IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 21.01.2020

Delivered On : 29.01.2020

CORAM:

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

WP.No.2956 of 2019
and
WMP.No.3229 of 2019

M/s.Shree Basaveshwar Sugars Ltd.,
No.6, Mallikarjuna Badawane,
Ganesh Nagar, Managuli Road,
Bijapur - 586 109,
Karnataka,
Represented by its Director
S.Kathiravan ...Petitioner

vs.

1.The Debts Recovery Tribunal - II,
770-A, Anna Salai,
Chennai - 600 002.

2.Bank of India,
Chennai Larch Corporate Branch,
IV Floor, Tarapore Tower,
No.826, Anna Salai,
Chennai - 600 002.

3.M/s.Andhra Bank,
Chennai Main Branch,
No.48/39, Wavoo Mansion,
Rajaji Salai,
Chennai - 600 001.

4.M/s.Canara Bank,
MVK Complex,
Thuraiyur Main Branch,
Perambur - 621 212.

5.M/s.Corporation Bank,
No.38 & 39, Whites Road,
Chennai - 600 014.

6.M/s.Oriental Bank of Commerce,
Spencer Plaza,
Ground Floor,
No.769, Anna Salai,
Chennai - 600 002.

7.Indian Renewable Energy Development
Agency Limited,
3rd Floor, August Kranti Bhawan,
Bhikaiji Cama Place,
New Delhi - 110 066.

8.M/s.CFM Asset Reconstruction Private Ltd.,
1st Floor, Wakefield House, Sprott Road,
Ballard Estate, Mumbai - 400 038.

9.R.Rajasekhar,
S/o Ramasamy
No.159, Kalyan Nagar,
Thuraiyur Road,
Perambalur - 621 212.

10.M/s.Vasan Construction Company (P) Ltd.,
Represented by its Director,
R.Rajasekhar,
No.274-C, Thuraiyur Road,
Perambalur - 621212. ...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 pertaining to the order dated 02.11.2018 made in MA.No.178 of 2018 in OA.No.606 of 2016 on the file of the Debts Recovery Tribunal-II, 770-A, Anna Salai, Chennai - 600 002, the first respondent herein and quash the same.

For Petitioner : Mr.B.Kumar, Senior Counsel
for Mr.S.Ramachandran

For Respondents : Mr.P.Raghunathan,
for M/s.T.S.Gopalan and Co.,
for R4

Mr.S.K.Srinivasan for R6

Mr.Elayarajkumar
for M/s.Ramalingam and Associates for R7

R1 : Tribunal

O R D E R

(Order of the Court was made by R.HEMALATHA, J.)

The petitioner company is a private limited company and is represented by its Director. The petitioner company was sanctioned credit facilities on consortium arrangement basis by 5 different Banks led by Bank of India, the lender and including Andhra Bank, Canara Bank, Corporation Bank and Oriental Bank of Commerce. Besides these Banks, IREDA (Indian Renewable Energy Development Agency Limited) also had financed the petitioner. The total dues to Banks worked out to Rs.308.86 crores with agreed rate of interest upto the date of recovery. IREDA had financed upto Rs.89.95 crores with a pari passu charge on the securities offered to the Banks. The petitioner company had defaulted and the Banks together filed OA.No.606 of 2016 jointly in Debts Recovery Tribunal-II at Chennai. Only one of the gurarantors, R.Rajasekhar filed a counter in the form of written statement contesting the Original Application. He sought for discharge from the liability stating that he was only an ordinary employee though he was related to one of the Directors and that the Bank officials along with others in the petitioner company colluded and siphoned off the funds and therefore he was not accountable. He had also alleged that the corporate guarantee of M/s.Dhanalakshmi Srinivasan Sugars Private Limited was never obtained by the creditors though that was stipulated when the loans were sanctioned and therefore he was not liable to repay. As the other defendants did not appear, they were set exparte. The Original Application was allowed with the direction to recover the dues from the sale of properties from the other defendants, and in case of any shortage, to recover the dues from the fifth defendant, R.Rajasekhar. The petitioner company had approached the Debts Recovery Tribunal-II, Chennai with a petition in MA.No.178 of 2018 for setting aside the exparte order dated 20.07.2018 in OA.No.606.2016. The Debts Recovery Tribunal-II dismissed this petition stating that the final order in OA.No.606 of 2016 was passed on merits as one of the defendants had appeared and contested and the reason for the non-appearance of the petitioner company was not convincing and did not warrant any interference. Hence this Writ Petition challenging the decision of the Debts Recovery Tribunal-II, Chennai.

