IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.07.2021

PRONOUNCED ON : 28.07.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN
A.S.No.281 of 2015
and
M.P.No.1 of 2015

Tamil Nadu Industrial Investment Corporation Limited,
Represented by its Branch Manager,
Madras South Branch,
No.473, Anna Salai,
Nandanam,
Chennai - 600 035. .... Appellant/Defendant

Vs

M/s.Omega Cables Limited
Represented by its Managing Director,
Khalid A.K.Buhari
No.16 & 17, Ambattur Industrial Estate,
Ambattur,
Chennai - 600 058. .... Respondent/Plaintiff

PRAYER: Appeal Suit filed under Section 96 of CPC to set aside the Judgment and Decree dated 29.10.2014 made in O.S.No.3747 of 2012 on the file of the XV Additional Judge, City Civil Court, Chennai.

For Appellant : Mr.K.Magesh

For Respondent : Mr.Kuberan
for M/s.Rank Associates

JUDGMENT

The Appeal suit is filed against the Judgment and Decree dated 31.12.2014 made in O.S.No.3747 of 2012 on the file of the XV Additional Judge, City Civil Court, Chennai.

2. The appellant is the respondent and the respondent is the plaintiff. The respondent filed a suit in O.S.No.3747 of 2012 for declaration and mandatory injunction.

3. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

4. The case of the plaintiff is that the plaintiff was engaged in the manufacturer of power cables, PVC control cables and conductors. The plaintiff availed various

facilities including loans for working capital from various institutions including the defendant. Since the plaintiff sustained huge loss, he was completely eroded and referred to Board of Industrial and Financial Reconstruction (herein after called BIFR) for rehabilitation. The BIFR appointed Industrial Investment Bank of India, as the operating agency and also prepared the necessary schemes for the purpose of financial reconstruction. It was approved by the BIFR on 15.06.1989. It was being one of the creditors approached the BIFR providing a draft proposal for charging interest at 18.50% per annum and the same was not approved by BIFR. The plaintiff borrowed a sum of Rs.39,77,860.15/- as on 31.03.2000. It was adjusted towards the principal outstanding and thereafter, it was adjusted towards interest, if any.

5. Whereas, contrary to that the defendant appears to have adjusted the payment first towards adhocly, levied penal interest and interest and they have not adjusted the payment towards the outstanding principal. As directed by the BIFR, the plaintiff has to clear the dues to the defendant as on 31.03.2001. After the payment, the defendant worked out the dues at Rs.20,24,724/-. The plaintiff also remitted the said amount on 31.03.2001 in full and final settlement under cover of the letter dated 30.03.2001. However, the defendant has raised false and frivolous claims and refused to issue “No Due Certificate”. In fact, the defendant also sent a demand notice on 22.04.2003 showing a due as 'Nil'. Hence, the suit.

6. Resisting the same, the defendant filed a written statement stating that the plaintiff approached the defendant Corporation for sanction of a loan to set up an industrial unit. The defendant sanctioned a term loan to the tune of Rs.15,00,000/- on 27.02.1963. The plaintiff mortgaged the property by the registered Mortgage Deed dated 20.01.1964 and also hypothecated the plaint and machinery. But due to various factors, the plaintiff could not be operated well and started incurring loss. Therefore, the defendant also sanctioned an additional term loan to the tune of Rs.35,00,000/- on 26.05.1970. Further, an additional loan of Rs.25.20 lakhs was also sanctioned on 25.03.1974 towards purchase of land and machinery. There was an arrangement of Paripassu on 30.04.1984 among the defendant, SIPCOT and Canara Bank for sharing recovery.

