IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

CRP.NO.1133/2020 & CMP.No.6128/2020

G.Sanketh ... Petitioner

Vs.

Hinduja Leyland Finance
rep.by its Authorised Officer
No.2/6, Above Max Hero Shware
Dr.Rajkumar Road, 4th Block
Rajaji Nagar, Bengaluru 560 010. ... Respondent

Prayer : Civil Revision Petition filed Article 227 of the Constitution of India against the order of dismissal dated 25.02.2020 made in AIR [SA].No.401/2019 by Debts Recovery Appellate Tribunal, Chennai.

For Petitioner : Ms.Anamika Sharma for M/s.Vishal Tiwari

For Respondent : Ms.V.V.Uthra

ORDER

[Order of the Court was made by S.S.SUNDAR, J.,]

(1)The above Civil Revision Petition is filed as against the order of dismissal dated 25.02.2020 made in AIR [SA].No.401/2019 by the Debts Recovery Appellate Tribunal, Chennai.

(2)Brief facts that are necessary for the disposal of this Revision Petition are as follows:-

(3)The petitioner availed a mortgage loan of Rs.1 Crore from the respondent / Financial Institution by mortgaging his property on 15.06.2016 for mobilising funds for his business for the purpose of manufacturing silver utensils. The loan was repayable in 120 instalments at Rs.1,52,217/- with interest at 13.5% [annual rest]. The petitioner executed a Mortgage Deed in respect of 25% of Undivided Share [UDS] in the land as well as in the building bearing Door No.2 at Bettappa Lane, Nagarthpet, Bengaluru and another property in Mavalli Tank Bund Road. After paying eight instalments, the petitioner was unable to pay regular instalments from March 2017 and as a result, the petitioner's loan account was declared as 'NPA' on 12.05.2017. The petitioner has stated that due to demonetisation and delayed realization of amounts from the petitioner's customers, the manufacturing unit went in great loss and it is admitted that the industry was closed.

(4)After the declaration of the loan account as NPA, the respondent initiated proceedings under the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in short 'the Act'] by issuing notice under section 13[2] of the Act dated 15.06.2019, demanding a sum of Rs.1,22,75,164/-. Thereafter, Possession Notice was also issued on 19.10.2019 under Section 13[4] of the Act and the respondent / Bank took symbolic possession of the mortgaged property.

(5)The petitioner filed an application before the Debts Recovery Tribunal – II, Bengaluru, in SA.No.352/2019 as against the Possession Notice dated 19.10.2019. Along with the appeal, the petitioner also filed an interlocutory application in IA.No.2563/2019 for stay on various grounds. When the matter was taken up on 20.11.2019, the respondent / Bank did not appear nor filed counter and hence, the Tribunal passed an exparte interim order of stay, subject to condition that the petitioner should deposit a sum of Rs.10 lakhs on or before 09.12.2019 and a further sum of Rs.10 lakhs on or before 27.12.2019 to the Loan Account. As against the conditional order of stay, the petitioner filed an Appeal in AIR [SA].No.401/2019 before the Appellate Tribunal under Section 18 of the Act along with the application in IA.No.27/2020 with a specific prayer to waive any pre-deposit to prefer the appeal before the Appellate Tribunal against the order in in IA.No.2563/2019 in SA.No.352/2019. The Appellate Tribunal, by order dated 27.01.2020, after hearing the application in IA.No.27/2020 in SA.No.401/2019, directed the petitioner to pay a sum of Rs.31 lakhs in two equal instalments. As per the said order, the first instalment of a sum of Rs.15.5 lakhs should be deposited before the Registrar of Tribunal within four weeks from the date of order and the second instalment of Rs.15.5 lakhs should be deposited within four weeks thereafter. The petitioner categorically admits that he could not comply with the order of DRAT, Chennai. However, he filed an application for extension of time in IA.No.124/2020 in AIR [SA].No.401/2019. The petition was dismissed along with the appeal in AIR [SA].No.401/2019. Challenging the same, the present Civil Revision Petition is filed by the petitioner.

(6)The Court heard the submissions of the learned counsel for the petitioner and the learned counsel for the respondent / Bank.

(7)The learned counsel for the petitioner fairly conceded to the facts recorded above. However, the learned counsel reiterated that the impugned order is against the principles of natural justice and orders have been passed without considering the plea of the petitioner and without going into the merits of the case. The grievance of the petitioner is that the Appellate Tribunal had not exercised its discretion judiciously.

(8)It is brought to the notice of this Court that earlier, the petitioner herein was directed by DRAT to deposit a sum of Rs.23 lakhs in two instalments, in order to entertain the appeal. The said order was put to challenge by the petitioner before this Court by filing CRP/.No.1257/2020. However, this Court, vide order dated 14.06.2023, passed the following order:-

> *"3.The learned counsel for the petitioner submits that the petitioner would deposit Rs.35 lakhs within two weeks.*
>
> *4.The petitioner shall deposit an amount of Rs.35 lakhs within two weeks with the respondent / Financial Institution. If the amount as directed is*

deposited within two weeks by the petitioner with the respondent, then upon proof of deposit being shown, the DRAT may entertain the appeal filed by the petitioner, of course, if the said appeal complies with all other conditions.

5.In case the petitioner fails to deposit the amount of Rs.35 lakhs with two weeks as directed above, then the appeal shall remain dismissed."

(9)As against the order passed by this Court in CRP.No.1257/2020 the petitioner preferred a Special Leave Petition in D.No.25908/2023. However, after condoning the delay, the Hon'ble Supreme Court, refused to interfere with the impugned order and the Special Leave Petition directed against the order dated 14.06.2023, was dismissed.

(10)The petitioner has now challenged the order of DRAT only on the ground that the impugned order is against the principles of natural justice and there is material irregularity. The petitioner appears to be a chronic defaulter and has exposed himself that he is incapable of honouring his commitments. This Court finds that the petitioner who has no valid explanation for the delay in payment, has filed the present petition to drag on the proceedings without any *bona fides.* The petitioner has not disputed the liability and the matter is pending for a long time. Even after the present Revision is admitted, the petitioner has not shown any *bona fides.* When the liability is increasing day-by-day, on account of interest at annual rest, the respondent/Bank is put to serious prejudice on account of further delay. Despite this Civil Revision Petition was filed in the year 2020, this Court, in view of the conduct and attitude of the petitioner, shows that the intention of the petitioner is to drag. The fact that the petitioner has gone before the Hon'ble Supreme Court, after undertaking to make payment as seen from the order passed in CRP.No.1257/2020, shows that at every stage, the petitioner is trying to drag the proceedings much to the prejudice of the respondent / Financial Institution.

(11)Hence, for want of merits and *bona fides,* this Civil Revision Petition stands **dismissed.** No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [N.S., J.]
13.02.2024

AP
Internet : Yes

S.S. SUNDAR, J.,
and
N.SENTHILKUMAR, J.,

AP

To
The Authorised Officer
Hinduja Leyland Finance
No.2/6, Above Max Hero Shware
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