



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P.[MD]No.7895 of 2021

and

W.M.P.[MD]No.6031 of 2021

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M/s.Jai Bharath Steels,
Rep. by its Managing Partner,,
Mr.IsmayilMadakkal,
No.12-A, Suryalakshmi Garde, Extension,
Subramaniampalayam,
G.N.Mills Post,
Coimbatore - 641 029.
Place of Office at
S.F.No.468/2, Thethupatti Village,
Aravakurichi,
Karur - 639 207.

... Petitioner

Vs.

1.The Authorised Officer,
Tamil Nadu Mercantile Bank Limited,
Karur Branch,
No.43, Kovai Road,
Padma Tower, 1st Floor,
Karur - 639 002.

2.M/s. Sanji Steels,
Rep. by its Partner,
Mr.S.A.Mubark Ali,
No.36/1, Olisha Nagar,
Pallapatti,
Aravakurichi Taluk,
Karur - 639 207.

3.Mr.S.A.Mubark Ali

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the first respondent to permit the petitioner to take their finished goods of 750 MT of MS Ignots (finished goods), the Work-in-Progress Materials, Scrap and other raw materials available in the manufacturing premises at Survey No.468/2, Thethupatti Village, Aravakurichi Taluk, Karur District, on the basis of the petitioner's representation dated 01.04.2021 within a time frame as fixed by this Court.



For Petitioner : Mr.Ajmal Khan
Senior Counsel
for Mr.K.Suresh
For Respondent No.1 : Mr.N.Dilip Kumar,

O R D E R

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[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

With the consent on either side, the Writ Petition itself is taken up for final disposal.

2.Heard Mr.Ajmal Khan, Senior Counsel for Mr.K.Suresh, learned Counsel appearing for the petitioner and Mr.N.Dilip Kumar, learned Standing Counsel appearing for the first respondent Bank.

3.The petitioner prays for issuance of a Writ of Mandamus, to direct the first respondent to permit the petitioner to take the finished goods of 750 MT of MS Ignots (finished goods), the Work-in-Progress Materials, Scrap and other raw materials available in the manufacturing premises at Survey No.468/2, Thethupatti Village, Aravakurichi Taluk, Karur District, by considering his representation dated 01.04.2021.

4.The case of the petitioner is that they entered into a lease agreement with the respondents 2 and 3 and on 15.10.2018, taking on lease the manufacturing unit and they have made some investments and also manufactured finished goods and some of the goods are in semi finished conditions. It is not disputed by the petitioner that the respondents 2 and 3 are borrowers of loan from the first respondent Bank and an equitable mortgage has been created in respect of the Bank, mortgaging the land and building and the machinery in the factory premises.

5.It is also cannot be disputed that on the date when the lease agreement was entered into, the loan account of the second and third respondents has become an NPA and proceedings have been initiated under the SARFAESI Act. The proceedings under the said Act was initiated by the Bank and by order dated 04.02.2020, the Chief Judicial Magistrate, Karur permitted the first respondent Bank to take possession of the factory premises. Pursuant to which, actual physical possession was taken on 20.03.2021, ie., pursuant to a public sale notice dated 22.01.2021. The petitioner is before us by contending that they should be permitted to remove the finished goods, semi-finished goods and raw materials and scrap which are all properties of the writ petitioner.

6.Mr.N.Dilip Kumar, learned Standing Counsel for the first respondent Bank submits that the lease agreement is an unregistered agreement and the petitioner was fully aware of the fact that the loan account has become an NPA and proceedings under SARFAESI Act



has been initiated and the bank is a secured Creditor and is entitled to proceed against them.

7.It is not in dispute that proceedings are now pending before the Debt Recovery Tribunal, Coimbatore, challenging the proceedings initiated under the SARFAESI Act and we are informed that two SARFAESI appeals are pending, namely, S.A.Nos.173 & 174 of 2021, which are challenging the sale notice issued in respect of the land and building and machinery respectively.

8.Considering the facts and circumstances, if the plea raised by the petitioner is a *bonafide* plea, then nothing prevents the petitioner from approaching the Debt Recovery Tribunal, by filing appropriate application in the pending SARFAESI appeals. Without resorting to such remedy, the petitioner cannot approach this Court. Therefore, we are of the clear view that the prayer sought for by the petitioner cannot be granted and the writ petition for such a relief is not maintainable. Hence, we have to dismiss the writ petition. However, taking note of the submissions of the learned Senior Counsel for the petitioner and knowing that a representation has been given by the petitioner on 01.04.2021, which has been sent by post to the first respondent Bank, we are inclined to issue a direction to the first respondent to consider the representation on merits and in accordance with law and it would be better if an opportunity of personal hearing is granted to the authorised representative of the petitioner and the bonafideness of the claim may be examined and a reasoned decision be taken in accordance with law, within a period of three [3] weeks from the date of receipt of a copy of this order.

9.With the above direction, the Writ Petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

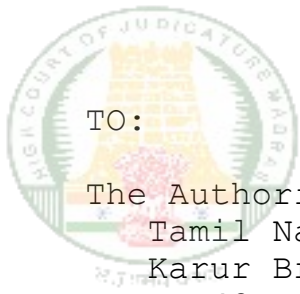
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/ /2021

Sub Assistant Registrar(CS)

MR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



TO:

The Authorised Officer,
Tamil Nadu Mercantile Bank Limited,
Karur Branch,
No.43, Kovai Road,
Padma Tower, 1st Floor,
Karur - 639 002.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-16073[F] dated 16/04/2021)

+1 CC to M/s.K.SURESH, Advocate (SR-16138[F] dated 17/04/2021)

ORDER MADE IN
W.P. [MD]No.7895 of 2021
16.04.2021

RK (30.04.2021) 4P 4C