IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.03.2020	Pronounced on : 11.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.29707 of 2015
and M.P.No.1 of 2015

M/s. Jaya Sakthi Leathers (P) Ltd.,
a Company constituted under Companies Act,
Rep. by its Managing Director,
M.P.Adimoolam
Plot Nos.19-24,
Opp. To Pondicherry Dairy,
Pondicherry .. Petitioner

Vs.

1. The Finance Secretary,
Chief Secretariat,
Beach Road, Pondicherry.

2. The Secretary (Industries),
Chief Secretariat, Beach Road,
Pondicherry.

3. The Director of Industries,
Thattanchavaday, Pondicherry.

4. The Chairman,
Puducherry Industrial Promotional
Development and Investment Corporation Ltd.,
No.60, Romain Rolland Street,
Puducherry.

5. The Managing Director,
Puducherry Industrial Promotional
Development and Investment,
Corporation Ltd.,
No.60, Romain Rolland Street,
Puducherry.

6. The General Manager,
Puducherry Industrial Promotional
Development and Investment,
Corporation Ltd.,
No.60, Romain Rolland Street,
Puducherry.

7. M/s. Anuradha
8. Mr.M. Krishnan
9. The District Registrar,
Department of Registration,
Saram Revenue Complex,
Pondicherry.

[R8 & R9 are impleaded vide order dated 15.04.2019 made in WMP.No.11272 of 2019] .. Respondents

Prayer : Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the entire records pertaining to the auction of the petitioner's property situated in Plot Nos.15 to 23 in R.S.No.2 in Cad No.3, situated at Kurumbapet, Pondicherry dated 10.07.2014, thereby confirming the same vide proceedings in No.PIPDIC/FP/SSI/805/97/R.R. Cell -III/2470 dated 18.06.2015 and quash the same and consequently direct the respondents to conduct fresh sale by including the Plot No.24 in R.S.No.2 in Cad No.3, situated at Kurumbapet, Pondicherry.

For Petitioner : Mr. S.Mukunth
for M/s. V. Rani

For Respondent : Ms. N.Mala
Additional Govt. Pleader [R1 to R3]

D. Ravichandran [R4 to R9]

* * *

ORDER

I have heard the learned counsel on either side.

2. The petitioner - a private limited company filed an application to the respondent Corporation on 28.09.1995 requesting for providing financial assistance for setting up a small scale unit at R.S.No.2, Kurumbapet, Villianur Commune, Puducherry for manufacturing Leather Shoe Uppers.

3. The respondent Corporation sanctioned a term loan of Rs.26,25,000/-, which the petitioner was to repay along with interest at 18.5% per annum and in default, to pay additional interest at 4% per annum for the default period. To secure the loan transaction, the Directors of the petitioner company executed a memorandum of deposit of title deeds on 06.05.1996, a Mortgage Deed dated 06.05.1996 registered as document No. 1151 of 1996 and also another deed dated 06.05.1996 hypothecating the plant, machinery, etc., as security for the loan. The respondent corporation granted a moratorium of 1½ years from the date of first disbursement and the petitioner was required to pay the term loan in 32 quarterly instalments i.e., first four installments at Rs.18,750/- each and the next four instalments at Rs.50,000/- each and the next four installments at Rs.87,500/- and the last 20 instalments at Rs.1,00,000/- each. The petitioner is stated to have availed the entire loan of Rs.26,25,000/- on various dates between 18.06.1996 and 22.08.1997.

4. Subsequently, the petitioner filed an application for working capital assistance, which is of Rs.3,50,000/- and it was sanctioned on 18.03.1999. The working capital loan was to be repaid along with interest at 5% per annum and in default additional interest at 4% per annum for the default period. The property, over which, an equitable mortgage by deposit of Title Deeds was created, was a plot measuring 4,000 sq.mts bearing plot Nos. 15,16,17 and 18.

