

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

C.R.P.(PD).No.4282 of 2020
and C.M.P.No.27951 of 2019

M/s.Mary Fashion Impex
rep by its Partner R.Krishnamurthy
Shed No.88, TEA Nagar,
Mudalipalayam, SIDCO,
Tirupur - 641 606.

... Petitioner

Vs.

1.The Authorized Officer,
Tamilnad Mercantile Bank Ltd.,
Dr.Nanjappa Road Branch,
Opp. to V.O.C. Park,
Coimbatore - 641 018.

2.The Chief Manager,
Tamilnad Mercantile Bank Ltd.,
Dr.Nanjappa Road Branch,
Opp. to V.O.C. Park,
Coimbatore - 641 018.

... Respondents

Petition filed under Article 227 of the Constitution of India against the order dated 04.12.2019 made in I.A.No.3131 of 2019 in S.A.No.605 of 2019 on the file of the Dents Recovery Tribunal, Coimbatore so far as directing the petitioner herein to make payment of Rs.12,00,000/- on or before 03.01.2020 as 1st installment and of Rs.12,00,000/- on or before 01.02.2020 as 2nd installment.

For Petitioner : Mr.R.Selvakumar

For Respondents : Mr.P.Chandrasekaran (R1 & R2)

ORDER

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

The petitioner availed various credit facilities from the 1st respondent and in view of the defaults committed, notices dated 02.07.2019 under Section 13(2) of the SARFAESI Act, were issued to the petitioner/principal borrower, partners/guarantors/mortgagors, demanding a sum of Rs.5,08,08,096.87p as on 30.06.2019. The petitioner had submitted a representation dated 31.08.2019, for which the respondent - Bank has also sent a reply on 05.09.2019.

2.The 1st respondent - Bank has issued a possession notice dated 20.09.2019 indicating their intention to bring the secured assets for sale.

3.The petitioner, challenging the legality of the said notice, filed an appeal in S.A.No.521 of 2019. The petitioner also filed S.A.No.605 of 2019 on the file of the Debts Recovery Tribunal, Coimbatore, to set aside the auction sale notice dated 28.10.2019 published in one News Daily on

29.10.2019. The petitioner, pending disposal of S.A.No.605 of 2019, filed I.A.No.3131 of 2019 praying for stay of all further proceedings in pursuance to the Sale Notice dated 28.10.2019, published in the News Daily on 29.10.2019. The Tribunal, vide impugned order dated 04.12.2019, had passed a conditional order of stay by directing the petitioner to make a payment of Rs.12,00,000/- each, by way of 2 installments within a stipulated time with default clause that in the event of non compliance of the conditional order granted, not to confirm the sale till 03.02.2020.

4.The learned counsel appearing for the petitioner by drawing the attention of this Court to para-5 of the impugned order would submit that admittedly, after the issuance of possession notice, a sum of Rs.1,00,00,000/- was paid on 30.11.2019 and yet another sum of Rs.3,85,00,000/- was paid on 29.11.2019 and thus, the petitioner has paid a total sum of Rs.4,85,00,000/- and the balance amount was only Rs.80,00,000/-, which works out to below 20% of the total outstanding as per Section 31 (j) of the SARFAESI Act, which is in full application to the case on hand and without appreciating the facts and legal position, the Tribunal has committed a grave error in passing the further conditional order and hence, prays for setting aside the same.

5. *Per contra*, the learned counsel appearing for the respondents would submit that the Tribunal has rightly exercised the jurisdiction vested in it and also in accordance with law, which may not be interfered with in exercise of powers under Article 226 of the Constitution of India.

6.This Court has considered the rival submissions and also perused the materials placed before it.

7.It is submitted and conceded by the 1st respondent - Bank and it was also recorded in para-5 of the impugned order that after the possession notice, the petitioner has paid a sum of Rs.4,85,00,000/-. In the light of the admitted fact, there shall not be any further necessity for directing the petitioner to make a payment of Rs.12,00,000/- each, by way of two installments with a default clause.

8.It is brought to the knowledge of this Court by the learned standing counsel appearing for the respondents that the auction was held and the sale is yet to be confirmed.

9.It is also brought to the knowledge of this Court by the learned

counsel appearing for the petitioner that as regards declaring the account of the petitioner as Non Performing Asset, the petitioner has filed an appeal in S.A.No.521 of 2019 and it may be tagged along with S.A.No.605 of 2019 and both the appeals may be given early disposal, for which the learned standing counsel appearing for the respondents has no serious objection.

10. The Debts Recovery Tribunal, Coimbatore, is directed to accord priority and dispose of the appeals in S.A.Nos.605 and 521 of 2019 as expeditiously as possible, not later than three months from the date of receipt of a copy of this order.

11. In the light of the above facts and circumstances, the impugned conditional order of stay dated 04.12.2019 in I.A.No.3131 of 2019 in S.A.No.605 of 2019 is set aside. **The Civil Revision Petition is allowed.** Till the disposal of the appeal in S.A.No.605 of 2019, there shall be an order of stay of confirmation of sale alone. No costs. The connected miscellaneous petition is closed.

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Index : No
Internet : Yes

[M.S.N., J.] [R.H., J.]
13.02.2020
(2/2)

va

**M.SATHYANARAYANAN, J.
and
R.HEMALATHA, J.**

va

To

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