IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.05.2023

CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.15186 of 2023
and W.M.P.No.14698 of 2023

M/s.R.P.Rajarajan Associates
Rep. By its Managing Partner,
No.105, Dr.Radhakrishnan Salai,
Mylapore, Chennai,
and at No.39, Habibullah Road,
T.Nagar, Chennai – 600 017. ..Petitioner

Vs

1.The Chairman
Wilful Defaulters Committee,
IDBI Tower, WTC Complex, Cuffe Parade,
Mumbai 400 005.

2.The Chairman
Wilful Defaulters Committee,
IDBI Tower, WTC Complex, Cuffe Parade,
Mumbai 400 005.

3.Deputy General Manager and Centre Head,
Nandanam RAC,
IDBI Bank Ltd., Khivraj Complex I,
Anna Salai, Nandanam,
Chennai. ..Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the respondents pertaining to the impugned notice of the respondents dated 20.04.2023 in Ref.No.IDBI/RAC/814/WD/04-23/01, and quash the same and further direct the respondents to return the original title deeds and execute discharge of mortgage as soon as the entire loan amount is discharged by the petitioner.

For Petitioner : Mr.V.C.Janardhanan
for Mr.V.Anand

ORDER

(Made by DR.ANITA SUMANTH.,J)

The petitioner seeks relief as against an order of IDBI Bank dated 20.04.2023 calling upon the petitioner to remit a sum of Rs.18.32 crores (approx) under the threat of publication of names and photographs of the Directors of the petitioner / Company for non-payment of the sums in default.

2. The petitioner has filed Securitisation Appeal No. 108 of 2022, pending originally before the Debts Recovery Tribunal ('DRT') - II and subsequently transferred to DRT - III (see prayer in W.P.No.9906 of 2023 filed by IDBI Bank at page 59 of compilation accompanying the present writ affidavit).

3. The petitioner has also admittedly approached the DRT on previous occasions seeking interim relief as against proposed auction sale of various properties offered as collateral towards its financial arrangements with IDBI and defaults thereof. The DRT has passed a series of orders dated 09.03.2022, 01.04.2022, 30.05.2022 and 15.09.2022 directing payment of stipulated amounts. Upon satisfaction of the condition of remittances as aforesaid, the auction sale has been stayed. The orders of the DRT read thus:-

> *"<u>09.03.2022</u>*
> *Counsel for applicant present.*
> *IA No.353/2022 (Emergent) – Heard the Ld.Counsel for the applicant. Perused the affidavit. Satisfied with the reasons for urgency. Hence, this IA No.353/2022 is allowed.*
> *IA No.354/2022 (Stay) – This IA is taken up for hearing as IA No.353/2022 is allowed.*
> *SA is filed by the applicant challenging the impugned sale notice dated 13.09.2021 issued by the respondent fixing the sale on 10.03.2022.*
> *It is the case of the applicant that the all the previous attempts of the bank to sell the property had failed because of technical flaws in the proceedings initiated by the bank and the bank has been conveniently reducing the value of property from Rs.40,42,00,000/- to Rs.32,70,00,000/- between 26.03.2021 and 03.02.2022. It is also stated that bank had not followed Rule 8(7) of Security Interest Enforcement Rules, 2002 while issuing the impugned sale notice.*
> *Mr.E.Kumar, Advocate enters appearance*

for respondent through CAVEAT and undertakes to file counter.

Having heard the counsel for applicant, this Tribunal feels that as the applicant is contending that the attempts made by the bank to sell the property have failed due to failure in compliance of Rules as mandated in the Statute and the reduction of the value of the property is to be justified by the bank, the respondent has to file their counter and produce the valuation report based on which they had arrived at the value of the property. Having heard the counsel for applicant, this Tribunal feels that the applicant had made out a prima facie case seeking indulgence of this Tribunal. However as the proceedings initiated by respondent has reached up to the stage of sale and sale cannot be stalled at this stage, this Tribunal feels that sale of schedule property can go on and confirmation of sale can be deferred for the time being so as to allow the respondent to come out with the counter substantiating the steps taken by them.

