(2006) 11 MAD CK 0009

In the Madras High Court

Case No : Writ Petition No. 37139 of 2005

V.S. Murugan APPELLANT

Vs

Indian Overseas Bank and Jawahar Mills Limited RESPONDENT

Date of Decision : 16-11-2006

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Rules, 2004 — Rule 8(8)

Citation : (2006) 11 MAD CK 0009

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : T. Raja, K.B. Pradeep, P.S. Sivashanmuga Sundaram and M. Vijayanand, for the Appellant; V.T. Gopalan, Solicitor General for F.B. Benjamin George, for R1 and R2 and P.L. Narayanan, for R3, for the Respondent

Judgement

M. Jaichandren, J.—The Writ Petition has been filed praying for the issuance of a writ of Certiorarified Mandamus to call for the entire

records relating to the letter, dated 23.8.2005, on the file of the second respondent and quash the same and to forbear the respondents 1 and 2

from issuing fresh tender-cum-auction notification in respect of their secured assets taken symbolic possession from the third respondent and

consequently to confirm the bid in favour of the petitioner pursuant to the tender notification, dated 29.3.2005 and to allow the writ petition with

cost.

2. Heard the learned Counsels appearing for the petitioner as well as for the respondents.

The brief facts of the case, as stated by the petitioner, are as follows:

3. The petitioner is a proprietor of the firm M/s. Hari Tex, dealing with scraps,

Textile Machineries, Electrical Goods, Motors, Old Machineries

and Generators and the said firm has been in existence for over 20 years. The second respondent had issued a tender notification, dated

29.3.2005, published in News Daily, on 30.3.2005. As per the said notification, the second respondent had invited tenders from the public for sale

of the property of the third respondent taken possession under the provisions of the Securitization and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 and the Security Interest (Enforcement) Rules, 2002. It was indicated in the said notification that the

secured Asset proposed to be sold was taken symbolic possession by the first respondent bank as secured creditor by inviting sealed tenders in

as is where is"" condition.

4. It had been further stated that the entire sale consideration shall be exclusively available for appropriation towards the dues payable to the bank

and it is exclusive of encumbrances of statutory dues, dues of workers and other charge holders, if any. All the dues were to be paid or settled by

the proposed purchaser out of his own sources by making the necessary arrangement to the satisfaction of the Indian Overseas Bank, Salem Main

Branch, Salem.

5. The tender had to be submitted by 1.00 p.m., on 30.4.2005 and the opening of tender was fixed to be at 3.00 p.m. on 2.5.2005, in the

Regional Office of the first respondent. The reserve price was fixed at Rs. 7.00 crores. In order to participate in the bid, the intending tenderers

were asked to remit 10% of the bid amount by way of a demand draft. The remaining bid amount was to be paid within 15 days from the date of

confirmation of the sale and upon failure to remit the balance bid amount, the bank would revoke the sale and forfeit the deposit of 10% plus 15%

of the bid amount already paid and the property would be brought for resale.

6. It was further stated that even prior to the issuance of the said tender notification, the third respondent had approached the first respondent as

well as the Industrial Development Bank of India, Mumbai, for the settlement of the dues by way of ''one time settlement''. The Industrial

Development Bank of India, Mumbai, vide its letter, dated 31.5.2004, had agreed to the proposal for ''one time settlement'' proposed by the third

respondent after discussions with the proposed investor, the petitioner herein.

After prolonged negotiations, the third respondent was willing to pay

a sum of Rs. 7.00 crores by selling the secured assets exclusively charged to the first respondent bank. The first respondent bank after considering

all the aspects relating to the matter, had recommended for selling the secured assets by way of private treaty in terms of Rule 8(8) of Security

Interest (Enforcement) Rules, 2002. It was also placed before the Settlement Advising Committee which had recommended to the first respondent

bank for the sale of the secured assets of the third respondent by publication and it fixed the upset price at Rs. 7.00 crores. Pursuant to the tender

notification, dated 29.3.2005, the petitioner had made an offer of Rs. 7,00,70,007/- and in accordance with the conditions stipulated in the said

tender notification, he had paid a sum of Rs. 70,07,007/- being 10% of the bid amount to the first respondent.

7. The petitioner had submitted a representation, on 2.5.2005, to the second respondent requesting him to consider the petitioner''s request for

completion of the auction sale with slight modifications in respect of the conditions stipulated in the tender notification. It was necessiated due to the

fact that the dues amount of nearly Rs. 5.00 crores due to the workers have to be paid before taking delivery of the machines from the third

respondent''s factory premises. It had also been pointed out that other statutory claims were also to be settled. The petitioner had prayed for a

modification of the payment terms in respect of payment of additional 15% of the bid amount immediately, after the bid was completed in favour of

the petitioner and the payment of balance 75% of the bid amount to be paid within 15 days from the date of confirmation of the sale by the first

respondent. The petitioner had also prayed for modification of the conditions relating to the issue of the sale certificate.

