WBEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.12.2022

PRONOUNCED ON : 02.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD).Nos.22929 of 2021 & 194 of 2022
WMP(MD).Nos.19406 of 2021 & 137 of 2022

M/s.Sunaichandran Spintex (P) Ltd.,
D.No.55Y/1B, Naidu South Street
Chettiarpatti
Rajapalayam Taluk
Virudhunagar District 626 122
Represented by its one of the Director
T.Sunaichandran ...Petitioner in both petitions

Vs

1.The Authorized Officer
The Tamilnadu Industrial Investment Corporation Ltd (TIIC)
No.98/C4, 2nd Floor
Chairman Shanmuga Nadar Road
Sivakasi 626 123

2.A.Velmurugan ...Respondents/Respondents

Prayer in WP(MD).No.22929 of 2021: Writ Petition has been filed under Article 226 of Constitution of India to issue a writ of Mandamus, directing the respondents to extend the period of time granted by the Debts Recovery Tribunal, Madurai in its order dated 13.10.2021 in S.A.No.454 of 2021 by directed the petitioner's to deposit a sum of Rs.70 lakhs to the 1st respondent bank.

Prayer in WP(MD).No.194 of 2022: Writ Petition has been filed under Article 226 of Constitution of India to issue a writ of Declaration to declare that the auction sale conducted by the 1st respondent on 15.02.2021 as null and void and not in conformity with the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, in consequentially direct the respondents and to restore the Auctioned property situated in Door No.404 (13F) Elanthiraikondan Village, Rajapalayam Taluk, Virudhunagar District in favour of the petitioner.

(In both petitions)

For Petitioner : Mr.S.Sheik Ismail

For R1 : Mr.S.Suresh
Standing Counsel
For M/s.Aiyar & Dolia

For R2 : Mr.M.Saravana Kumar

COMMON ORDER

(Made by **R.VIJAYAKUMAR,J.**)

W.P(MD).No.22929 of 2021 has been filed for a mandamus directing the respondents to extend the period of time granted by the Debts Recovery

Tribunal, Madurai by its order dated 13.10.2021 in S.A.No.454 of 2021 by directing the petitioner to deposit a sum of Rs.70 lakhs to the first respondent Bank.

2.The petitioner is a Textile Unit and they had borrowed a sum of Rs.1 crore from the Tamil Nadu Industrial Investment Corporation as a working capital facility. A sum of Rs.70 lakhs was disbursed on 16.11.2016 and another sum of Rs.30 lakhs was disbursed on 25.11.2016. The property which is in dispute, was offered as a collateral security. Since the petitioner did not make any regular payments and the cheques furnished by the writ petitioner got dishonored, the first respondent corporation had initiated proceedings under Section 138 of Negotiable Instruments Act.

3.The respondent Corporation had issued a demand notice under Section 13(2) of the SARFAESI Act on 07.02.2018. The petitioner had issued two cheques in order to settle the amount. However, those cheques were dishonored. Hence, the respondent Corporation was constrained to issue another demand notice under Section 13(2) of SARFAESI Act on 25.05.2018. For the said demand notice, again the petitioner issued a cheque for a sum of Rs.9,25,000/-

and the same was also dishonored. Hence, the respondent Corporation had issued possession notice under Section 13(4) of the SARFAESI Act on 14.08.2018. The first auction sale notice was issued on 22.12.2018 and the same was challenged by the borrower before the Debts Recovery Tribunal in S.A.No. 73 of 2019. Though an order of interim stay was granted by the Tribunal, the stay got vacated, in view of the non compliance of the condition imposed in the said order. The cheques that were issued in compliance of the conditional order were also dishonored.

