BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.09.2023**

CORAM

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.552 of 2014
and
M.P.(MD)No.1 of 2014

1.The Chairperson and Managing Director,
The Tamilnadu Industrial Investment Corporation Limited,
Chennai-600 035.

2.The Branch Manager,
The Tamilnadu Industrial Investment Corporation Limited,
Madurai Branch, No.1A, 2nd East Main Street,
Anna Nagar, Madurai – 625 020. ...Appellants

-Vs.-

1.Dr.M.Kalander Mohideen (Died)
2.C.P.Manickam
3.K.Saithar Begam
4.K.Pareen Bobby
5.K.Somika ...Respondents

(R3 to R5 were substituted for R1 as per order dated 22.10.2018 in C.M.P.(MD)No.9496 of 2018)

PRAYER:- Writ Appeal - filed under Clause 15 of Letters Patent Act, to set aside the order dated 02.11.2012 made in W.P.(MD)No.14549 of 2011 on the file of this Court.

For Appellants : Mr.R.Saravanan
For R2 and R4 : No appearance
For R3 and R5 :Mr.G.Prabhu Rajadurai

****

JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH, J.)**

The appellants are the Tamilnadu Industrial Investment Corporation Limited (in short 'TIIC') and this appeal arises from an order passed by learned Judge of this Court on 02.11.2012 on the following facts.

2.The Writ Petitioner had purchased Plot Nos.7 and 8 admeasuring 5760 sq.ft (property in question) in Narayanapuram, Madurai by way of a registered sale deed dated 13.03.2002 from one Manickam. Prior to such purchase, the Writ Petitioner had engaged in due diligence and found that the property was not encumbered and thus, purchased the same by paying good consideration.

3. The said Manickam had purchased the property in question on 08.01.1997 and 25.03.1998 from one Balachandran, who had, in his

turn, purchased the property in question in 1992 by way of registered sale deeds. Upon purchase, the petitioner had availed a loan from Indian Bank, Tallakulam and constructed a house thereupon. The petitioner and his family were residing therein. While so, he had come to know that the property in question had been mortgaged by way of equitable mortgage with TIIC as collateral for two loans taken by a partnership firm. Since the encumbrance had not been registered, the petitioner had been wholly unaware of the encumbrance upon the property in question.

4.Immediately by coming to know of the fact that the property is under a cloud, the petitioner had approached TIIC and come to know that TIIC had proceeded as against the original partnership firm for recovery of the amount outstanding. The loans in question had been availed in 1993, (1)an industrial loan, wherein, the principal was a sum of Rs.5,07,000/- and (2)a machinery loan, the principal being a sum of Rs.4,54,000/-. The property in question had been offered as collateral security towards the latter.

5.The borrower had been a partnership firm comprising four individuals, Balachandran, Kumaresan, Sivasubramanian and their mother. One Kumaresan could not be traced and the Writ Petitioner had come to know that Balachandran had absconded to Singapore. Despite efforts having been taken in the Embassy office at Singapore, TIIC was unable to proceed further in the matter for want of full address in Singapore. Sivasubramanian, the third partner had approached TIIC individually making some efforts to settle the loan. Apart from him, the petitioner and his vendor Manickam had made efforts in that direction.

6.The combined efforts of Sivasubramanian, the Writ Petitioner and Manickam resulted in a position where a sum of Rs.5,00,000/- had been paid, out of which Rs.2,00,000/- had been paid by Sivasubramanian on 09.05.2006 and Rs.3,00,000/- by the Writ Petitioner and Manickam on 29.09.2006. That apart, a shed, in respect of which loan of Rs.5,70,000/- had been availed, had been brought to auction on 08.08.2006 and a sum of Rs.7,10,000/- recovered by TIIC. These facts are not in dispute.

7.Original records have been produced before us and we have heard the detailed submissions of Mr.R.Saravanan, learned Counsel for TIIC and Mr.G.Prabhu Rajadurai, learned Counsel for R3 and R5. We note that TIIC has been evidently negotiating with all stakeholders in the transactions, ie., Sivasubramanian, erstwhile partner of the defaulting firm, as well as Manickam and the Writ Petitioner separately.

8.In an effort towards recovery, a letter has been issued on 08.06.2006 to Sivasubramanian by TIIC which reveals that they had received two cheques from him during March 2006 for an amount of Rs.6,00,000/-. The cheques had been dishonoured and subsequently, an amount of Rs.2,00,000/- had been paid by him by way of demand draft. Pursuant thereto, a proposal for One Time Settlement was issued on 29.09.2006.

9.The proposal for OTS scheme was issued by TIIC only to the three partners in the defaulting partnership firm, ie., Kumaresan, Balachandran and Sivasubramanian and the Writ Petitioner was completely in the dark as far as the OTS was concerned. We are of the considered view that this procedure followed by TIIC is inappropriate and incorrect. As on 29.09.2006 when the proposal for OTS was issued, they have been in negotiation with the Writ Petitioner recovering a sum of Rs.3,00,000/- from him.

