IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.01.2021

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

CRP.PD.No.1911/2020 & CMP.Nos.11708 & 11711/2020

[PHYSICAL HEARING]

1.M/s.Ambur Shoes
represented by its Partners,
PAN No.AABFA1495L
No.10, Vepery High Road,
Periamet, Chennai 600 003.

2.Arif Ahmed Meddaikar
3.Naseera Kouser .. Petitioners

Versus

Bank of Baroda
IFSC Code No.VIJB0003043
represented by its Chief Manager
Stressed Assets Recovery Management
Branch, No.144, Moore Street
Chennai 600 001. .. Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order passed by the learned

Debts Recovery Tribunal-1,Chennai in IA.No.1449 of 2019 in OA.No.814 of 2019 dated 16.03.2020.

For Petitioners : Mr.B.Thilak Narayanan

For Respondent : Mr.S.Mohan
Standing counsel

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

(1)The first petitioner is represented by its Partners, availed loan facilities from the respondent-Bank which was enhanced to Rs.1000 Crores on 22.05.2017 and the said availment of loan has been secured by means of hypothecation of movable assets/properties such as plant and machinery etc., kept at the factory premises bearing Door No.91/2, 91/3B, Gudiyatham Road, Chinnavarikam Village, Vaniyambadi Taluk, Vellore District and also at Door No.1A-2, Jalal Road Extension, Malligaithope, Ambur, Vaniyambadi Taluk, Vellore District, and the said loan facility was also secured by creation of security in respect of immovable assets also.

(2)It appears that the petitioners, due to vagaries of business and other conditions, were not able to service the debts and the respondent-

Bank, vide communication dated 25.07.2019, offered One Time Settlement and however, the petitioners have failed to utilise the said offer offered by the respondent-Bank.

(3)The petitioners failed to adhere to the repayment of the schedule and therefore, the loan account was classified as "Non Performing Assets" on 08.12.2017 and it was followed by a Demand Notice on 05.03.2018 u/s.13[2] of the SARFAESI Act, 2002, and in spite of receipt and acknowledgment, the petitioners had failed to comply with the terms of the said Notice. Therefore, the respondent-Bank has issued the Possession Notice dated 10.10.2019 u/s.13[4] of the Act and took the symbolic possession of the secured assets.

(4)The petitioners, aggrieved by the same, filed SA.No.423/2019 before the Debts Recovery Tribunal – II at Chennai, challenging the Possession Notice dated 10.10.2019 and the same is pending and in the meanwhile, the respondent-Bank also filed OA.No.814 of 2019 before the Debts Recovery Tribunal-1 at Chennai, for recovery of a sum of Rs.12,51,13,220.25p., due and payable as on 31.10.2019 without prejudice to the initiation of the proceedings under the SARFAESI Act. The respondent-Bank also filed IA.No.1448 of 2019 in OA.No.814 of 2019 praying for appointment of an Advocate

Commissioner to take inventory of the hypothecated machineries and other movables with consequential orders to sell the same and that apart, also filed IA.No.1449 of 2019 praying for ad-interim injunction restraining the petitioners from alienating their immovable properties in respect of which, mortgage was created. The Tribunal, vide impugned order dated 16.03.2020, has partly allowed the interlocutory application and challenging the legality of the same, the present Civil Revision Petition is filed.

(5)Mr.B.Thilak Narayanan, learned counsel for the petitioners has drawn the attention of this Court to the affidavit dated 01.11.2019 filed by the respondent-Bank in support of IA.No.1449 of 2019 in OA.No.814 of 2019 as well as the impugned order passed by the Tribunal and would submit that in paragraph No.7 of the affidavit, it is averred that "*I further understand that the 2nd and 3rd respondents are holding the properties outside India and they are having wide contacts/network of friends and close relatives outside India. I submit that the respondents/defendants clearly admitted their liabilities in their various correspondence/Acknolwedgement of liabilty and they are not disputing their liability to the petitioner Bank. It is apprehended that the 2nd and 3rd respondents are likely to flee the country in order to* *evade/escape their liability and burden & consequences arising out of the Recovery Certificate that may be issued in favour of the petitioner Bank by this Hon'ble Tribunal".*

(6)The primordial submission made by the learned counsel for the petitioners, by drawing the attention of this Court to the counter affidavit filed to the said Interlocutory Application filed by the petitioners herein, especially, to paragraph No.21, where it is averred that "*I submit that the reasons adduced by the petitioner that the 2nd & 3rd respondents are holding the properties outside India and they are having wide contacts/network of friends and close relatives outside India are wild imaginations which has no substance.."* and made a submission that since holding of passport and right to travel abroad is fundamental right enshrined in the Constitution of India on the basis of such vague averments, the DRT-1 at Chennai, ought not to have passed the impugned order with directions and prays for interference.

(7) ***Per contra,*** Mr.S.Mohan, learned Standing counsel appearing for the respondent-Bank would submit that the petitioners have admitted the availment of the loan, execution of documents creating the security and also filed OA.No.814 of 2019 on the file of DRT-1 at Chennai, for recovery of a sum of Rs.12,51,13,220.25p., due as on 31.10.2019 with

subsequent interest and cost and since there is every possibility of the partners of the 1st petitioner Firm going abroad and remain there and that the request for asylum, cannot be ruled out, the Tribunal has taken into consideration of the said fact and also public interest involved, has rightly passed the impugned order and prays for dismissal of this Civil Revision Petition with cost.

(8)This Court has considered the rival submissions and also perused the materials placed before it.

(9)In the considered opinion of the Court, the averment made in paragraph No.7 in IA.No.1449 of 2019 in OA.No.814 of 2019 filed by the respondent-Bank as the petitioner before DRT-1, Chennai, is a very bare averment for which, the petitioners herein, in paragraph No.21 of the counter affidavit, has given a reply stating that the said apprehension has no substance. The petitioners, in the affidavit filed in support of CMP.No.11708/2020 in this Civil Revision Petition, has also averred as follows:-

> *"7.We state that at the outset, the said application was unwarranted and not maintainable. We have no intention to leave the country and the assertion made by the Respondent in the said*

interim applications is baseless, vague and self serving.."

(10)It is a well settled position of law that the right to holding a passport and travelling abroad is a fundamental right and of course, subject to reasonable restriction and if the right is to be curtailed, there must be strong, sufficient and cogent reasons. Though the Tribunal has referred to various decisions, incorporating the law in the said subject, did not go into the factual aspect and allowed the Interlocutory Application with certain directions.

(11)The Tribunal, while considering applications filed seeking the relief of impounding of the passport and consequential orders, shall also require to go into the factual aspect and however, in the case on hand, the Tribunal did not do so and hence, on the sole ground, the impugned order warrants interference.

(12)In the result, the Civil Revision Petition is **allowed and the impugned order dated 16.03.2020 made in IA.No.1449 of 2019 in OA.No.814 of 2019 is set aside and IA.No.1449 of 2019 is once again remanded to the Debts Recovery Tribunal -1 at Chennai and the Tribunal shall adjudicate the said issue afresh in accordance with law and pass appropriate orders as expeditiously as possible.**

No costs. Consequently, the connected miscellaneous petitions are closed.

[MSNJ] [AANJ]
27.01.2021

AP
Internet:Yes

To
1.The Chief Manager,
Bank of Baroda
IFSC Code No.VIJB0003043
Stressed Assets Recovery Management
Branch, No.144, Moore Street
Chennai 600 001.

COPY TO:- The Debts Recovery Tribunal-1, Chennai.

M.SATHYANARAYANAN, J.,
AND
A.A.NAKKIRAN, J.,

AP

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