BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2024

CORAM

THE HON'BLE MR.JUSTICE **R.SURESH KUMAR**
AND
THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

W.P(MD)No.9108 of 2024
and
W.M.P.(MD)No.8297 of 2024

M.Thiagarajan ... Petitioner

vs

1.The Debts Recovery Tribunal,
Kalyani Towers, Uthangudi,
Melur Main Road, Madurai-625 023.

2.The Recovery Officer No-II,
DRT, Madurai,
Kalyani Towers, Uthangudi,
Melur Main Road, Madurai-625 023.

3.International Assets Reconstruction Company
Private Limited,
Chennai.

4.The Liquidator,
M/s.Paramount Mills (P) Limited (Under liquidation),
Madurai – 625 704. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the second respondent to stop all proceedings in RC No.502 of 2018 in O.A.No.538 of 2013 till the disposal of M.A.No.72 of 2022.

For Petitioner	: Mr.V.S.Karthi
For R1 and R2	: Mr.K.Govindarajan Deputy Solicitor General of India

*****

ORDER

(Order of this Court was made by **G.ARUL MURUGAN, J.**)

This Writ Petition is filed seeking to direct the second respondent to stop all further proceedings in R.C.No.502 of 2018 in O.A.No.538 of 2013 till disposal of M.A.No.72 of 2022.

2.By consent, this Writ Petition is taken up for final disposal at the admission stage itself and in view of the order that is proposed to be passed, notice to the third and fourth respondent is dispensed with.

3.It is the case of the petitioner that the Company, namely, M/s.Paramount Mills (P) Limited at T.Pudupatti, had availed financial assistance from M/s.Axis Bank Limited on 30.12.2009 towards Inland Bill Discounting, Cash Credit and Inland Letter of Credit and the Company has involved in the business of manufacturing home and global textile products. Due to default in repayment, O.A.No.378 of 2013 was filed by the third respondent on behalf of the Bank for recovery of the money, wherein, an *ex parte* order was passed on 12.12.2018. In the meantime, the Bank also had moved before the National Company Law Tribunal for the same remedy vide CP/774/(IB)/2018, under Section 7 of the Insolvency and Bankruptcy Code, where, the petitioner had remitted a sum of Rs.4,98,33,303.30/- and only a balance due payable is Rs.14,95,544.10/-.

4.In view of the development, the petitioner has filed a petition to set aside the *ex parte* decree in M.A.No.72 of 2022, which was taken up for hearing and for the purpose of filing counter by the Bank, it has been posted to 25.10.2024. While the application is pending, the second respondent has issued a proclamation of sale under Rules 38 and 52(2) of the Second Schedule to the Income Tax Act, 1961 read with Recovery of Debts Due to Bank and Financial Institutions Act, 1993, calling upon the petitioner to pay a sum of Rs.5,86,89,252/-, failing which, property will be sold on

18.04.2024. Therefore, the petitioner prays for a relief that the auction sale process contemplated under the proclamation of sale notice, dated 26.02.2024 has to be stayed till the finality of M.A.No.72 of 2022 filed by him to set aside the *ex parte* decree.

5.The learned Counsel for the petitioner by reiterating the averments made in the affidavit contended that the Bank has also proceeded before the National Company Law Tribunal (NCLT) as against M/s.Paramaount Mills (P) Limited in CP/774/(IB)/2018 under Section 7 of IBC. It is claimed that the petitioner had remitted a sum of Rs.4,98,33,303.30/- and in view of the payments made, the petitioner had filed an application under Section 19(25) of Recovery of Debts Due to Bank and Financial Institutions Act, 1993, which has been taken on file in M.A.No.72 of 2022 in O.A.No.378 of 2013 to set aside the *ex parte* order, dated 12.12.2018, and to record the payments received to a tune of Rs.5,13,28,847.40/- and the petition in M.A.No.72 of 2022 has been taken up for hearing and now posted to 25.10.2024 for the purpose of filing counter by the Bank.

6.The learned Counsel for the petitioner contended that when the petition filed by the petitioner to set aside the *ex parte* order is pending and further in view of the subsequent payments made, if the the proclamation and auction issued by the respondents is proceed with, the interest of the petitioner will be prejudiced and the issue pending before the Debts Recovery Tribunal , Madurai will become infructuous.

