(2009) 11 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15702 of 2008

Kay Quinone Organics (India) Ltd. and Another — APPELLANT

Vs

IFCI Ltd. and Others — RESPONDENT

Date of Decision : 16-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Rules, 1962 — Rule 60, 61, 62
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 21

Citation : (2010) 2 ALD 63 : (2010) 2 BC 333

Hon'ble Judges : G. Chandraiah, J;A. Gopal Reddy, J

Bench : Division Bench

Advocate : K.V. Simhadri, for the Appellant; Deepak Bhattacharjee and B. Viswanatha Reddy, for the Respondent

Final Decision : Dismissed

Judgement

A. Gopal Reddy, J.—The petitioner, by invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution, seeks issuance of a writ of mandamus to declare the order dated 19.6.2008 in I.A. No. 1225 of 2008 in I.N. No. 305 of 2008 passed by the Debts Recovery Appellate Tribunal, Chennai (for brevity "the DRAT"), as illegal and unreasonable. In the aforesaid IA, the DRAT granted interim stay subject to a condition of the petitioner depositing an amount of Rupees one crore with the first respondent-Bank in two equal instalments, each at Rs. 50,00,000/-, first instalment to be paid on or before 21.7.2008 and the second instalment to be paid on or before 20.8.2008, and, on such deposit, the respondent was directed to keep the said amount in interest earning no-lien account.

2. The first respondent-Bank invoked the jurisdiction of the Debts Recovery Tribunal on 1.7.2002, pursuant to which, a Recovery Certificate for a sum of Rs. 174,78,02,376.45 together with interest at the rate of 20.5% per annum with quarterly rests from 15.5.2007 till realization was issued on 15.5.2007.

Thereafter, The Recovery Officer of the Tribunal issued demand notice and thereafter initiated the proceedings against the securities and properties of the petitioner and put the same to auction on 19.6.2008. Then, the petitioner invoked the jurisdiction of the DRAT questioning the recovery proceedings in RP No. 98 of 2007 in O.A. No. 1022 of 2002. The DART by its order dated 22.7.2008 in IA No. 1225 of 2008 in I.N. No. 305 of 2008 granted interim stay of auction subject to certain conditions as stated supra, by exercising its discretionary jurisdiction u/s 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Aggrieved thereby, the present writ petition is filed.

3. This Court, while issuing notice before admission on 22.7.2008, granted interim stay of recovery proceedings initiated in RP No. 98 of 2007 in O.A. No. 1022 of 2002 on the file of the Recovery Officer-II, Debts Recovery Tribunal, Visakhapatnam, (for brevity ''the Tribunal'') subject to the condition of the petitioner paying Rs. 25,00,000/- within a period of fifteen days from the date of the said order. It was observed therein that if the amount referred to above is not paid within a period of twenty days from the date of the said order, the ad interim relief granted shall stand vacated automatically.

4. Later, the petitioner filed W.P.M.P. Nos. 24256 and 24257 of 2008, seeking stay of all further proceedings including the auction sale scheduled to be held on 29.8.2008 as published in the Economic Times dated 25.7.2008, and, to direct the respondent to receive the Bankers cheque (DD) drawn in favour of IFCI Ltd., for Rs. 25,00,000/- treating it as the deposit made within the time or by extending time till 27.8.2008, respectively, contending that pursuant to the interim order of this Court dated 22.7.2008, the petitioner obtained Bankers Cheque 4 No. 008947, dated 5.8.2008, for Rs. 25,00,000/- drawn in favour of ''IFCI Ltd, no-lien account in account of Kay Quinone Organics (I) Ltd.'', as was referred to in the order of the DRAT, dated 19.6.2008; but, however, the same was returned to the drawer/petitioner on 7.8.2008 with an endorsement ''title differs''. Thereafter, the ICFI Limited/respondent addressed letter dated 8.8.2008 to the petitioner enclosing the memorandum of the HDFC Bank, pursuant to which the petitioner addressed letter dated 11.8.2008 to the respondent enclosing managers for an amount of Rs. 25,00,000/- drawn on HDFC Bank vide cheque No. 009029, dated 11.8.2008 in favour of IFCI Ltd., duly modifying the name of IFCI Limited and deleting the words ''no lien account''. The respondent by its letter dated 12.8.2008 returned the said cheque to the petitioner stating that the amount is not received within the period of twenty days as stipulated by this Court.

5. From the above, it is obvious that even after return of the pay order dated 5.8.2008 on 7.8.2008 and intimation thereof, the petitioner did not take any steps to comply with the directions of this Court. Admittedly, the cheque was produced after the expiry of the time granted by this Court. By the time the petitioner submitted the cheque, the said interim order stood automatically vacated. Thereafter, the Tribunal conducted auction of the properties of the

petitioner on 29.8.2008. It is stated that the respondents have followed the due procedure contemplated under law while conducting the public auction. Five months thereafter, the petitioner filed W.P.M.P. No. 1975 of 2009 to implead the auction purchaser and the Recovery Officer as respondents 2 and 3 to the writ petition.

6. The first respondent-Bank filed W.V.M.P. No. 2559 of 2008 seeking to vacate the interim order dated 22.7.2008, along with counter-affidavit stating that u/s 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the appeal preferred by the petitioner shall not be entertained by the Appellate Tribunal unless the appellant deposits 75% of the amount of debt due and as determined by the Tribunal u/s 19 thereof, which comes to Rs. 1,31,08,51,797/-. However, the Appellate Tribunal exercising discretionary jurisdiction conferred under the proviso to Section 21, directed the petitioner to deposit Rs. 1.00 crore only, that too, in two instalments. The first respondent also filed additional counter-affidavit stating on the failure of the petitioner to comply the directions of this Court, public auction was conducted by the Tribunal after expiry of the time granted by this Court and as to the steps taken for confirmation of the sale and issuance of sale certificate, and handing over of the physical possession of the property to the auction purchaser.

