(2014) 04 MAD CK 0032

In the Madras High Court

Case No : W.P. No. 9419 of 2014 and M.P. No. 1 of 2014

P.G. Saranyan and Others APPELLANT

Vs

Indian Bank and Others RESPONDENT

Date of Decision : 10-04-2014

Acts Referred:

Citation : (2015) 3 BC 240

Hon'ble Judges : S. Rajeswaran, J;S. Vaidyanathan, J

Bench : Division Bench

Advocate : S.R. Rajagopal, Advocate for the Appellant; Kalyanasundaram for Jayesh B. Dolia, Advocate for the Respondent;

Final Decision : Disposed off

Judgement

S. Vaidyanathan, J.

1. Even though the petitioner has filed the present writ petition challenging the Order of the DRAT/respondent No. 26 herein, dated 10th March, 2014 made in LA. No. 1039/2012 in AIR SR. No. 728/2012 with a prayer to quash the same and for a consequential direction to the DRAT to hear the Appeal without insisting upon the pre-deposit, the moot question to be decided by DRT/DRAT is whether the Bank can proceed against the guarantor after accepting and receiving the entire amount under OTS and that too, after discharging the Principal Borrower and can this not be called as a day-light robbery by the Bank. Heard the learned Counsel for the petitioner and the learned Counsel appearing for the respondent No. 1/Bank. We have also gone through the documents made available on record including the order passed by the DRT in Original Application 411/2007 dated 20th June, 2012 and the order passed by the DRAT in I.A. No. 1039/2012 in AIR SR. No. 728/2012.

2. The petitioner/guarantor has approached this Court challenging the proceedings of the DRA? dated 10th March, 2014 made in LA. No. 1039/2012 in AIR SR No. 728/2012 directing the petitioner to deposit 50% of the amount due,

viz. Rs. 53,02,208/-, into the Tribunal on or before 28th March, 2014, as a pre-condition to entertain the Appeal. It is an admitted case that a sum of Rs. 90,52,326.39 has been paid by the petitioner/guarantor as full and final settlement due from the Company to whom the petitioner stood as a guarantor. The case of the petitioner is that the Principal Debtor has paid the entire amount and the respondent No. 1/Bank having accepted the same, is not entitled to proceed against the petitioner as the foundation on itself has gone. It is submitted by the learned Counsel for the respondent No. 1/Bank that this Court in Comp. Appln. No. 3217/2007 in Comp. Petn. No. 613/2000 has passed an Order dated 25th September, 2008 granting liberty to the respondent No. 1/Bank to proceed against the guarantor and the observation made in Para. 9 will not stand in the way of the Bank exercising its rights against the guarantors in the pending case for recovering the balance dues before the DRT. It is no doubt that mechanically an amount of Rs. 1,06,04,413/- has been taken by the DRAT as the outstanding due to the respondent No. 1/Bank and has directed the petitioner to deposit 50% of the said amount in the Waiver application. The Bank is also not able to give correct calculation as to the amount due from the guarantor/ petitioner Whether the respondent No. 1/Bank could proceed against the petitioner/guarantor after accepting full and final settlement of the amount from the Company is the question to be decided by DRT after hearing the parties concerned. Having accepted the entire amount as full and final settlement from the petitioner, merely because this Court has given liberty to the Bank proceed against the guarantor, it does not mean that the Bank can mechanically invoke the powers and try to recovery once again, the very same amount. In case, the liberty had not been given by this Court, then the petitioner would have taken a stand that liberty was not given to the Bank to proceed against him and hence, he is not entitled to be proceeded with. Based on the observations of this Court made earlier, the respondent No. 1/Bank cannot, without applying its mind, try to extort the money from the petitioner/guarantor. The DRT/DRAT should decide the issue as to whether the Bank can proceed against the guarantor after discharging the Principal Borrower.

3. In view of the above, we direct the petitioner to deposit a sum of Rs. 15,00,000/- (Rupees fifteen lacs only) into a "No Lien" Account which would be reinvested to enable the parties to get Bank rate of interest. After such deposit has been made by the petitioner, the DRAT is directed to proceed with the matter on merits and in accordance with law. In case the DRT/DRAT arrives at a conclusion that the petitioner/guarantor is not liable to pay the amount as the Principal Borrower has been discharged, then the respondent No. 1/Bank should identify the Officers concerned and recover the amount from them. The Bank is directed to identify the names of the Officers, their address to inform the DRT/ DRAT and also the Officers concerned now itself, as they should not take a stand later that they have not been intimated in advance.

4. The writ petition is disposed of with the above directions. No costs. Consequently connected Miscellaneous Petition is also closed. It is made clear

that the above Order has been passed only to dispose of the writ petition. It is open to the parties concerned to raise all the grounds available to them, both on fact and in law, before the DRAT. However, with regard to the direction of this Court to the respondent No. 1/Bank to recover the amount from the Officers concerned, the same remains unaltered.

