successful bidder and upon the receipt of the entire sale consideration of a sum of Rs.31.33 Lakhs, Sale Certificates were also issued in the favour of the petitioner on 03.06.2008 and respondents 2 and 3 were also informed about the sale of the secured assets in favour of the petitioner herein / auction purchaser.

- (9) Respondents 2 and 3 filed SA.No.121 of 2008 before the Debts Recovery Tribunal at Coimbatore challenging the Sale Certificates dated 03.06.2008 issued in favour of the petitioner herein / auction purchaser and all appeals were taken up together and were dismissed vide common order dated 27.07.2011. Respondents 2 and 3, aggrieved by the said common order, filed RA [SA] No.163 of 2017 before the Debts Recovery Appellate Tribunal at Chennai, / the 1st respondent herein.
- (10) The Tribunal, vide the impugned order dated 03.10.2018, though confirmed the sale and the Sale Certificate as already confirmed by the Debts Recovery Tribunal, Coimbatore, had also taken into consideration the fact situation and the totality of the facts and circumstances, had directed the appellants therein / respondents 2 and 3 herein to compensate the writ petitioner herein / auction purchaser of Rs.31.33 Lakhs along with simple interest at the rate of 9% per annum along with the Registry expenses within thirty days from the date of receipt of a copy of the said order and in the event of compliance, the sale and Sale Certificate will be deemed to be set aside. The 1st respondent / Tribunal had disposed of the said appeal accordingly and aggrieved by the said order, this writ petition is filed by the auction purchaser.
- (11) Mr.A.K.Sriram, learned counsel for the petitioner / auction purchaser has drawn the attention of this Court to the contents of the impugned order passed by the 1st respondent / Tribunal and would submit that though the Tribunal, on an analysis of the facts, thought fit to confirm the sale and Sale Certificate issued in favour of the writ petitioner / auction purchaser, as already confirmed by the Debts Recovery Tribunal at Coimbatore, had traversed beyond the scope of the appeal and purely on equitable grounds, had permitted the respondents 2 and 3 herein to compensate the petitioner herein by paying a sum of Rs.31.33 Lakhs along with simple interest @ 9% p.a., within the stipulated time frame and in the event of compliance, also ordered setting aside of the sale and Sale Certificate and the said course adopted by the 1st respondent / Tribunal, is per se unsustainable in law.
- (12) The learned counsel for the petitioner has invited the attention of this Court to Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, [in short 'RDDB Act'] especially sub-section [25] and would submit that DRAT at Chennai / 1st respondent herein, purported to have exercised the powers under Section 19[25] of the RDDB Act and invited the attention of this Court to the judgment rendered by the Hon;ble Supreme Court of India reported in 2013 [15] SCC

341 [Standard Chartered Bank V. Dharminder Bhoi and Others] and would submit that in paragraph No.33 of the said judgment, the Hon'ble Apex Court has considered the scope and purport of the said provision and observed that ''the aforesaid provision makes it quite clear that the Tribunal has been given power under the Statute to pass such other orders and give such directions to give effect to its order or to prevent abuse of its process or to secure ends of justice. Thus, the Tribunal is required to function within the statutory parameters. The Tribunal does not have any inherent powers and it is limpid that Section 19[25] confers limited powers.''

(13) In sum and substance, it is the submission of the learned counsel for the petitioner that DRAT at Chennai, the 1st respondent herein, in major portion of the impugned order, had held against respondents 2 and 3 ; but however, in the concluding paragraph, on equitable grounds, had permitted respondents 2 and 3 herein to pay back the sale consideration paid by the writ petitioner / auction purchaser with interest forgetting the fact that the sale had taken place during the year 2008 and the Sale Certificate was also issued in their favour on 03.06.2008 and after a lapse of nearly 10 years, it is set at knot and prays for setting aside the impugned order.

(14) Mr. R. Ramesh, learned Standing counsel appearing for respondents 4 and 5 / Bank has drawn the attention of this Court to the counter affidavit filed by respondents 4 and 5 and would submit that admittedly, the sale has been confirmed in favour of the writ petitioner / auction purchaser and in terms of Section 13[8] of the SARFAESI Act, the respondents 2 and 3 had lost the right of redemption and in the light of the fact that the Sale Certificate was issued in favour of the writ petitioner herein on 03.06.2008 and in the absence of deposit of the entire sale consideration by them prior to the confirmation of the sale, they are not entitled to any indulgence / relief and the impugned order passed by the 1st respondent / Tribunal, with certain directions runs contrary to the said statutory provisions and hence, prays for interference.

