IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.858 of 2022

The Principal Secretary /Chairman and Managing Director,
State Industries Promotion Corporation
of Tamil Nadu Limited,
19A, Rukumani Lakshmipathy Road,
Post Box No.7223, Egmore,
Chennai-8. .. Appellant/1st Respondent

Vs

1.M/s.Bhanu Moulds and Dies (P) Ltd.,
50, Kayarambedu Village,
Guduvancheri,
Chengalpattu Taluk,
Kancheepuram District,
rep. by Power Agent V.Kovil Pillai
..1st Respondent/Petitioner

2.K.James Antonyraj ..2nd Respondent/2nd Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 22.04.2021 in W.P.No.17543 of 2013.

Prayer in W.P.No.17543 of 2013 : Writ Petition filed under Article of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records relating to the order passed by the First Respondent in their Ref.No.F&R/223/2013, dated 20.03.2013 and to quasht he same and consequently direct the respondent to treat the loan account No.PF/F&R/223/2013 of the petitioner as closed and return the original title deeds of the mortgaged property deposited in respect of the said loan.

For the Appellant : Ms.Sudharshana Sunder

JUDGMENT
(Delivered by the Hon'ble Chief Justice)

By this writ appeal a challenge is made to the judgment dated 22.4.2021 whereby the writ petition preferred by the petitioner/ non-appellant was allowed.

2. It is a case where the petitioner/non-appellant borrowed a sum of Rs.53.57 lakh from the appellant, out of total sanctioned amount of Rs.56 lakh. The petitioner/non-appellant repaid part amount, but failed to pay the rest of the amount as per the schedule of payment and, therefore, the appellant initiated action against the petitioner/non-appellant by filing SFCOP No.11 of 1991. The SFCOP No.11 of 1991 was decreed by the District Judge, Chengalpet, for a sum of Rs.78,22,146/- together with interest at 14% per annum on the principal amount of Rs.31,87,206/-. The appellant thereupon filed a execution petition to recover the due amount. An attempt was made to auction the property, but the auction could not be completed for various reasons.

3. It is further stated that as the petitioner/non-appellant failed to make any payment, the appellant offered one time settlement (OTS) by its communication dated 21.11.2003 requiring the petitioner/non-appellant to pay a sum of Rs.31,87,206/- and other dues. The petitioner/non-appellant failed to make any payment. Therefore, the said OTS was cancelled on 15.2.2005. Thereafter, the petitioner/non-appellant was directed to pay the entire due as per the decree. In the meanwhile, the petitioner/non-appellant sent a representation on 19.5.2005 and also filed W.P.No.34378 of 2005 to direct the appellant to consider the said representation.

4. It is stated that during the pendency of the aforesaid writ petition, the appellant sent a communication on 13.11.2009 informing the petitioner/non-appellant that the earlier OTS could not be complied, thus was cancelled on 15.2.2005. However, in view of the revised OTS policy announced during 2005, the appellant extended concessions such as waiver of interest on interest, penal interest, reduction of interest rates based on the merits of the case. Accordingly, the appellant directed the petitioner/non-appellant to furnish certain details. It was with clarity that after receipt of certain particulars demanded by the appellant, the matter would be placed before the Sub Committee/Board.

5. Pursuant to the aforesaid, a sum of Rs.3,20,0000/- was remitted by the petitioner/non-appellant on 23.07.2010, which was duly acknowledged by the appellant. The petitioner/non-appellant thereafter paid a sum of Rs.28,67,206/- which was

duly acknowledged by the appellant by issuing a receipt. Thus, in all, the petitioner/non-appellant paid a sum of Rs.31,87,206/- during the pendency of the earlier writ petition, being W.P.No.34378 of 2005.

6. However, by the communication dated 13.1.2011, the appellant directed the petitioner/non-appellant to remit a sum of Rs.53,57,652/- in all within a period of 30 days. The break-up of the demand was also given. The petitioner/non-appellant could arrange the payment of a sum of Rs.54 lakh through the second respondent. The payment was made through banker's cheque and it was duly acknowledged on 28.9.2011 by the appellant.

7. The issue raised by the appellant is about the delay in making the payment as per the revised OTS. According to the appellant, the payment of Rs.54 lakh was to be made within 30 days from 13.1.2011. The amount of Rs.54 lakh was, however, paid with a delay of 7 months and in any case not within the period of 30 days as agreed in the OTS. Accordingly, it is stated that when the petitioner/non-appellant failed to comply the conditions of the OTS and, therefore, the appellant was at liberty to recover the amount without adhering to the terms of the OTS. However, the learned Single Judge allowed the writ petition considering the overall facts and judgments on the issue.

8. It is submitted that the conduct of the petitioner/non-appellant was also ignored by the learned Single Judge inasmuch as the petitioner/non-appellant sold the property to the third party in the year 2012 despite an attachment order at the instance of the appellant herein. The conduct of the petitioner/non-appellant was writ large and should have been taken into consideration by the learned Single Judge. A third party right was created and it was admitted by the party entering into the transaction with the borrower.

9. The second respondent claimed to be a bona fide purchaser because as against the OTS amount of Rs.53,57,652/-, an amount of Rs.54 lakhs was paid, that too, much prior to the sale of the property. The learned Single Judge should have taken it to be adverse to the petitioner/non-appellant as he had sold the property, but the judgment is silent on the issue and, therefore, a challenge to it has been made even on the aforesaid ground.