4.A second auction notice was issued on 30.05.2019 which was challenged by the petitioner before the Debts Recovery Tribunal in S.A.No.354 of 2019. An interim order was granted on 26.06.2019 on certain condition. Except the first installment, other conditions were not fulfilled and hence, the stay got vacated. The respondent Corporation has taken physical possession of the property on 12.12.2019. The third auction notice was issued on 11.02.2020 which was challenged by the writ petitioner in S.A.No.111 of 2020. Again an order of interim stay of confirmation of sale was granted on condition that the petitioner should deposit certain amount in three installments. Except the first installment, the condition was not complied with by the petitioner and the stay got vacated.

5.Since the petitioner had not complied with a conditional order and the cheques issued by him towards compliance of the conditional order got dishonored, the fourth sale notice was issued on 14.01.2021 fixing the date of sale as on 15.02.2021. The sale was conducted on 15.02.2021 and the second respondent was declared as a successful bidder and the same was confirmed on 18.02.2021.

6.After confirmation of the sale, the petitioner had filed W.P(MD).No. 3860 of 2021 challenging the auction notice dated 13.01.2021. This Court was pleased to grant interim order on 01.03.2021 directing the petitioner to deposit a sum of Rs.25 lakhs within a period of four weeks and the same was complied with. In the said order, the respondent corporation was permitted to receive the balance sale consideration from the second respondent herein. Accordingly, the entire sale consideration was paid by the auction purchaser on 04.03.2021. The writ petition was finally dismissed on 06.10.2021 on the ground of availability of alternative remedy and the petitioner was directed to approach the Debts Recovery Tribunal.

7.The petitioner thereafter filed S.A.No.454 of 2021 before the Debts Recovery Tribunal, Madurai challenging the auction sale. An interim order was granted on 13.10.2021 directing the petitioner to deposit a sum of Rs.70 lakhs on or before 08.12.2021 and directed the respondent Corporation to maintain status-quo. However, the petitioner had deposited only a sum of Rs.30 lakhs and hence, the interim order got vacated automatically. The petitioner had filed an application for extension of time on 08.12.2021. Though there was sitting of Debts Recovery Tribunal on 10.12.2021, the matter was not brought for hearing. On 30.12.2021, the sale deed was executed in favour of the auction purchaser and the amount was appropriated towards the loan account. The physical possession of the property was also handed over to the auction purchaser on 22.12.2021. The present writ petition has been filed on 21.12.2021 after registration of the sale deed in favour of the auction purchaser. The above said dates and events are not in dispute.

W.P(MD).No.22929 of 2021

8.The present writ petition in W.P(MD).No.22929 of 2021 has been filed on 21.12.2021 with a prayer to direct the respondent namely Tamil Nadu Industrial Investment Corporation and auction purchaser to extend the period of time granted by the Debts Recovery Tribunal on 13.10.2021 in S.A.No.454 of 2021. It is pertinent to point out that the Debts Recovery Tribunal, Madurai is not made as a party. The order dated 13.10.2021 in S.A.No.454 of 2021 has also not been challenged.

9. The operative portion of the order dated 13.10.2021 in S.A.No.454 of 2021 by the Debts Recovery Tribunal is extracted as follows:

> *"The Tribunal, on considering the rival submissions of the parties and without going into merits of the case at present, and the present condition NOVEL Corona (COVID-19) prevailing in the country, this Tribunal is the view that the Applicant needs to be given one more chance to prove his bona-fide and merits of the submission. Hence, this Tribunal is hereby ordered the Applicant to deposit a sum of Rs.70 lakhs to the respondent bank being the sum of sale consideration minus the amount of Rs.36.00 lakhs, which is already paid by the Applicant (Even though, there is excess sale consideration with the respondent bank/financial institution being the surplus money received during the sale of the property) on or before 08.12.2021, as the applicant specifically made a prayer for a period of two months time so as to arrange fund during the pandemic COVID-19 period to the respondent bank/financial institution. The respondent bank/financial institution on receiving the sum, as ordered by this Tribunal, shall not proceed any further under SARFAESI Act. If the applicant is failed to deposit the sum as ordered by this Tribunal, the*

respondent bank/financial institution shall be at its liberty to proceed further in the case, without any further reference to this tribunal.