7. Due to loss incurred by the plaintiff, the plaintiff approached the BIFR for relief for repayment of dues to all the agencies during 1988. Accordingly, the plaintiff was liable to pay a sum of Rs.86,16,000/- as on 31.12.1988. By the proceedings dated 14.06.1988, the BIFR appointed Industrial Investment Bank of India Ltd., as the operating agency to implement the packages. According to Clause I of the Draft Package, the financial institutions to re-phase the interest dues upto 31.12.1988 with interest at the rate of 6%

per annum. Accordingly, the plaintiff was liable to repay the principal of Rs.27.72 lakhs commencing from 31.12.1990 in 10 half yearly instalments ending on 01.04.1995. The funded interest was payable on 10 half yearly instalments commencing from 01.10.1995 and ending on 01.04.2000. But the plaintiff defaulted in repaying the defendant's dues and there was a liability to the tune of Rs.65,94,102.27/- as on 31.03.1999. Thereafter, the plaintiff was directed by the BIFR, remitted a sum of Rs.40,00,000/- on 31.03.2000 and further remitted a sum of Rs.20.25 lakhs on 30.03.2001 and requested the defendant to discharge from loan liability which could not be considered in view of the heavy over dues. Therefore, the plaintiff is liable to pay a sum of Rs.34,48,023.77/- as on 31.12.2009.

8. The defendant also issued notice for recovery of a sum of Rs.19,62,242.77 on 30.06.2003. As per the loan agreement dated 19.03.1991, the plaintiff was liable to repay the outstanding principal of Rs.27,72,271.41 with interest at the rate of 10% and additional interest at the rate of 2% for defaulted amount for defaulted period. Then the accrued interest of Rs.59,92,897/- is liable to be paid with interest at the rate of 6% with the additional interest at the rate of 2% per annum. Therefore, the calculation of balance amount by the plaintiff is wrong and misleading. The Appellate Authority by its order dated 28.06.2001 observed that the rehabilitation scheme has failed. Therefore, the plaintiff is not entitled to the proceedings of the BIFR and the plaintiff is a chronic and willful defaulter. As per the Paripassu arrangement dated 30.04.1981, the plaintiff is in due of Rs.34,48,023.77/- as on 31.12.2009. As such, the demand for "No Due Certificate" is unjustified and illegal and prayed for dismissal of the suit.

9. On hearing the rival pleadings, the learned trial Judge framed the following issues for determination of the suit :-

" 1. Whether the plaintiff is entitled for the declaration and consequential Mandatory injunction as prayed for in the suit ?

2. Whether the plaintiff is entitled for permanent and Mandatory injunction as prayed for in the suit ?

3. To what other relief ?"

The above issues are recasted as follows :

"1. Whether the plaintiff has paid the entire dues to the defendant corporation ?

2. Whether the plaintiff is liable to pay a sum of Rs.34,48,023.77/- ?

3. Whether the plaintiff is entitled for decree of declaration to declare as the plaintiff is not liable to pay any amount to the defendant and for consequential mandatory injunction to direct the defendants to issue a No Due Certificate to the plaintiff ?

4. Whether the plaintiff is entitled for a decree of permanent injunction to restrain the defendant from demanding or collecting the original title deeds pertaining to the property owned by the plaintiff deposited with Canara Bank, Teynampet, Chennai ?

5. Whether the plaintiff is entitled for mandatory injunction to direct the defendant to issue necessary forms to the plaintiff to be filed before the Registrar of Companies, Chennai ?

6. Whether the suit is hit by Section 34 of SARFAESI Act?

7. Whether the claim of the defendant, if any is barred by limitation ?

8. To what relief the plaintiff is entitled ?"

10. On the side of the plaintiff, they examined P.W.1 and marked Exs.A1 to A19. On the side of the defendant, D.W.1 was examined and marked Exs.B1 to B12. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the Court below decreed the suit in favour of the plaintiff. Aggrieved by the same, the defendant preferred this Appeal Suit.

11. The learned counsel for the appellant would submit that the suit itself is not maintainable as against the appellant and it is clearly barred under Section 34 of the SARFAESI Act. No suit is maintainable as against the financial institution before the Civil Court. The plaintiff failed to pay the entire dues and the defendant over ride to initiate the proceedings as against the plaintiff. The cause of action for initiating the recovery proceedings is well within time and continues the cause of action, the defendant has right to initiate recovery proceedings at any time within the prescribed time limit. Therefore, no necessity to decide the limitation for initiating the recovery proceedings. There is a Paripassu agreement between the appellant, SIPCOT and Canara Bank, which was marked as Ex.B7.