5. The petitioner's request to induct 2 other persons as directors and relieve the then three directors was considered by the Loan Committee of the respondent Corporation and approved subject to the incoming directors executing deeds of personal guarantee, which they also complied with. However, the petitioner was imposed with other conditions such as (i) incoming directors should arrange Rs.5,00,000/- towards arrears before approval of the change of management; and (ii) the petitioner should arrange to deposit the shares of the new promoters, which should not be less than the stake of the old promoters i.e., Rs. 10,00,000/-. However, on account of non-compliance of these two conditions, the respondent Corporation had not relieved the erstwhile directors of the company of their obligation and commitment, which had been duly intimated to the petitioner.

6. It is an admitted fact that the petitioner failed to repay the loan in terms of the conditions imposed in the sanction order and other documents signed by the petitioner. The respondent Corporation initiated action in exercise of their

powers under Section 29 of the State Financial Corporation Act, 1951 (hereinafter referred to as 'the Act') and had taken possession of the hypothecated assets on 26.08.2003. In January 2004, though the respondent Corporation extended the benefit of a One Time Settlement Scheme (OTS) wherein the petitioner had to remit 20% of the principal arrears upfront, the petitioner did not avail the scheme, but made a proposal that he would be pay Rs.75,000/- within 30 days from the date of handing over of the mortgage/hypothecated assets and agreed to pay between Rs.60,000/- to 75,000/- regularly for three months and gave various assurances. Accepting the petitioner's assurances, the mortgaged assets, which were taken possession, were handed over back to the petitioner. The petitioner did not keep up his assurances and defaulted in its commitment. Therefore, the respondent Corporation once again initiated action and took possession of the mortgage assets on 28.02.2007.

7. With a view to afford them one more opportunity, the respondent Corporation gave another OTS offer and based on the same, the mortgaged property was redelivered to the petitioner on 23.04.2007. The petitioner again defaulted in keeping up to the schedule of payment as per the second OTS. Though this was the attitude of the petitioner, the respondent Corporation gave a third OTS offer. However, the petitioner did not comply with the same. Even thereafter, one more OTS offer was given to the petitioner, which was also not utilized and they had not made any payment to the respondent Corporation.

8. In 2012, the petitioner sought permission of the respondent Corporation to sell the unit as they identified a purchaser. This was favourably considered and the OTS offer was given, in which, substantial concession was given to the petitioner to the tune of Rs. 1,37,92,464/-. This, according to the respondent Corporation, is a special OTS offer. However, the petitioner did not avail the same. Even thereafter, the petitioner had addressed letters requesting the respondent Corporation to defer taking over possession. Though the respondent Corporation obliged the petitioner, they did not keep up the commitment nor paid any money. One of the directors of the petitioner company - Mrs.G.Vasantha Leela had sold plot Nos.15 and 16 to one Mr.M.P.Adhimoolam - director of the company by the sale deed dated 05.03.2001. Thereafter, the said property was mortgaged to M/s.Shriram City Union Finance Limited by registered mortgage deed dated 09.03.2011.

9. The respondent Corporation would submit that this was with a view to create an encumbrance over the property and prevent the respondent Corporation from recovering the

outstanding on 09.01.2013. The respondent Corporation took over possession of all the mortgage/hypothecated properties in terms of Section 29(1) & (5) of the Act. Even thereafter, the said Mr.M.P.Adhimoolam had executed the Sale Deed in favour of one Ms.Meena in respect of plot Nos.15 and 16 and by Sale Deed dated 02.09.2014, the said Meena sold the properties to one Ms.R.Vimala. However, they could not deliver the physical possession of the property. The said Ms.R.Vimala file a suit in O.S.No.2410 of 2014 before the District Munsif Court, Puducherry against the respondent Corporation, in which, initially an interim order of injunction was granted as the plaintiff - the said Ms.R.Vimala suppressed the vital facts and after counter affidavit was filed, the interim order of injunction was vacated and the interlocutory application was dismissed on 26.02.2015.