(15) Mr. K. S. Sundar, learned counsel appearing for the respondents 2 and 3 would submit that the 1st respondent / Tribunal, in paragraph No.13 of the impugned order, had also taken into consideration of the fact that the house property has already been auctioned and that the tea factory is going to be lost, thought fit to grant a liberty to respondents 2 and 3 to pay back the sale consideration along with the interest and accordingly, the 3rd respondent also sent a communication dated 24.10.2018 to the petitioner herein / auction purchaser

enclosing a cheque dated 24.10.2018 for a sum of Rs.62,13,200/- and since the sale consideration has been repaid to the writ petitioner along with the simple interest @ 9% per annum from the date of sale on 18.02.2008 to the date of the impugned order dated 03.10.2018, the writ petitioner is not at all prejudiced and he would further add that the 1st respondent / Tribunal has exercised its jurisdiction within four corners of Section 19[25] of the RDDB Act and since discretion has been exercised properly, in the facts and circumstances of the case, this Court may not interfere with the same.

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

(17) A perusal and consideration of the contents of the impugned order dated 03.10.2018 would disclose the following facts:-

- ➔ The Accounts of the borrowers / respondents 2 and 3 was classified as 'Non Performing Assets' on 30.09.2005.
- ➔ Section 13[2] Notice of the SARFAESI Act dated 28.10.2005 was issued for recovery of a sum of Rs.70,02,002/-.
- ➔ Challenge made to the auction proceedings in the form of appeals, came to be dismissed.
- ➔ The sale of the secured assets took place on 02.02.2008 and the writ petitioner / auction purchaser became the successful bidder and the petitioner was issued with the Sale Certificate dated 03.06.2008.
- ➔ The SARFAESI Appeal in SA.No.121 of 2008, challenging the issuance of the Sale Certificate along with two other appeals filed by the borrowers in SA.Nos.100 and 121 of 2008 were dismissed vide common order dated 27.07.2011.

(18) It is relevant to extract Section 13[8] of the SARFAESI Act:-

''13[8] If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.''

(19) Admittedly, the borrowers/respondents 2 and 3 did not comply with Section 13[8] of the SARFAESI Act, before confirmation of the sale.

- (20) The DRAT at Chennai, the 1st respondent herein, in paragraph No.9, has rejected the plea of respondents 2 and 3 herein / borrowers, as to the sale of agricultural lands under Section 31[i] of the SARFAESI Act. In paragraph No.10 of the order, the DRAT had noted that even after ten years of purchase, the writ petitioner / auction purchaser is yet to get possession and further recorded the finding that the appellants/borrowers/respondents 2 and 3, have no right of redemption because on or before sale confirmation, the sale amount have not been deposited. In paragraph No.12, the Tribunal / 1st respondent herein has rejected as to the lower value of the property.
- (21) In paragraph No.13, the Tribunal / 1st respondent herein had confirmed the sale and Sale Certificate which was already confirmed by the Debts Recovery Tribunal at Coimbatore, while dismissing the appeal in SA.No.121 of 2008. However, curiously DRAT/1st respondent herein, appears to have exercised equitable jurisdiction may be under Section 19[25] of the RDDB Act.
- (22) The Hon'ble Supreme Court of India, in the decision reported in 2013 [15] SCC 341 [cited supra], in paragraph NO.33, had considered the scope and ambit of Section 19[25] of the RDDB Act and held that the Tribunal is required to function within the statutory parameters and it does not have any inherent powers and it is limpid that Section 19[25] confers limited powers.
- (23) Almost, in all auction proceedings, pertain to initiation of measures under the SARFAESI Act, the borrowers / guarantors are bound to lose the secured assets. The DRAT at Chennai, / 1st respondent herein, had swayed by the fact situation as to the losing of the secured assets by the borrowers / respondents 2 and 3 herein and accordingly, passed the impugned order with certain directions.
- (24) In paragraph No.34 of the very same judgment, the Hon'ble Apex Court has taken note of the decision reported in AIR 1963 SC 217 [Upper Doab Sugar Mills Ltd. V. Shahdara [Delhi] Saharanpur Light Railway Co.Ltd] wherein, it has been held that when the Tribunal has not been conferred with the jurisdiction to direct for refund, it cannot do so.
- (25) In the light of the fact that exercise of power or jurisdiction under Section 19[25] of the RDDB Act on the part of the Tribunal is very limited coupled with the factual circumstances narrated above, this Court is of the considered view that the direction issued by the DRAT, Chennai, / 1st respondent herein in paragraph No.13 of the impugned order, warrants interference, especially, in the light of the

statutory provision under Section 19[25] that once the sale is confirmed, the right of redemption is lost. It is also to be noted at this juncture that except paragraph No.13, the 1st respondent herein / DRAT, had concurred with the findings of the Debts Recovery Tribunal, at Coimbatore, rendered in SA.No.121 of 2008.

