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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.07.2024

CORAM

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

W.P(MD)No.8090 of 2018
and
W.M.P.(MD)No.7675 of 2018

M/s.Sheela Christian Charitable Trust,
represented by its Managing Trustee,
P.Kala Reena,
Namakkal-637 020. ... Petitioner

vs

1.The Authorized Officer,
Religare Finvest Limited,
Corporate Castle No.794-A,
3rd Floor, Verivada Road,
Near Shanmuga Theatre,
Mettupalayam Road,
Coimbatore – 641 002.

2.Religare Finvest Limited,
represented by its Branch Manager,
Corporate Castle No.794-A,
3rd Floor, Verivada Road,
Near Shanmuga Theatre,
Mettupalayam Road,
Coimbatore – 641 002.

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3.Debts Recovery Tribunal-Madurai,
III & IV Floor, Kalyani Towers,
4/162, Madurai-Melur Road,
(Near Meenakshi Mission Hospital),
Uthangudi Post, Madurai – 625 107. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the order, dated 13.03.2018 made in I.A.No.602 of 2018 in S.A.No.126 of 2018 on the file of the third respondent herein insofar as the it directs the petitioner to make payment of sum of Rs.87,08,000/- each in three installments and to quash the same.

For Petitioner	: Mr.E.Om Prakash Senior Counsel for M/s.Vastlaw Associates
For R1 and R2	:Mr.S.Sakthi Siddharth for Mr.R.Suriyanarayanan

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ORDER

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

This Writ Petition is filed challenging the order, dated 13.03.2018, made in I.A.No.602 of 2018 in S.A.No.126 of 2018 on the file of the Debts Recovery Tribunal, Madurai, in so far as imposing conditions in the interim order.

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2.It is the case of the petitioner that M/s.Sheela Christian Charitable Trust is a private charitable educational Trust constituted on 09.08.2003 and is running an Engineering College in the name of "King College of Technology". It is a reputed educational engineering institution in the locality and has been in operation for nearly 13 years since 2005. For the purpose of developing the College, they had approached the second respondent financial institution for availing loan, which was sanctioned for a sum of Rs.20 crores by a loan agreement, dated 18.06.2012. The petitioner had furnished the property as collateral security for securing the loan.

3.Even though the petitioner Trust was regularly paying the loan amount, due to the change in Government policy, there were some defaults, but however, the second respondent restructured the loan by executing supplementary loan agreement, dated 22.12.2016 for a sum of Rs.12,61,35,111/-. Even though as per the modified schedule, the petitioner Trust was making payment upto November 2017, but however, there was again default in repayment of the dues and due to which, the Bank had

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classified the loan account as non-performing asset and initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act"). The first respondent had issued demand notice, dated 21.12.2017, under Section 13(2) of the SARFAESI Act demanding a sum of Rs.13,06,24,792.08/-. Since the amount, as per the demand notice, was not paid, the first respondent issued possession notice, dated 26.02.2018 under Section 13(4) of the SARFAESI Act by taking symbolic possession of the property. The possession notice was also published in Dinamani Tamil Daily on 03.03.2018.

4.Challenging the possession notice, the petitioner had filed an appeal under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal, Madurai, in S.A.No.126 of 2018 along with a petition for stay in I.A.No.602 of 2018. The Debts Recovery Tribunal, Madurai, entertained the appeal and granted a conditional order of interim stay on 13.03.2018 subject to payment of three installments of Rs.87,08,000/- each on or before 13.04.2018, 14.05.2018 and 13.06.2018, respectively. It was also made clear that in the event of failure to make even a single installment, the stay

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would stand automatically vacated and the petition shall stand dismissed and the case was posted for hearing on 14.06.2018. Assailing the interim order, dated 13.03.2018, passed by the Debts Recovery Tribunal, Madurai, the petitioner had preferred the above Writ Petition.

5.The learned Counsel for the petitioner submitted that prior to preferring the Writ Petition and after obtaining the interim order, they have paid a sum of Rs.87,08,000/-, which is as per the first installment of the conditional order imposed by the Debts Recovery Tribunal, Madurai, and also they had been making further payment. The learned Counsel for the petitioner further submitted that the Bank had wrongly classified the account as non-performing asset and the petitioner Trust running an educational institution, in fact, was not able to repay the dues in time, only as the Government fees to be reimbursed from the concerned Department were not made in time. The learned Counsel further submitted that since the proceedings have been taken without following the provisions of the Act and the Rules, the interim order granted by the Tribunal by imposing onerous conditions is not sustainable, he contended and sought for interference of this Court.