10. Furthermore, the respondent Corporation would state that at the time of taking over possession, the petitioner illegally removed several of the major machinery, which have been hypothecated. On 14.03.2013, with a view to prevent recovery action, the petitioner gave three post-dated cheques of Rs.25,00,000/-, Rs.25,00,000/- and Rs.25,16,015/- respectively and three days before the date of presentation, the petitioner sent a letter on 27.06.2013 instructing the respondent Corporation not to present the said three cheques. This will clearly show the attitude of the petitioner.

11. When the respondent Corporation initiated recovery action, the petitioner filed O.S.No.16 of 2013 before the vacation Court viz., the Principal District Munsif Court, Puducherry praying for a injunction, in which, an interim order of injunction was granted with a direction to pay a sum of Rs.4,00,000/- as against the outstanding of Rs.2,54,52,096/-. The petitioner did not comply with the interim order, but sent a demand draft for Rs.1,00,000/-, which was returned by the respondent Corporation.

12. As it is not in compliance of the condition imposed by the Court, the respondent Corporation conducted Tender-cum-Public Auction on 23.05.2013, but nothing materialized in the tender because none of the bidders were interested as the Government of Puducherry had withdrawn all the concessions such as Sales Tax benefit, Powers Supply Subsidy etc., At that juncture, the petitioner filed W.P.No.27731 of 2013 before this Court to quash the proceedings of the respondent Corporation dated 03.04.2013 and to extend the OTS for one more year. After considering the averments set out in the counter affidavit of the respondent, the writ petition was dismissed by order dated 17.03.2014. Against the said order, the petitioner preferred

appeal in W.A.No.545 of 2014, which was also dismissed by judgment dated 23.04.2014.

13. After the dismissal of the writ appeal, the respondent Corporation published Auction Sale notification on 06.07.2014 and this was challenged by the petitioner by filing W.P.No.17959 of 2014, which was dismissed by order dated 10.07.2014. In the auction conducted on 10.07.2014, there were 6 bidders, who had presented their respective earnest money deposit (EMD) and the highest offer was placed before the Standing Committee, which recommended to the board for acceptance. After considering that the highest offer was reasonable, an approval was granted and as mandated by the Hon'ble Supreme Court, an opportunity was given to the petitioner to bring better offers and by letter dated 27.06.2015, the petitioner was granted reasonable time to do so. The petitioner did not bring any better offer nor repaid the arrears of the loan amount within the time granted. The respondent Corporation received the balance sale consideration from the auction purchasers, Rs.54,90,000/- after deducting the EMD of Rs.6,10,000/- and executed the registered Sale Deed dated 25.09.2015, pursuant to which the 7th respondent has become the absolute owner of the assets. With regard to hypothecated plant and machinery, they were sold to the highest bidder S.Ganesan after receipt of the full sale consideration.

14. Further, it is submitted that the petitioner had filed another suit in O.S.No.12 of 2015 before the vacation Court (Principle Sub-Judge), Puducherry seeking a decree for permanent injunction not to confirm the public auction. However, the Civil Court refused to grant any interim injunction and the suit has been transferred to the Principal District Munsif Court and renumbered as O.S.No.1072 of 2015 and the suit is pending. It is further submitted that after all the proceedings initiated by the petitioner before this Court and the Civil Court had failed, the present writ petition has been filed to quash the communication dated 18.06.2015 and to conduct a fresh sale.

15. The petitioner alleges illegality in the auction sale by stating that the payment terms have not been adhered to by the 7th respondent. Secondly, an allegation is made that the 7th respondent is a neighbouring plot owner and the property was knocked off for a throw away price. In the counter affidavit, it has been explained that the said Ms.Vasantha Leela was the owner of plot No.24 and after her death, by sale deed dated 11.03.2011, her husband Mr.P.Gopalan and her son Mr.G.Ramesh sold plot No.24 to one Ms.Saraswathi and handed over possession of the same, who, in turn, sold the plot to the 7th respondent and she became the owner of the plot 24.