12. Accordingly, the defendant is entitled to collect original documents from the Canara Bank by virtue of Paripassu agreement dated 30.04.1981. Therefore, the defendant cannot be restrained from collecting the original document from the Canara Bank without paying the dues.

Therefore, a due of Rs.34,48,023.77/- as on 31.12.2009 and without paying the said dues, the suit is not maintainable and it is liable to be dismissed. The plaintiff failed to comply the scheme of BIFR and as such, the plaintiff is not entitled for any relief under the BIFR proceedings.

13. He further submitted that the demand notice which was marked as Ex.A17 issued only in respect of one account and not for the entire transaction of the plaintiff. Therefore, it cannot be treated that there is no due to the defendant by the plaintiff. He further submitted that as per the letter issued by the plaintiff which was marked as Ex.A7, the plaintiff requested to waive the balance amount. The letter dated 05.03.2001, which was marked as Ex.A9 also revealed that there is a due to the defendant, IIB and SIPCOT. Therefore, he prayed for dismissal of the suit filed by the plaintiff.

14. Per contra, the learned counsel for the plaintiff/respondent would submit that the demand notice dated 22.04.2003 has been issued by the defendant by showing the dues as 'Nil'. Therefore, the plaintiff is not liable to pay any amount as principal or interest or any debt to the defendant. Therefore, the defendant ought to have issued "No Due Certificate" dated 22.04.2003 to the plaintiff, which was marked as Ex.A17. No one prevented the defendant to initiate the proceedings under SARFAESI Act or any other proceedings as against the plaintiff. In fact, the plaintiff filed a suit, not challenging any of the recovery under the SARFAESI Act or any other proceedings. The suit is filed for declaration declaring that the plaintiff is not liable to pay any amount as principal or interest.

15. On the basis of Ex.A17, the plaintiff is entitled to get "No Due Certificate" Though, the defendant's issued "Zero Demand Notice", the defendant failed to issue "No Due Certificate". Therefore, the plaintiff was constrained to file a suit and the same was rightly decreed by the Court below. The D.W.1 categorically admitted in his evidence that even today the defendant has not taken any action to recover any due if any, from the plaintiff. At the same time, he has also categorically admitted that there is no proceedings initiated by the plaintiff restraining the defendant for taking any steps to recover the dues from the plaintiff. Therefore, the Court below rightly allowed the suit and prayed for dismissal of the appeal.

16. Heard, Mr.K.Magesh, the learned Senior Counsel appearing for the appellant and Mr.Kuberan, learned counsel appearing for the respondent and perused the materials available on record.

17. The plaintiff is the manufacturer of power cables, PVC Control cables and Conductors. They sustained

huge loss and to meet out day to day affairs of the company, availed facilities including loan for working capital from various institutions including the defendant Corporation. They obtained term loan from the defendant Corporation on 27.02.1963 for a sum of Rs.15,00,000/-, on 26.05.1970 for a sum of Rs.35,00,000/- and on 25.03.1974 for a sum of Rs.25.20 lakhs. On the said loan, the plaintiff executed a Mortgage Deed in favour of the defendant. There was heavy loss, as a result, the plaintiff approached the BIFR for rehabilitation and the case was registered as BIFR case No.202 of 1987. The BIFR appointed IIBI as operating agency and the rehabilitation scheme, the creditors including the defendant Corporation were directed to charge concessional interest of 10% on principal amount and 6% on the accrued interest and also directed to waive penal interest on liquidated damages. The scheme sanctioned as failed and ordered for wounding up. Aggrieved by the same, the plaintiff preferred an appeal before the AAIFR in Appeal No.130 of 2001 and the same was also dismissed.