8. The third respondent, vide its letter in reference No. RO.LAW/28/2005-2006, dated 13.5.2005, had informed that the petitioner was the only

tenderer being the highest bidder. It was also informed in the said letter that after the remittance of 25% of the bid amount upfront, the bank will be

in a position to take up the issue of confirmation of sale and for fixing a period for the terms of the payment of the balance amount of 75% and the

petitioner was called upon to remit the further amount of 15% bid amount to make up the aggregate remittance of 25% of the bid amount. In response to the second respondent''s letter, dated 13.5.2005, the petitioner had sent a reply, dated 18.5.2005, in which he had drawn the

attention of the second respondent towards the earlier letter, dated 2.5.2005. In his reply, dated 18.5.2005, he had pointed out the steps taken by

him regarding the settlement of the loans of the secured creditor, namely, the Industrial Development Bank of India by way of ''one time settlement''

of Rs. 3,66,00,000/-. The representation had also contained the proposed mode of settlement of the statutory dues due to be paid to the various

authorities as provided by law. It was also stated that the petitioner will deposit 15% of the bid amount to be kept in a no lien account before

22.5.2005 and 10% of the bid amount already deposited to satisfy the requirement stipulated in the tender notification, dated 29.3.2005. While,

the negotiations were going on, the petitioner was informed of the writ petition filed before this Court in W.P. No. 1064 of 2004 challenging the

tender notification, dated 29.3.2005. Since the writ petition was dismissed, on 3.5.2005 during the admission stage, a Writ Appeal in W.A. No.

1065 of 2005 had been filed in which the petitioner had impleaded himself as he was the successful bidder and by virtue of the interim order

granted in the Writ Appeal, the petitioner was being put to irreparable hardship. The First Bench of this Court by its order, dated 18.7.2005, had

modified the earlier order of interim stay, dated 17.5.2005, giving liberty to the bank to consider whether the offer made by the fourth respondent

therein, the petitioner in the present writ petition, was in confirmity with the terms and conditions of the tender notification and the relevant rules

applicable to the issue. Therefore, the petitioner had made a representation, dated 17.8.2005, to the second respondent stating all the facts relating

to the matter. The second respondent without considering all the events that had taken place at the date of tender notification and the orders

passed by the Division Bench, on 18.7.2005, in W.A.M.P. No. 1946 of 2005 etc., had sent a letter, dated 23.8.2005, stating that the auction had

been cancelled for non-compliance of the tender terms.

9. Therefore, the present writ petition has been filed challenging the letter of the second respondent, dated 23.8.2005.

10. At the time of hearing of the writ petition an additional affidavit was filed wherein, in paragraph 10, it was stated as follows:

I further humbly submit that it is an admitted case of the respondent bank at Para ? 39 in page No. 128 of the typed set Volume No. I filed by them

in this writ petition that the values of the machineries and building are depreciating day by day. Therefore, the only legitimate objection, which the

first respondent could raise is the loss of interest from 13.5.2005 till the date of final payment and the same will be properly taken care of by the

petitioner. The first respondent is a bank engaged in banking business. Had I paid the entire sale consideration within the due date, the first

respondent could have invested the money in lending and generated more income. I have learnt that the prime lending rate of interest of the bank is

only 11% p.a compounded monthly and the maximum lending rate of the bank is 19.5% p.a. compounded monthly. Though the delay in remittance

of the entire sale consideration is not due to my fault and beyond my control and still I undertake to pay any additional amount, with an intention to

put an end to the litigation, therefore, I humbly submit that I am ready and willing to pay the entire balance sale consideration, after adjusting the

sum of Rs. 70,07,007/- lying with the first respondent against my offer of Rs. 7,00,70,007/- together with interest at 19.5% P.A. which is the

maximum lending rate of interest from 13.5.2005 till the date of final payment.

11. Learned senior counsel Mr. V.T. Gopalan appearing for the first and second respondents had raised certain objections with regard to the

confirmation of sale in favour of the petitioner, since the terms and conditions of the tender notification, dated 29.3.2005, had not been complied

with in full by the petitioner. However, in view of the fact that the petitioner had undertaken to pay the entire balance sale consideration together

with interest at 19.5% per annum compounded monthly from 13.5.2005 till the date final payment and in view of the fact that the value of the

machineries and building in question was depreciating, it would only be appropriate for the bank to conclude the sale in favour of the petitioner.

Further, the fact that the terms and conditions stipulated in the tender notification, dated 29.3.2005, were being subsequently negotiated by the

bank only goes to show that the bank was in a way willing to accept the sale consideration after modifying the tender conditions. Further, there are

no rival bidders involved in the auction sale and it would be in the interest of all concerned, including the petitioner herein, the workers to whom certain dues may be payable and to the other statutory authorities or bodies to whom the statutory dues would be payable.

12. The petitioners/proposed respondents in W.P.M.P. Nos. 18429 and 18430 of 2006 had raised certain apprehensions regarding payment of

dues to the members of the petitioner union/sangam, which they may be entitled to, as stipulated by the terms and conditions of the auction sale.

Therefore, it is made clear that the sale would be confirmed and the sale certificate issued to the petitioner or his nominee subject to the terms and

conditions contained in the tender notification, dated 29.3.2005.

13. In such circumstances, this Court is of the considered opinion that it would be appropriate to direct the second respondent to confirm the sale

in the name of the petitioner or his nominee on deposit of the amount by the petitioner with the second respondent, as specified in paragraph 10 of

the additional affidavit, dated 5.11.2006, filed in support of the above writ petition. The sale certificate shall be issued by the second respondent to

the petitioner or his nominee subject to the satisfaction of the other terms and conditions of the tender notification, dated 29.3.2005.

With the above directions, the writ petition is disposed of. No costs.