16. The learned counsel for the petitioner has elaborately referred to documents, which were executed by the petitioner at the time of availing the loan etc., and narrated the dates and events, the substantial portions of which have been set out in the preceding paragraphs.

17. As noticed above, the challenge to the impugned auction is on two grounds viz., the property had been sold to the 7th respondent without adhering to the time schedule fixed in the notification viz., Clause No.B(5)(a), (5)(b) and (6) and the other issue is with regard to plot No.24. The same has been explained by the respondent in the counter affidavit, which, in the considered view of this Court, is a satisfactory explanation and nothing turns out of the said contention raised by the petitioner and therefore the same is rejected.

18. With regard to the allegation that the time schedule fixed in the notification for payment of the bid amount has not been complied with, the respondent Corporation denied the same. However, the primary question would be as to whether the petitioner has locus standi to raise such a ground. From the facts narrated above, it is evidently clear that the petitioner is a chronic defaulter and he has abused the court procedures repeatedly and filed cases with false and misleading statements to thwart the recovery proceedings. In fact, the respondent Corporation has been too lenient to the petitioner and has extended as many as 4 OTS benefits, yet the petitioner did not comply with any one of the same. The petitioner is not only a chronic defaulter, but a company, which never kept up their promises, but violated the terms of OTS and deserves no indulgence. Not once but twice, the petitioner attempted to some how obtain an interim order from the vacation courts, repeatedly filing of writ petitions with the so called different reliefs, which clearly show the conduct of the petitioner and their real intentions.

19. The learned counsel for the petitioner had referred to the decisions in the cases of Gajraj Jain Vs. State of Bihar and Ors. [reported in (2004) 7 SCC 151] and Kerala Financial Corporation Vs. Vincent Paul and Anr. [reported in (2011) 4 SCC 171].

20. The procedure laid down in the case of Vincent Paul has been followed by the respondent Corporation and there is no infraction. It is the petitioner, which had defaulted, did not avail the opportunity given by the respondent Corporation to match the offer of the 7th respondent or bring buyers with higher offers. Therefore, no ground is made out in this regard. The decision in the case of Gajraj Jain will not, in any manner,

help the petitioner.

21. In fact, the petitioner is to be penalized for having prevented the recovery action being initiated against them by repeatedly filing cases and in spite of that, the respondent Corporation has been able to sell the property. Above all, the petitioner has now filed a fresh writ petition in W.P.No.13858 of 2018 seeking to quash the sale deed dated 25.09.2015 executed in favour of the 7th respondent by the respondent Corporation. This fact will further show that the petitioner is attempting dubious methods to stall the recovery action and also defeat the interest of the purchaser.

22. Thus, this Court is of the considered view that the present writ petition filed by the petitioner lacks bonafide and the petitioner is guilty of misusing the procedure of the Court, for which, cost is liable to be imposed on the petitioner.

23. For all the above reasons, the writ petition is dismissed with cost of Rs.50,000/- payable by the petitioner to the Puducherry State Legal Service Authority within a period of 15 days from the date of receipt of a copy of this order, failing which, the Member Secretary, Puducherry State Legal Service Authority shall take steps to recover the amount in a manner known to law. Connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Finance Secretary,
   Chief Secretariat,
   Beach Road, Pondicherry.

2. The Secretary (Industries),
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7. The District Registrar,
Department of Registration,
Saram Revenue Complex,
Pondicherry.

8.The Member Secretary
Puducherry Legal Services Authority Puducherry

+2 ccs to Mrs.V.Rani Advocate sr21358
+1 cc to Mr.D.Ravichander Advocate sr21616

W.P.No.29707 of 2015
and M.P.No. 1 of 2015

svl(co)
aa03/06/2020