Hence, confirmation of sale if any held pursuant to the impugned sale notice dated 13.09.2021 is stayed on condition that the applicant remitting an amount of Rs.50,00,000/- with the respondent on or before 11.00 a.m. on 10.03.2022 and on further condition that the applicant remitting a further amount of Rs.50,00,000/- on or before 29.03.2022.

This restraint order will stand automatically vacated if the applicant fails in compliance of any of these conditions and in that event, the respondent is free to proceed further in accordance with law.

Post this matter on 01.04.2022 for reporting compliance and for filing counter by respondent.

01.04.2022

Counsel for both sides present. Counter filed. It is reported that conditional order has been complied. The counsel for applicant submitted that applicant is ready to deposit further amount. Hence, the interim order granted on 09.03.2022 is extended for further period of two months on condition that the applicant remitting a further amount of Rs.50 lakhs by 29.04.2022 and another Rs.50 lakhs by 30.05.2022.

This restraint order will stand automatically vacated if the applicant fails in compliance of any of these conditions and in that event, the respondent is free to proceed further in accordance with law.

Post this matter on 30.05.2022 for compliance and for further proceedings.

30.05.2022

Counsel for both sides present. Counsel for applicant submits that the conditional order has been complied. Post this matter on 13.07.2022 for hearing.

15.09.2022

Counsel for applicant and representing counsel for respondent present. Ld. Counsel for the applicant submitted that the applicant is willing to remit another amount of Rs.1 crore to prove their bonafides and further submits they are ready to argue the matter even today. Representing counsel for respondent seeks time. Post this matter on 19.10.2022. Interim order is extended till next posting date. "

4. The amount directed to be remitted is a sum of Rs. 3 crores which the petitioner states has been so remitted. To be noted that the orders dated 09.03.2022, 01.04.2022, 30.05.2022 and 15.09.2022 produced before the Courts confirm payment of only a sum of Rs.2 crores and there is no confirmation in relation to the final component of Rs. One crore. The petitioner has, however, confirmed at in the writ affidavit that the amount of Rs.3 crores has been remitted in full.

5. The status of the Securitisation Appeal after 15.09.2022 was sought but learned counsel for the petitioner is unable to throw light on that aspect of the matter. Thus this Bench proceeds on the basis that the petitioner has complied with the pre-condition imposed by the DRT and that there has been no adverse order passed by the DRT post 15.09.2022.

6. The orders of the DRT are to the effect that there is a stay of collection of the balance dues. However, it is appropriate that the DRT examine the matter and arrive at a conclusion in this regard as it

is seized of the Securitisation Appeal and is in possession of all requisite facts concerning the trajectory of the matter thus far. The petitioner has also approached this court by way of a writ petition challenging its classification as a defaulter. That writ petition is pending sans any interim orders.

7. For the aforesaid reasons, we permit the petitioner to approach the Debts Recovery Tribunal by way of application seeking interim measures as against the impugned communication dated 20.04.2023 for the filing of which the petitioner is granted a week's time.

8. If no interim application is filed within the time granted, the benefit under this order stands withdrawn automatically without further reference to the petitioner or this Court. If the interim application is filed within one week as permitted aforesaid, let it be taken up for hearing by the DRT III on Thursday i.e., 25.05.2023 and disposed within two weeks thereafter i.e., on or before 08.06.2023, after hearing the respondent as well.

9. It is further made clear that the DRT III shall decide the interim application once filed, in accordance with law and as it thinks fit. On a query posed by the Bench, we are given to understand from the petitioner that the DRT Bench III is functional. The petitioner is put to strict proof that the amount of Rs.3 crores as ordered by the DRT has been paid in time and the DRT III shall satisfy itself of compliance of such condition.

10. There shall be a stay of the impugned communication dated 20.04.2023 till 08.06.2023 or till disposal of application to be filed by the petitioner, whichever is earlier.

11. With the above liberty, this writ petition stands dismissed. No costs. Connected miscellaneous petition is closed.

(A.S.M., J.) (M.N.K., J.)
11.05.2023

Index: Yes/No
Neutral Citation : Yes
mmi/ssm

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