IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2021

CORAM :

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

W.P.No.1218 of 2020
and
W.M.P.No.1480 of 2020

N.Ramathal ... Petitioner

Vs.

1.The Authorised Officer,
State Bank of India,
SME Branch,
54, First Floor,
Uthukulli Road,
Tirupur - 641 601.

2.M/s.Win Apparels,
Represented by its Proprietrix,
Mrs.R.Sridevi,
No.1, Poonthottam,
Murugapalayam,
Avinasi Road,
Tirupur - 641 603.

3.B.Shanmugavadivu

4.K.Loganathan ... Respondents

[R3 and R4 impleaded vide orders of this Court dated 21.01.2021 made in W.M.P.Nos.2448 & 2449 of 2020 in W.P.No.1218 of 2020]

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the Hon'be Debts Recovery Appellate Tribunal at Chennai made in AIR (SA) No.161 of 2019 (I.A.No.810 of 2015 in S.A.No.234 of 2015 on the file of DRT, Coimbatore) dated 29.11.2019 and quash the same and consequently direct the Honourable DRAT to treat the case of the petitioner as having complied with the order of the Hon'ble DRAT made in AIR (SA) No.161 of 2019 (I.A.No.810 of 2015 in S.A.No.234 of 2015 on the file of DRT, Coimbatore) dated 15.10.2019.

For Petitioner : Mr.Silambanan
Senior Counsel
for M/s.Kaavya Silambanan Associates

For R1 : Mr.M.Devaraj
Standing Counsel

For R3 and R4 : Mr.T.Nixon

O R D E R

(Order of the Court was made by M. SATHYANARAYANAN, J.)
(Through Video Conferencing)

By consent, the writ petition has been taken up and disposed of by this order.

2.The petitioner, in the affidavit filed in support of this writ petition, would aver among other things that the 2nd respondent Company is an export oriented concern running the business of exporting garments to overseas buyers and for the purpose of business, it availed packing credit loan and term loan from the 1st respondent, for which, the petitioner stood as Guarantor and had given her agricultural land as security for due repayment of the loan. The 2nd respondent also hypothecated the stocks, movables and receivables. It is further averred by the petitioner that the 2nd respondent started committing default in payment of dues, and in order to recover the same, the 1st respondent has invoked the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act" for brevity) by issuing demand notice under Section 13(2) calling upon the borrower as well as the Guarantor to pay a sum of Rs.1,31,62,429.07. The petitioner, being the Guarantor, has sent a suitable reply through counsel on 16.12.2011, denying the liability, and further points out that, in the light of Section 31(i), the provisions of SARFAESI Act are inapplicable to the agricultural lands.

3.However, despite the tenable reply submitted by the petitioner, the 1st respondent proceeded further and issued the possession notice, dated 09.01.2012, and it was received by the petitioner on 12.01.2012. The petitioner, challenging the same, filed S.A.No.7 of 2012 on the file of the Debts Recovery Tribunal, Coimbatore, and it was dismissed vide order, dated 04.07.2013. The petitioner, aggrieved by the dismissal of S.A.No.7 of 2012, filed further appeal.

4.The 1st respondent has issued a sale notice with regard to the auction sale to be conducted on 18.12.2015, and challenging the same, the petitioner filed S.A.No.234 of 2015 before the same Tribunal, and it has been entertained. The petitioner also took out an application in I.A.No.810 of 2015 in S.A.No.234 of 2015 praying for appropriate direction directing the 1st respondent Bank to receive a sum of Rs.75 Lakhs and permit her to redeem the Secured Asset.

5.The petitioner, aggrieved by the rejection of I.A.No.810 of 2015, filed A.I.R. (SA) No.161 of 2019 before the Debts Recovery Appellate Tribunal at Chennai ("DRAT" for brevity), along with I.A.No.483 of 2019 praying for waiver of Pre-Deposit. The DRAT, vide proceedings/order dated 10.07.2019, directed the petitioner/appellant therein, to make a Pre-Deposit of Rs.70 Lakhs with the Registrar of DRAT, within two weeks from the date of the order. The petitioner, aggrieved by the same, filed W.P.No.23087 of 2019, and vide order dated 22.08.2019, this Court has extended time for compliance of the order of Pre-Deposit. The matter came up for final disposal and vide order dated 09.09.2019, the order passed in I.A.No.483 of 2019 was set aside, and once again, the application was remanded back for fresh consideration. After remand, the application was argued, and it was pointed out by the learned counsel for the petitioner/applicant therein, as to the fact that the deposit of a sum of Rs.50 Lakhs before the Debts Recovery Tribunal, Coimbatore, has not yet been appropriated, and that apart, the petitioner has also made a payment of Rs.20 Lakhs with the Registrar of DRAT.

6.The amount of Rs.50 Lakhs deposited by the petitioner herein/applicant before the Debts Recovery Tribunal, Coimbatore, was attached with another Bank and a criminal case has also been filed, and the DRAT, having noted all the factual submissions and other aspects, found that the sum of Rs.20 Lakhs as against the Pre-Deposit of Rs.70 Lakhs cannot be construed as full compliance, and having noted the fact that the order of Pre-Deposit has not been complied with, has dismissed the appeal for want of compliance of Pre-Deposit, and challenging the said order, the present writ petition is filed.