7. The second respondent-auction purchaser filed counter reiterating the stand taken by the first respondent-Bank in its additional counter-affidavit.

8. Mr. K.V. Simhadri, learned Counsel for the petitioner strenuously contended that the action of the first respondent-Bank in proceeding to conduct auction despite the stay order of this Court is nothing but violation of the orders of this Court and thereby depriving the petitioner of their property. He further submitted that when petitioner is taking steps with the respondent for one time settlement, they had not noticed the posting of O.A. due to oversight, and, in their absence, the Tribunal passed ex parte decree dated 15.5.2007 and issued recovery certificate and consequential demand notice. Therefore, the petitioner approached the DRAT questioning the recovery proceedings. He submitted that before the DRAT they made a counter-claim for Rs. 27,00,00,000/- and, therefore, grant of conditional stay by the DRAT is erroneous, that too, without recording any reasons therefore. The appellate Tribunal did not take into consideration their contentions while exercising discretionary jurisdiction. The recovery/sale proceedings are the subject-matter of challenge before the DRAT and, therefore, the respondents cannot proceed with auction. He further submitted that in spite of this Court granting stay, the respondents proceeded with conducting auction, that too without following the statutory procedure, and thereby deprived the petitioner of their property. He lastly submitted that DRAT posted the appeal to 30.11.2009 for adjudication and, therefore, prayed for adjournment of hearing of the writ petition.

9. It is to be seen that prior to the passing of the interim order by this Court on 22.7.2008, a Commissioner was appointed by the Tribunal for taking necessary

steps to auction the property in question. Initially, the proclamation of sale was published on 12.5.2008 by the Tribunal and the same was affixed and served on the necessary parties. In view of the interim order granted by the DRAT, the auction initially scheduled to be held on 19.6.2008 was postponed. As the petitioner did not comply with the orders of the DRAT, dated 19.6.2008 and after expiry of the time stipulated therein, the Tribunal issued sale notification on 25.7.2008. A few days prior to this, the petitioner approached this Court by way of the present writ petition and this Court by order dated 22.7.2008 granted stay of recovery proceedings subject to certain conditions, stated supra. It is stated that the Debt Recovery Tribunal had no knowledge of the interim order granted by this Court while issuing sale proclamation notification on 25.7.2008. However, after expiry of the time granted by this Court in the order dated 22.7.2008, the Tribunal conducted auction on 29.8.2008, in which, the second respondent stood as highest bidder. After confirmation of the sale by the Recovery Officer on the ground that no application under Rules 60 to 62 of the Second Schedule appended to the Income Tax Act, 1961 made applicable to recovery proceedings has been received for setting aside the sale, sale certificate coupled with delivery of the physical possession of the property was issued to the second respondent/ auction purchaser. It is after expiry of 20 days and the consequential default committed by the petitioner in complying with the directions of this Court, the Tribunal conducted the auction. Further, it is obvious that the auction was conducted on 29.8.2008 and nearly five months thereafter, the petitioner took further steps to file a petition being W.P.M.P. No. 1975 of 2009 to implead the auction purchaser and Recovery Officer as respondents 2 and 3 in the writ petition. Further, he did not take any steps to set aside the sale.

10. It is not in dispute that against the ex parte decree dated 15.5.2007 passed by the Tribunal, the petitioner filed an application seeking to set aside the said order dated 15.5.2007, along with an application being M.A. No. 47 of 2007 to condone the delay of 150 days in filing the application to set aside the ex parte decree. To this application, the first respondent-Bank filed counter stating that when the petitioner prayed time for cross-examining the respondent-Bank, the Tribunal granted time, however, the petitioner failed to cross-examine the respondent-Bank and thereby forfeited its right to cross-examine AW1-respondent Bank and thereafter-only, the exparte decree dated 15.5.2007 came to be passed holding that the petitioner is not diligent in pursuing the matter, and dismissing the condone delay application. Aggrieved thereby, the petitioner filed appeal before the DRAT.

11. From the above factual matrix, it is axiomatic that the petitioner failed to comply with the orders of this Court and, therefore, the conditional stay granted by this Court stood automatically vacated. Thereafter only, the auction was conducted on 29.8.2008 and in the said auction, the second respondent-M/s. Andhra Organics Limited stood as the highest bidder. Pursuant to the same, sale certificate was issued and the physical possession of the property in question was delivered to the second respondent and registration was also done in its favour.

It is obvious that the petitioner did not take any steps to set aside the sale. Even the appeal preferred by the petitioner before the DRAT was also dismissed for default on 7.8.2008. However, it is stated, it was restored to file later. The attitude of the petitioner reveals that he is successfully delaying the proceedings without paying any amount though substantial amount in due is Rs. 174,78,02,376/-. If the intention of the petitioner is fair enough to discharge the debt, he could have certainly complied the directions of this Court by depositing Rs. 25,00,000/- within fifteen days. Thus the conduct of the petitioner in prosecuting the lis speaks volumes about his diligence. At no point of time, even after obtaining the orders from the DRAT and this Court, the petitioner has not even moved in the matter, which conduct of the petitioner makes it manifest that he wants to protract the lis as long as he can and gain time at the cost of playing delaying tactics. Thus he has entailed himself for disentitlement of relief sought for in the writ petition. We do not see any irregularity or infirmity in the order of the DRAT.

12. The writ petition is devoid of merits and is dismissed accordingly. No order as to costs.