The applicant is also further directed to initiate necessary steps to implead the auction purchaser in the case and the respondent bank/financial institution shall furnish the details in respect of the auction purchaser forthwith to the applicant.

The case is adjourned to 09.12.2021. There shall be an order of status-quo in force till 09.12.2021 and the parties are directed to maintain status-quo in the case till then. Call on 09.12.2021"

10.As per the said order, the petitioner has to deposit Rs.70 lakhs on or before 08.12.2021 and if the borrower fails to deposit the said amount, the financial institution was at liberty to proceed further without any further reference to the Debts Recovery Tribunal. The Debts Recovery Tribunal further directed to maintain status-quo till 09.12.2021.

11.Admittedly, the petitioner had deposited only a sum of Rs.30 lakhs in compliance with the above said order and thereafter, he has filed the present writ petition on 21.12.2021. The narration of the dates and events will clearly indicate that the petitioner is a chronic defaulter, the cheques issued by him after issuance of demand notice and possession notice, have been dishonored and Section 138 proceedings have been initiated. The cheque issued by the writ petitioner pursuant to the conditional order passed in S.A.No.73 of 2019 passed by the Debts Recovery Tribunal have also got dishonored. Almost on all the occasions, the petitioner had chosen to comply with the first installment and he had refrained from complying with other installments, only to get over the date of sale. On every occasion, whenever as auction sale notice is issued, the petitioner has chosen to approach the Debts Recovery Tribunal and obtained an interim order with condition to pay certain amount in installments. The petitioner had paid the first installment, only to cross the auction sale date and thereafter, he had defaulted in paying the balance installments.

12.As rightly contended by the learned Standing Counsel appearing for the Bank, there is no haste in bringing the property for sale. Only in the 4th auction sale notice issued in the year 2021, the sale has taken place, though the first demand notice was issued in February 2018. The sale in favour of the second respondent has been confirmed and the sale deed has been executed on 13.12.2021 and the physical possession has also been handed over to the auction purchaser on 22.12.2021. Hence, at this length of time, this Court cannot put the clock back and extend the time granted by the Debts Recovery Tribunal in its order dated 13.10.2021 in S.A.No.454 of 2021.

13.In view of the above said facts, we do not find any merit in the writ petition. The writ petition stands dismissed. However, the petitioner is at liberty to prosecute S.A.No.454 of 2021 and S.A.No.231 of 2022 pending on the file of the Debts Recovery Trbunal, Madurai.

W.P(MD).No.194 of 2022

14.The present writ petition has been filed for a declaration that the auction sale conducted by the Authorised Officer of Tamil Nadu Industrial Investment Corporation on 15.02.2021 as null and void and consequentially directing the respondents to restore the possession of the auctioned property in favour of the petitioner.

15.Admittedly, the petitioner has challenged the sale notice and the auction sale before the Debts Recovery Tribunal in S.A.No.454 of 2021 and the same is pending. In the said appeal, an interim order was granted on 13.10.2021 directing the petitioner to deposit a sum of Rs.70 lakhs on or before 08.12.2021. The petitioner had deposited only Rs.30 lakhs within the said time. Hence, the interim order has got vacated. Thereafter, the petitioner has chosen to file the present writ petition challenging the very same auction sale to declare it as null and void. The petitioner having not complied with the interim order passed by the Debts Recovery Tribunal, cannot independently challenge the same auction by way of the present writ petition, without even challenging the interim order dated 13.10.2021. Hence, the present writ petition is not maintainable and the same stands dismissed.

16.Accordingly, both the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(D.K.K.J.,) **(R.V.J.,)**

02.01.2023

Index :yes
Internet :yes
msa

D.KRISHNAKUMAR, J.
AND
R.VIJAYAKUMAR,J.

msa

Pre-delivery Common Order made in
W.P(MD).Nos.22929 of 2021 & 194 of 2022
WMP(MD).Nos.19406 of 2021 & 137 of 2022

02.01.2023