18. While the matter was pending before the BIFR, as directed by the BIFR, the plaintiff made payments to the defendant. The plaintiff paid as per the claim of the defendant and finally paid the balance due on 30.03.2001 in full and final settlement. Whereas, the defendant after adjusting the sale proceedings and various amounts paid by the plaintiff for a sum of Rs.34,48,023.77 as on 31.12.2009, the plaintiff paid a sum of Rs.20,24,724/- through cheque drawn in Canara Bank with a request to record as full and final. On receipt of the same, the defendant issued a letter dated 30.03.2001, which was marked as Ex.A13 revealed that to confirm the full and final settlement have been effected by Company to BIFR with copy to immediately on realisation. It was duly encashed by the defendant, it was recorded as full and final settlement. Thereafter, the defendant had not sent any objection to record as full and final settlement by the letter dated 30.03.2001, which was marked as Ex.A13.

19. In fact, the plaintiff had sold out the Ranipet Plant and a sum of Rs.60,00,000/- was remitted to the defendant. It was also categorically admitted by the defendant. That apart, the plaintiff paid a sum of Rs.45,00,000/- even before 31.03.1999 and paid a sum of Rs.40,00,000/- before 31.03.2000 and Rs.25.20 lakhs on 30.03.2001. Thus, the plaintiff made payments to the tune of Rs.165.25 lakhs, it was categorically admitted by the defendant. Whereas, the defendant contended that the plaintiff has to pay a sum of Rs.34,48,023.77/- without any basis. In pursuant to the Ex.A13, the defendant issued a demand notice dated 25.02.2003, which was marked as Ex.A17 with “Nil” due to the plaintiff.

20. According to the defendant, as per the demand notice dated 25.02.2003, the plaintiff is not liable to pay

any due or any amount to the defendant. Though, the defendant had taken specific stand that there are three accounts in the name of the plaintiff, one for the principal amount and other two accounts for funded interest, Ex.A17 was issued with regard to one funded interest account and the plaintiff cannot take advantage of Ex.A17 which was issued towards the funded interest. In respect of the principal amount, the defendant failed to prove the same. The defendant marked Ex.B11 to substantiate the said contention which is account statement pertaining to the plaintiff's loan account. It does not disclose all three accounts as contended by the defendant. Except Ex.A17, the defendant had not issued any demand notice in respect of other two accounts as contended by the defendant to the plaintiff. In fact, the agreement entered between the plaintiff and the defendant dated 19.03.1991, which was marked as Ex.B1 also does not contain any accounts as mentioned by the defendant

21. There is categorical evident to the effect that the plaintiff never restrained the defendant by any of the proceedings to initiate the proceedings under Section 34 of the SARFAESI Act or any other proceedings to recover the balance due from the plaintiff. The relevant portion of deposition of P.W.1 is extracted hereunder :-

> "“பிசா.ஆ.1 ஒப்பந்தத்தை நிறைவேற்ற வழக்கு தாக்கல் செய்யப்பட்டுள்ளதா என்றால் தெரியாது. பிசா.ஆ.1 அடிப்படையில் வாதி எங்களுக்கு தொகை செலுத்த வேண்டும் எனக் கேட்டு இதுவரை நாங்கள் வழக்கு ஏதும் தாக்கல் செய்யவில்லை என்றால் சரிதான். வாதி தாக்கல் செய்த இந்த வழக்கில் அவர் மீது நாங்கள் நடவடிக்கை ஏதும் எடுக்கக்கூடாது என் நிரந்தர உறுத்துக்கட்டளை பரிகாரம் கொடுக்கப்படவில்லை என்றால் சரிதான். ”

Even then the defendant failed to take any steps to recover the amount due from the plaintiff. Therefore, the Court below rightly decreed the suit and nothing warrant to interfere with the Judgment and Decree passed by the Trial Court.

22. In the result, the Appeal Suit is dismissed. Consequently, connected Miscellaneous Petition is closed. No order as to costs.

Sd/-
Assistant Registrar(Lok Adalat)

//True Copy//

Sub Assistant Registrar

Lpp
To
1.The XV Additional Judge,City Civil Court, Chennai.
2.The Section Officer,V.R.Section, High Court, Madras.
+1 cc to Mr.K.Magesh, Advocate Sr.NO. 36217

A.S.No.281 of 2015
and M.P.No.1 of 2015

RR(CO)
A.SK(29.10.2021)