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6.The learned Counsel appearing for the respondent Bank argued that the very Writ Petition challenging the interim order granted by the Tribunal in the challenge to possession notice is not maintainable and the petitioner ought to have filed necessary application before the Debts Recovery Tribunal, Madurai, itself seeking for any further remedy or ought to have filed an appeal before the Debts Recovery Appellate Tribunal. The learned Counsel further submitted that till date, the petitioner had not even completed the amount equivalent to the second installment, as per the interim order of the Tribunal and in fact, even though the Tribunal had directed the petitioner to pay a sum of Rs.2,61,24,000/- in three installments, the petitioner had not made even 50% of this amount for the past six years. The learned Counsel also brought to the notice of this Court that when the outstanding as on 21.12.2017 was Rs.13,06,21,792/-, the outstanding as on 12.17.2024 is Rs.19,96,00,000/- and sought for dismissal of the Writ Petition.

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

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8.The petitioner Trust is running an Engineering College in the name of “King College of Technology” and had admittedly availed loan from the second respondent Bank for a sum of Rs.20 crores by executing a loan agreement, dated 18.06.2012. It is the contention of the petitioner that even though earlier there had been some defaults, subsequently, by a supplementary agreement, dated 22.12.2016, the loan was restructured for a sum of Rs.12,61,35,111/- and the petitioner was properly remitting the interest till November 2017. After that, there had been defaults in the repayment of the loan and the loan account of the petitioner came to be classified as non-performing asset and the respondent Bank had initiated proceedings under the SARFAESI Act.

9.The first respondent had issued a demand notice, dated 21.12.2016 under Section 13(2) of the SARFAESI Act, demanding a sum of Rs.12,61,35,111/- and since this amount was not paid, possession notice under Section 13(4) of the SARFAESI Act, dated 26.02.2018, was issued by taking symbolic possession of the property. It was also published in the Tamil daily on 03.03.2018. The petitioner had challenged the possession

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notice before the Debts Recovery Tribunal, Madurai, by filing an appeal under Section 17 of the SARFAESI Act in S.A.No.126 of 2018 along with a stay petition in I.A.No.602 of 2018.

10.The Debts Recovery Tribunal, Madurai, had entertained the appeal and granted a conditional order of stay on 13.03.2018 subject to the petitioner paying a sum of Rs.87,08,000/- each in three monthly installments, totalling a sum of Rs.2,61,24,000/-. The petitioner has to make the first installment on 13.04.2018 and to pay other two installments on 14.05.2018 and 13.06.2018, respectively and in the event of failure to pay even a single installment, the interim order granted shall stand automatically vacated.

11.Though the Writ Petitioner had challenged the conditional order imposed by the Debts Recovery Tribunal, Madurai, and also obtained an interim order from this Court, it is brought to our notice that till date, only the following payments have been made by the petitioner:

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Date	Amount
18.04.2018	Rs.50,00,000/-
24.05.2018	Rs.10,00,000/-
03.07.2018	Rs.27,08,000/-
07.03.2019	Rs.25,00,000/-
09.10.2019	Rs.10,00,000/-
08.01.2020	Rs.5,00,000/-
24.06.2020	Rs.10,00,000/-

12.Therefore, when the Debts Recovery Tribunal, Madurai, by an interim order, dated 03.03.2018, had directed the petitioner to pay a sum of Rs.2,61,24,000/- in three equal installments, the petitioner had till date only paid a sum of Rs.1,37,08,000/-, for the past six years, which is only almost half of the amount, which has been directed by the Tribunal to be paid before 13.06.2018 itself. Now, it is also brought to our notice that even though the outstanding amount as covered under 13(2) notice as on 21.12.2017, was Rs.13,06,24,792/-, as on 12.07.2024, the outstanding payable by the petitioner to the respondent Bank is Rs.19,96,00,000/-. The petitioner by filing the above Writ Petition was able to scuttle the proceedings before the Debts Recovery Tribunal, Madurai, for the past six

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years, but have not acted *bona fidely* by making payment to the Bank and in fact, even the conditional order imposed by the Debts Recovery Tribunal, Madurai, has also not been complied with for the past six years. In such circumstances, at this point of time, we are not inclined to interfere with the orders passed by the Debts Recovery Tribunal, Madurai.

13.In view of the above discussion, there is no merit in the Writ Petition and the Writ Petition deserves to be dismissed. Accordingly, this Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J] & [G.A.M., J]
12.07.2024

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

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To

The Registrar,
The Debts Recovery Tribunal-Madurai,
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(Near Meenakshi Mission Hospital),
Uthangudi Post, Madurai – 625 107.

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R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

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Order made in
W.P(MD)No.8090 of 2018

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