2. There is no dispute as regards the loans availed by the petitioner company. There is also no dispute as regards the receipt of the summons in OA.No.606 of 2016 as they have admitted the serving of the summons. Infact, the petitioner company has also stated that "we have filed vakalath and contested the matter before the Tribunal" which means that the only defendant who had filed a written statement in the Debts Recovery Tribunal was representing the company though his written statement had a different version. The Debts Recovery Tribunal had concluded that there was no reason to believe that the petitioner company had a convincing reason to plead

for the non-appearance earlier. There was also a considerable delay in their petition to set aside the exparte order and that too on flimsy grounds.

3. Mr.B.Kumar, learned senior counsel assisted by Mr.S.Ramachandran, learned counsel contended that the Tribunal did not allow the petitioner company for setting aside the exparte order which is a clear violation of principles of natural justice. He would further contend that the petitioner company ought to have been afforded opportunity to defend its case and such a hasty and biased decision by the Debts Recovery Tribunal deserves to be set aside by this Court.

4. Per contra, Mr.P.Raghunathan, learned counsel appearing for the Canara Bank and Mr.S.K.Srinivasan, learned counsel appearing for the Oriental Bank of Commerce would contend that the instant petition was only an attempt to subvert and delay the process of recovery. It is further contended that the petitioner company itself had admitted that the summons was duly received from the Debts Recovery Tribunal in OA.No.606 of 2016 and also that it was suitably resisted and defended by one of the defendants (D5) who was also the guarantor of the loan. It is therefore opined that the order is itself was not an exparte order and there is no merit in the arguments placed by the learned counsel for the petitioner.

5. In this regard, the Debts Recovery Tribunal had categorically concluded that the petitioner company was not in a position to give a convincing reason for not filing the written statement in the first instance and secondly that the case was resisted and defended by one of the defendants who was a guarantor, which itself shows that the order was not exparte.

6. In this context, reliance is placed on the decision of the Hon'ble Supreme Court in Authorised Officer, State Bank of Tranvancore and other vs. Mathew.K.C reported in MANU/SC/0054/2018 wherein the Apex Court held that the

> "The Hon'ble High Court ought not entertain a Writ Petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person".

It was further observed by the Apex Court that

> "in financial matters grant of exparte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim orders. Loans by financial institutions are granted from public money generated at the taxpayer's expense. Such loan does not become the property of the person taking the loan, but retains its

> character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the money and cannot be permitted to be blocked by frivolous litigation."

7. In Kanaiyalal Lalchand Sachdev and Others vs. State Of Maharashtra and Others reported in (2011) 2 SCC 782, the Apex Court had stated that it is well settled that

> "The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:
>
> (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
>
> (b) the petition reveals all material facts;
>
> (c) the petitioner has any alternative or effective remedy for the resolution of the dispute;
>
> (d) person invoking the jurisdiction is guilty of unexplained delay and laches;
>
> (e) ex facie barred by any laws of limitation;
>
> (f) grant of relief is against public policy or barred by any valid law; and host of other factors."

8. In the instant case, the petitioner company has not exhausted it remedy before the Debt Recovery Appellate Tribunal and has approached this Court directly. Moreover, the delay in filing the petition for setting aside the exparte order has no proper reason.

9. The alternate remedy which was available to the petitioner company to challenge the Debts Recovery Tribunal order was an appeal to the Debt Recovery Appellate Tribunal within 40 days of the Debts Recovery Tribunal order under subsection (3) of the Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

10. The Apex Court in Authorised Officer, State Bank of Tranvancore and other vs. Mathew.K.C (cited supra) had further observed thus

> "when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation"

11. In Punjab National Bank vs. O.C. Krishnan And others reported in (2001) 6 SCC 569, the Apex Court had held about Debts Recovery Tribunal much before the SARFAESI Act came into existence,

> "The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions."

12. Therefore this Court strongly opines that it is well settled by the Apex Court that this Court has no jurisdiction to act in a case where all the remedies have not been exhausted. Such judicial adventurism is unwarranted. At the same time, in the instant case, the petitioner company has also failed to substantiate as to how any exceptional circumstances have been made out for this Court to interfere.

13. As a result, Writ Petition is not admitted as it is not maintainable. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

mbi

To

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+1cc to Mr.S.Ramachandran, Advocate SR.No.7578

+2cc to M/s.Ramalingam and Associates, Advocate SR.No.6939

+1cc to Mr.S.K.Srinivasan, Advocate SR.No.7151

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NR(CO)
GMY(14/02/2020)