(26)The directions given in paragraph No.13 of the impugned order dated 03.10.2018 in SA.No.163 of 2017, is an error apparent on the fact of the record and the DRAT at Chennai, / 1st respondent herein lacks such power in issuing the said directions.

(27)In the result, the writ petition is ALLOWED and the impugned order dated 03.10.2018 made in SA.No.163 of 2017 is set aside and the order dated 27.07.2011 made in SA.No.121 of 2008 on the file of the Debts Recovery Tribunal at Coimbatore is confirmed. No costs.

(28)In the light of allowing of the writ petition, respondents 4 and 5/Bank are directed to take immediate and appropriate steps in accordance with law to get the actual possession of the assets sold in favour of the writ petitioner herein / auction purchaser and hand over the same to them as expeditiously as possible. Consequently, the connected miscellaneous petition stands closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

AP

To

1.The Debts Recovery Appellate Tribunal

4th Floor - Indian Bank Circle

No.55, Ethiraj Salai, Egmore,

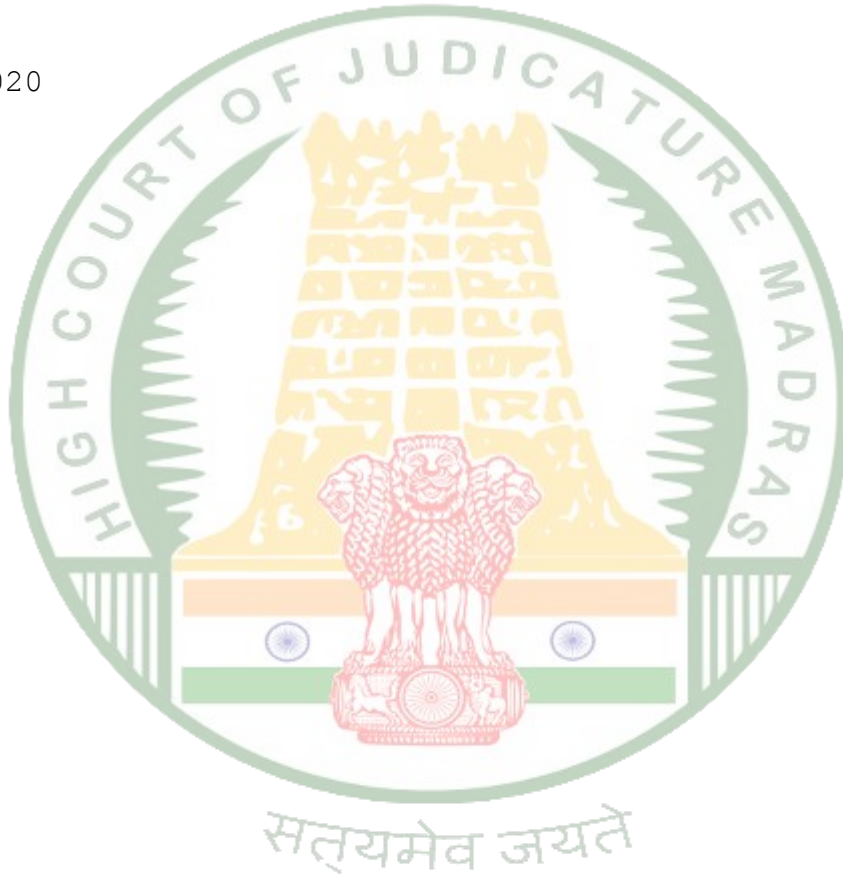
Chennai 600 008.

2.The Debts Recovery Tribunal
Coimbatore

+1 cc to M/s.A.S.Kailasam & Associates sr15091
+2 ccs to Mr.K.S.Sundar Advocate sr15071
+1 cc to M/s.RRK Associates sr14564

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