10. We considered the submission made by learned counsel for the appellant and scanned the matter carefully.

11. The case has a chequered history and brief facts have been narrated in the opening paragraphs of the judgment. It is

not in dispute that after sanction of the amount of Rs.56 lakhs, the petitioner/non-appellant had borrowed Rs.53.57 lakhs. The petitioner/non-appellant defaulted in making re-payment, though in the intervening period some payments were made totalling a sum of Rs.31,87,206/-. After the first OTS, when the petitioner/non-appellant failed to make payment, a revised OTS was entered in 2009 for a sum of Rs.53,57,652/- and it was indicated in the letter dated 13.1.2011 that on payment of the amount aforesaid the request for revalidation of OTS would be considered. Accordingly, the petitioner/non-appellant agreed to pay a sum of Rs.54 lakh as suggested by the appellant in the revised OTS within a period of thirty days.

12. It is not in dispute that the amount aforesaid was paid by the petitioner/non-appellant through the second respondent by way of a banker's cheque, though with a delay of 7 months. The petitioner/non-appellant thereafter paid an additional amount of Rs.4 lakhs, over and above Rs.54 lakhs. In between, the writ petition, being W.P.No.34378 of 2005, was disposed by the judgment dated 18.2.2013 with the following directions:

> "The petitioner has come to this court in the year 2005 seeking a limited prayer for issuance of a direction to the respondent to consider and dispose of the petitioner's representation dated 19.5.2005.
>
> 2. The learned counsel appearing for the petitioner submitted that though the petitioner has borrowed a loan for a sum of Rs.56,00,000/- (Rupees Fifty Six Lakhs only) on 27.1.1983, after some default, he deposited a sum of Rs.31,87,206/- without paying the penal interest, however, a sum of Rs.54,00,000/- towards the interest and the balance principle amount was also paid in the month December, 2012. When there was a difference of interest worked out by the respondent Corporation, once again the petitioner has paid a sum of Rs.4,00,000/- towards the difference of interest. In spite of all these three payments, the request of the petitioner made in the representation dated 19.5.2005 has not been considered. Therefore, the prayer for disposal of the pending representation dated 19.5.2005 cannot be refused.
>
> 3. Though the learned counsel appearing for the petitioner sought for some time to take instructions, this Court gives direction to the respondent to dispose of the petitioner's representation dated 19.5.2005 on merits and in accordance with law within a period of two weeks from the date of receipt of a copy of this order.

4. Accordingly, W.P.No.34378/2005 stands disposed of. No costs. Connected WPMP No.37265/2005 is closed."

13. The learned Single Judge has taken note of the judgment passed in the earlier writ petition and found that pursuant to the subsequent order dated 13.1.2011 passed by the appellant, the appellant had agreed to seek payment of Rs.54 lakhs within a period of thirty days. The said amount was deposited by the petitioner/non-appellant, through the second respondent, though with a delay of 7 months. Learned counsel for the appellant has admitted receipt of the said amount, apart from the additional amount of Rs.4 lakhs, but it is stated to have been adjusted towards the due amount.

14. The facts aforesaid show a delay of 7 months in making the payment of amount under the OTS. Looking to the facts of the case, the learned Single Judge directed the appellant to calculate the interest at its lending rate to be paid by the petitioner/non-appellant for the delayed period. The appellant was given liberty to charge another sum equivalent to 10% of Rs.54,00,000/- to offset any other loss caused. The said exercise was directed to be completed within a period of thirty days from the date of receipt of a copy of this order. In our considered opinion, to avoid the complication and to balance the equities, the learned Single Judge passed an appropriate order directing payment of interest for the delayed period, apart from a sum equivalent to 10% of Rs.54 lakhs to offset any other loss caused to the appellant.

15. The facts further show that the sale of the property by the petitioner/non-appellant is much subsequent to the payment of amount of Rs.54 lakhs through the second respondent, though with a delay of 7 months, instead of thirty days. The sale deed was registered on 20.1.2012. Therefore, if any action is initiated by the appellant now, it would further complicate the matter, because they need to file a suit for cancellation of the sale deed and then only they can secure the property.

16. Accordingly, we do not find any reason to cause interference in the equitable order passed by the learned Single Judge in the facts and circumstances and any interference in the judgment would unnecessarily complicate and multiply the litigation.

17. The writ appeal is accordingly dismissed. However, if the payment as directed by the learned Single Judge is not made by the petitioner/non-appellant, the appellant would be at liberty to pursue the remedy in accordance with law. There will be no order as to costs. Consequently, C.M.P.No.5732 of 2022 is closed.

Sd/-
Deputy Registrar(CS)

//True copy//

Sub Assistant Registrar

sasi

To

The Principal Secretary /Chairman and Managing Director,
State Industries Promotion Corporation
of Tamil Nadu Limited,
19A, Rukumani Lakshmipathy Road,
Post Box No.7223, Egmore,
Chennai-8.

+1cc to Mr.Sudharshana Sunder, Advocate SR.No.26824

W.A.No.858 of 2022

VM(CO)
GMY(02/05/2022)