7.Mr.Silambanan, learned Senior Counsel for M/s.Kaavya Silambanan Associates, appearing for the petitioner, would submit that the security was created as collateral security by one Mr.Loganathan, and he has lodged a complaint against the petitioner, based on which, an FIR came to be registered, and it was put to challenge in Crl.O.P.No.21051 of 2018, and interim order of stay of further proceedings in the said FIR came to be granted in her favour, and in the light of the same, there cannot be any impediment to take into consideration the sum of Rs.50 Lakhs lying to the credit of Debts Recovery Tribunal, Coimbatore, along with the sum of Rs.20 Lakhs deposited with the Registrar, DRAT, for compliance of the order of Pre-Deposit, and therefore, prays for appropriate orders.

8.Mr.T.Nixon, learned counsel appearing for the 3rd respondent, would submit that the auction sale of the Secured Asset took place, and the 3rd respondent became the successful bidder and sale certificate was registered in his favour vide Document No.5215 of 2018 on the file the Sub-Registrar's Office, Tirupur, on 29.10.2018, and on account of the subsistence of the interim orders in this writ petition, further proceedings could not take place, and prays for vacating the interim order and dismissal of the writ petition.

9.The learned counsel appearing for the 4th respondent would submit that the security has been given as collateral security for due repayment of the loan in favour of the son of the petitioner, and he indulged in cheating and other activities, and in this regard, he has also lodged a complaint on the file of the Inspector of Police, CCB, Tirupur, based on which, an FIR in Crime No.28 of 2017 came to be registered, and the son of the petitioner was arrested and the petitioner and her husband obtained Anticipatory Bail. In the light of the deceit and fraud played by the son of the petitioner in collusion with the petitioner and her husband, the present writ petition is purely an abuse of process of Court, and prays for dismissal of this writ petition.

10.This Court heard the submissions of Mr.M.Devaraj, learned Standing Counsel, appearing for the 1st respondent Bank, who would submit that, though registered sale certificate has been executed in favour of the 3rd respondent, further proceedings could not take place in the light of the subsistence of the order of status quo passed in this writ petition, and prays for dismissal of this writ petition.

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

12.It is an admitted fact that the petitioner has deposited a sum of Rs.50 Lakhs and the same is lying to the credit of the Debts Recovery Tribunal, Coimbatore, and that apart, a further sum of Rs.20 Lakhs has also been deposited by the petitioner, which lies to the credit of the Registrar, DRAT, Chennai.

13.It is argued by the learned Senior Counsel appearing for the petitioner that, in the light of the subsistence of the interim order in Crl.O.P.No.21051 of 2019, there cannot be any impediment to take into consideration the sum of Rs.50 Lakhs which is lying to the credit of Debts Recovery Tribunal, Coimbatore, for the purpose of compliance of the order of Pre-Deposit passed by the DRAT, Chennai. However, the said submission was strongly opposed by the learned counsel appearing for the 4th respondent, who would submit that, once the amount is allowed to be appropriated, in the event of dismissal of the Criminal Original Petition, it would definitely add up to the advantage of the petitioner and it may prejudice the interests of the 4th respondent, and as such, it may continue to remain in the deposit and depending upon the result of the Criminal Original Petition, further proceedings would follow.

14.This Court, taking into consideration the facts and circumstances of the case, as well as on appreciation of the rival submissions, is the considered view that, in technical sense, the petitioner has deposited a sum of Rs.70 Lakhs (Rs.50 Lakhs + Rs.20 Lakhs). In order to meet the ends of justice, this Court directs the Debts Recovery Appellate Tribunal at Chennai to treat the sum of Rs.20 Lakhs lying with the Registrar, Debts Recovery Appellate Tribunal at Chennai, as compliance of order of Pre-Deposit and entertain A.I.R.(SA) No.161 of 2019, if the papers are otherwise in order.

15.In the result, this writ petition is partly allowed and the order dated 29.11.2019 made in A.I.R.(SA) No.161 of 2019, is set aside. No costs. Connected miscellaneous petition is closed.

16.Since third parties have also intervened in the light of the execution of sale certificate in favour of the 3rd respondent, as well as the lodging of criminal complaint by the 4th respondent alleging deceit, fraud, etc. on the part of the son of the petitioner as well as the petitioner and her husband, this Court suo motu adds them as parties in A.I.R.(SA) No.161 of 2019.

17.The Debts Recovery Appellate Tribunal at Chennai is requested to expedite the final disposal of A.I.R.(SA) No.161 of 2019, for which, the petitioner as well as the respondents shall extend their maximum cooperation and make every endeavour to dispose of the same as expeditiously as possible, not later than eight weeks from the date of receipt of a copy of this order/uploading of this order in the website.

Sd/-
Assistant Registrar (CS III)

/true copy/
Sub Asst. Registrar

mkn
To

1.The Registrar,
Debts Recovery Appellate Tribunal,
Chennai.

2.The Registrar,
Debts Recovery Tribunal,
Coimbatore.

3.The Authorised Officer,
State Bank of India,
SME Branch,
54, First Floor,
Uthukuli Road,
Tirupur - 641 601.

+1 cc to Mr.M.Devaraj Advocate sr3840
+1 cc to M/s.Kaavyasilambanan Associates sr3659
+1 cc to M/s.T.Nixon Advocate sr3632

W.P.No.1218 of 2020

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