10.In a matter such as the present, where there are several interested parties making attempts to settle the outstanding loan, it would be appropriate for TIIC to act in concert with all the parties to ensure that the recovery is fruitful and fair and that all parties are fully aware of the amounts being recovered. The proposal for OTS dated 29.09.2006, extracted in full by the Writ Court at paragraph No.13 of the order, is reproduced herein for completion of this order as well:

> *13.Though affidavits and counter affidavits have been filed with typed set of papers on both sides, vide proceedings in TIIC/MDU/SRB/OTS/LAO-LAA/2006-2007 DATED 29.09.2006, the Branch Manager, TIIC has stated as follows:*
>
> *"Sir,*
>
> *Sub: Settlement of Loan availed by you under One Time Settlement (OTS) Scheme by availing certain concessions-Reg.*
>
> *We are to inform you that under the present OTS policy of the Corporation, by remitting the following amounts you can settle the loan availed from us.*

In Rupees

		I	II
Principal	:	570000	454350
Other dues	:	9898	
*Interest on Subsidy Bridge Loan if any	:	8853	
Total amount +	:	588751+454350 =1043101	

*Please note that the Corporation will waive the balance interest + interest/** balance amount in your loan account subject to the payment of the amount referred above as per the norms.+subject to omission/commission if any.*

To avail of the above benefit, you are requested to remit the OTS amount on or before 30.11.2006. Kindly note if the entire OTS amount is remitted on or before 30.11.2006, you need not pay any interest on the OTS amount.

If you opt to remit the OTS amount in instalments, you shall pay 20% of the OTS amount on or before 30.11.2006 so as to register your request. The balance OTS amount shall be paid in monthly instalments on or before 31.3.2007 with interest on the balance OTS amount at 11% p.a. from 01.12.2006 till the date of settlement of account.

Kindly note that the OTS offer will be valid only if the entire OTS amount or atleast 20% of the OTS amount indicated above is remitted before 30.11.2006. Apart from the OTS amount mentioned above, you may have to remit other dues amount incurred, if any, after the date of this letter and till the date of settlement of accounts as per our norms.

If you have already remitted part amount (not less than 20% of the OTS amount) under the OTS scheme 2005-06, you have to settle the account under the above scheme as per norms on or before 30.09.2006. Failing the same, a fresh request will have to be made for settlement *which will be considered under the present policy as per norms and the amount already paid will not be taken into account for the purpose of settlement.*

The above offer is without prejudice to any of our rights and can be withdrawn if found not eligible at a later date. You are requested to make use of this opportunity to avail of the concessions.

Please acknowledge the receipt of this letter by return of post. For any clarification you may meet the undersigned."

11.The OTS proposal normally crystallises the liability of the borrower/debtor as on the date of its issue, taking note of the debits and credits as on the date. However, in the present case, the proposal omits reference to the amount of Rs.7,10,000/- recovered from auction of the shed on 08.08.2006, Rs.2,00,000/- from Sivasubramanian on 09.05.2006 and Rs.3,00,000/- from Manickam and the Writ Petitioner on 29.09.2006. In fact, TIIC has collected an amount in excess of the amount outstanding.

12.That apart, Rs.7,10,000/-, Rs.3,00,000/- and Rs.2,00,000/- have been paid prior to 30.11.2006 which is the last date for settlement as per the proposal dated 29.09.2006 (see unnumbered para-2 above in the extract). Thus, the document confirms the position that the entirety Rs.

10,41,101/- as determined in the OTS has been received by TIIC prior to 30.11.2006 and thus, nothing further remained to be paid. We, thus, do not see any necessity for TIIC to have continued with the recovery proceedings thereafter.

13.The matter does not stop there as the concerned authority in TIIC has thereafter submitted a note to the Head Office on 12.08.2010. True, the note is not signed by the Senior Regional Manager, but has been duly signed by Senior Manager and the Branch Manager and sets out the entire history of the financial accommodation. TIIC states interalia, the following:

> *The collateral land has been disposed without our approval and the purchaser Thiru.Dr.Mohideen did not know the facts about the earlier mortgage to our Corporation as the the land was Mortgaged under Equitable Mortgage. The purchaser also pleaded that as there was no Encumbrance in the property as per the Sub-Registrar's Office, while purchasing the same from Thiru Manickam, he requested us to consider settlement on sympathetic grounds, as he has to repay Housing Loan availed from Indian Bank in addition to our settlement. In view of the litigation in the collateral land and subsequent charge created by Indian Bank, Madurai for the housing loan, the request of the Dr.Mohideen may be considered for settlement on the above lines.*
>
> *In view of the above mentioned facts the following observations are drawn on examining the ND & ND OTS*

policy prevailed during 2005-06 & 2006-07. ND & ND OTS settlement amount for shed loan account will be as under:

ELIGIBILITY FOR SHED LOAN A/C.