7.The learned Deputy Solicitor General of India appearing for the respondents 1 and 2 disputed the claim made by the petitioner and submitted that no such payment, as claimed, has been made and no documents or receipts are enclosed in the Writ Petition to prove the claim made by the petitioner in this Writ Petition and when the *ex parte* decree has been passed earlier in the year 2018 and now, the subsequent proceedings are undertaken, the petitioner has come up with the present Writ Petition only to stall the proceedings. If at all the petitioner has moved any application before the Tribunal and the same is pending, it is for the petitioner to further pursue his remedy there and the present Writ Petition is not maintainable.

8.Heard the learned Counsels on either side and perused the materials available on record.

9.It could be seen that M/s.Paramount Mills (P) Limited had availed credit facility from the Axis Bank by executing equitable mortgage by way of agreement of hypothecation of the assets and machinery and other movable and fixed assets in favour of Axis Bank. Since there was default in repayment of the loan amount, the Axis Bank had issued demand notice, dated 19.12.2011 to the Company and the the petitioner herein and during the pendency of the loan, the said Axis Bank Limited under the provisions of Section 5(1)(b) of the SARFAESI Act, 2002, assigned its entire debts and security interest and financial assets to the third respondent herein by way of a registered assignment agreement, dated 10.08.2012. By virtue of the said assignment agreement, the third respondent stepped into the shoes of Axis Bank and the third respondent has filed O.A.No.378 of 2013 before the Debts Recovery Tribunal, Madurai as against M/s.Paramount Mills (P) Limited and the the petitioner herein under Section 19(1) of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993, for recovery of a sum of Rs.1,30,11,317.75/- towards cash credit facility and Rs.1,61,83,350.42/- towards letter of credit facility along with subsequent interest and penal interest.

10.The Company and the petitioner herein were set *ex parte* and the Tribunal, by order, dated 12.12.2018 has passed an *ex parte* order allowing O.A.No.378 of 2013, wherein, the Company and the petitioner were directed to pay jointly and severally the sum, as claimed in the application and also the Bank was directed to bring the hypothecated and mortgaged properties for sale to realise the dues. Based on the orders passed by the Debts Recovery Tribunal, Madurai, the second respondent had issued a proclamation of sale in ROC.No.502/2018, dated 26.02.2024 and has also issued e-auction notice fixing the date of e-auction as 18.04.2024.

11.The petitioner claims that even though an *ex parte* order was passed in the year 2018, subsequently, he has remitted a sum of Rs.4,98,33,303.30/- in view of the proceedings initiated before the National Company Law Tribunal under the provisions of Insolvency and Bankruptcy Code and in view of the payments made, the petitioner had filed a petition in M.A.No.72 of 2022 before the Debts Recovery Tribunal, Madurai, for the purpose of setting aside the *ex parte* order, dated 12.12.2018 and to record the payments made, but, however, the same is disputed by the respondents 1 and 2.

12.Be that as it may, when the proceedings are initiated by the second respondent based on the order passed by the Tribunal as early as on 12.12.2018 in O.A.No.378 of 2013 and the sale has also been fixed on 18.04.2024, we do not propose to disturb the proceedings, which have already been commenced. Without going into the merits of the case, we feel that it would be suffice to direct the Debts Recovery Tribunal, Madurai, to take up M.A.No.72 of 2022 in O.A.No.378 of 2013 for an early hearing by giving advance notice to all the parties and dispose of the same on merits within a period of three months from the date of receipt of a copy of this order, if it is pending. It is made clear that this will not preclude the second respondent from continuing with the proceedings, as initiated by them. Accordingly, the Writ Petition stands disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

[R.S.K., J] & [G.A.M., J]
12.04.2024

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

cmr

To

1.The Debts Recovery Tribunal,
Kalyani Towers, Uthangudi,
Melur Main Road, Madurai-625 023.

2.The Recovery Officer No-II,
DRT, Madruai,
Kalyani Towers, Uthangudi,
Melur Main Road, Madurai-625 023.

R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

cmr

Order made in
W.P(MD)No.9108 of 2024

12.04.2024