1. *Loan disbursed was Rs.5.70 Lakhs during Jan.1993 for shed, which is less than Rs.10.00 Lakhs and as per the ND & ND OTS policy individual loan a/c upto Rs.10.00 Lakhs were permitted for settlement and the asset code of the unit as on 31.3.2002 is D II.*
2. *Primary shed was disposed in auction sale held on 8.8.2006 for Rs.7.10 Lakhs and entire principal was collected.*
3. *Other dues at the time of disposal of shed is Rs. 16,335/- and the same was adjusted out of auction sale proceeds.*
4. *Balance auction sale amount of Rs.1,23,665/- after crediting the entire principal/other dues was adjusted towards shed loan interest a/c.*
5. *As per ND & ND OTS policy 2006-07 the settlement amount for shed loan a/c is 10% of the interest outstanding (Rs.539652/-) or 15% principal disbursed (Rs.85.500/-) whichever is less. Therefore the settlement would be Rs.85,500/- and interest at the rate of 13.5% from 01.12.2006 to 30.09.2010 Rs. 44,247/- and the total settlement amount will be Rs. 1,29,747/-.*
6. *Subsidy Bridge loan a/c for shed loan Rs.1,43,250/- was fully adjusted from funds received from Government and there is no outstanding in the interest for the SBL as on date.*

ELIGIBILITY FOR MACHINERY LOAN ACCOUNT:

1. *Loan disbursed was Rs.4,54,500/- during Nov.1995 for machinery which is less than Rs.10.00 Lakhs and as per the ND & ND OTS policy individual loan a/c upto Rs.10.00 Lakhs were permitted for settlement and the asset code of the unit as on 31.3.2002 S. D II.*
2. *Amount remitted by the partner/purchaser of the*

collateral lands was Rs.5.00 Lakhs (on 09.05.2006 Rs.2.00 Lakhs and on 29.09.2006 Rs.3.00 Lakhs).

3. *Other dues at the time of adjustment of above amount towards machinery loan principal is Rs.2,868/- and the same was also adjusted out of balance settlement amount in Rs.5.00 Lakhs after crediting the entire principal amount in machinery loan account Rs. 4,54,350/- the remaining balance of Rs.41,889/- was adjusted towards interest a/c and Rs.893/- was adjusted towards other dues of shed loan account.*
4. *Therefore the machinery loan a/c may be treated as settled on the date of 29.09.2006.*
5. *Settlement amount for Subsidy Bridge Loan availed for machinery will be the interest outstanding upto the quarter during which period the final reimbursement from Government towards Subsidy Bridge Loan is received, reduced by remittances if any. In the machinery loan account the funds from the Govt. was received during Dec.1996 and interest o/s upto the quarter Jan 1997 was Rs.9,019/- only. Even if we collect interest at the Rate of Rs.13.50% from 1.12.2006 to 30.09.2010 will be Rs.4,667/- and the total settlement amount will be Rs.13,686/-.*
6. *If the loan account is considered to be settled on the above lines the total settlement amount will be as follows:*

Shed loan account	***..Rs.1,29,747/-***
Machinery loan a/c	***..Rs.Nil***
SBL for shed a/c	***..Rs.Nil***
SBL for machinery	***..Rs.13,686/-***
Other dues as on 31.7.2010	***..Rs.15,301/-***
Total amount payable	***..Rs.1,58,734/-***

However the collateral purchasers remitted Rs. 3.00 lakhs on 26.07.2010 towards settlement and requested to waive the balance interest outstanding in the loan account.

Amount so far remitted excluding the proposed OTS amount *of Rs.3.00 Lakhs*

Term loan-I	*- Principal*	*Rs.5.70*
	Interest	*Rs.3.77*
Term loan-II	*-Principal*	*Rs.4.54*
	Interest	*Rs.0.43*
(Including auction sale shed amount Rs.7.10 lakhs and Earlier OTS amount remitted on 09.5.06 Rs.2.00 lakhs, 29.9.06, Rs.2.00 lakhs, 29.9.06 Rs.1.00 lakh)		*Rs.14.44*

In view of the above mentioned facts the note is submitted to Head Office for consideration of settlement of the above loan accounts under ND & ND schemes 2005-06 and 2006-07."

14.The proposal was placed before the Board for approval, the officials of TIIC recommending that the request of the Writ Petitioner for waiver be accepted. To reiterate, the question of waiver is unnecessary as in the portion highlighted above, the amount paid by the collateral purchasers was Rs.3,00,000/- as against the total amount determined as payable of Rs.1,58,734/-. This proposal was rejected by way of a cryptic non-speaking order dated 22.11.2011.

15.A attentive attempt is made before us to state that the amount of Rs.7,10,000/- has been received only from auction and not from the debtors. It is immaterial as to whether the debtor has remitted the amount directly or the amount has been recovered from auction of the collateral. We are in complete agreement with the order of the writ court and in light of the discussion above, dismiss this appeal. The documents relating to the property in question shall be returned within a period of four weeks from date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

[A.S.M.J.,] & [R.V.J.,]
12.09.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
cmr

DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

cmr

W.A.(MD)No.552 of 2014

12.09.2023