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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

WP No.24466 of 2021

State Bank of India
Rep. by its Assistant General Manager
Stressed Assets Management Branch
Red Cross Building, Montieth Road
Egmore, Chennai.

.. Petitioner

Vs.

1. Atul Jain

2. Axis Bank
Rep. by its Assistant Vice President
No.3, Club House Road
Anna Salai
Chennai 600 002.

3. IDBI Bank Ltd.
Rep. by its Deputy General Manager
No.115, Anna Salai
Saidapet, Chennai 600 015.

4. Karur Vysya bank
Rep. by its Assistant General Manager
No.AC-6, 2nd Avenue
Anna Nagar
Chennai 600 040.

.. Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of Debts Recovery Tribunal II at Chennai and quash the impugned order dated November 1, 2021 in I.A.No.1167 of 2021 in I.A.No.46 of 2020 in O.A.No.30 of 2020 as unconstitutional and that said impugned order exceeds the jurisdiction.

For the Petitioner : Mr.A.L.Somayaji, S.C.
For M/s. India Law llp

For the Respondents : Mr.N.L.Rajah, S.C.
for Mr.Kalyan Jabhak
for respondent-1

ORDER

(Made by the Hon'ble Chief Justice)

The petition is directed against a rather remarkable order passed by the DRT II at Chennai on November 01, 2021.

2. In the fitness of things, it may do well to start with the tail before getting to the head and noticing the directions issued by the impugned order before seeking to ascertain the reasons that may have impelled the Tribunal to act thus:

"20. In the result, the petitioner is allowed to travel abroad strictly in accordance with the proposed itinerary and for this purpose the order dated



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25.1.2020 passed in IA No.46 of 2020 is kept in abeyance for a period of two months from 2.11.2021 so as to enable the petitioner to complete the first limb of his intended foreign trip i.e., from 10.11.2021 and ending on 20.11.2021. The consideration of extending this order will depend upon compliance of the previous orders of this Tribunal by the petitioner. Further, this order to keep in abeyance the order of this Tribunal dated 25.1.2020 in IA No.46 of 2020 for a period of two months will be subject to following conditions:-

(i) The petitioner has to produce the passport after returning from the first trip along with an affidavit giving details of his travel and the results of the discussion he had with any investor bank and strategic investors.

(ii) The petitioner shall not enter into any contract which will further expose the debtor company or its foreign subsidiaries.

(iii) The petitioner shall not represent the debtor company under CIRP before any of the intended investors.

(iv) The petitioner shall not alienate or encumber any of the foreign assets of any of the subsidiary companies or the suspended Directors of the company under CIRP.

(v) The petitioner can produce this order before



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the competent authorities to withdraw the lookout notice, if required.

(vi) The respondents shall also co-operate with the petitioner so as to communicate this order to competent authorities, if so required to enable petitioner's proposed travel."

3. The order was passed on an interim application being IA No.1167 of 2021 in pending proceedings before the DRT. The prayer made by the first respondent herein in IA No.1167 of 2021 was as follows:

"For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Tribunal may be pleased to direct the respondents to cancel the look out notice issued against the petitioner and permit the petitioner to travel abroad as per the tentative plan and thus render justice."

4. The affidavit filed by the first respondent in support of IA No.1167 of 2021 does not specifically refer to any lookout notice or the date thereof; but it refers to an order passed by the DRT in IA/46/2020 at paragraph 6 of such affidavit. The directions issued by the DRT need be noticed. Though the date of the order is not indicated



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in the affidavit filed by the first respondent, according to the petitioning bank, such order was passed on January 25, 2020.

"a) The respondents 2 & 3 shall deposit their passport before the Registry of this Tribunal, within three days from the date of receipt of a copy of this order.

b) Simultaneously, respondent 2 and 3 shall also file an affidavit duly undertaking that they will not leave the country without obtaining the approval from the Tribunal, within three days from the date of the receipt of the copy of this order.

c) On filing of such an undertaking affidavit, respondents 2 and 3 can take back their original passports from the Tribunal by submitting an undertaking that they will produce the same as and when directed by the Tribunal.

d) In the event of any breach of the terms of the undertakings required to be submitted in the manner aforesaid by the respondents, the petitioners are at liberty to approach the Tribunal for appropriate reliefs against the respondent."

5. What is evident is that since the first respondent herein was in control of certain companies or business entities which owe a huge

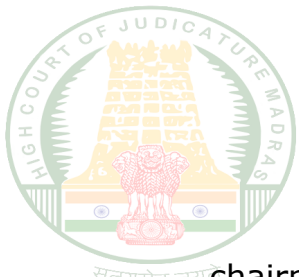


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amount to the petitioning bank herein, the relevant DRT, in effect, restrained the first respondent from leaving the country without substantial repayments being made. Indeed, the first respondent herein was required to furnish an affidavit of undertaking which, according to the petitioner, has not been done. It needs also be recorded that simultaneously with filing IA No.1167 of 2021 before the DRT II, Chennai, another interim application, IA No.1168 of 2021 was also filed by the first respondent herein seeking a modification of the aforesaid directions issued on January 25, 2020. However, the Tribunal declined to take up the application pertaining to the modification, as would be evident from the order impugned herein, but the effect of the impugned directions amounts to the complete vacating of the order dated January 25, 2020.

6. According to the first respondent, no lookout notice has been served on the first respondent and, as such, the first respondent was neither in a position to produce a copy thereof, nor in a position to indicate any date of such purported notice. The first respondent submits that the procedure for issuing lookout notice has been amended by the Union Home Ministry and it is now possible for

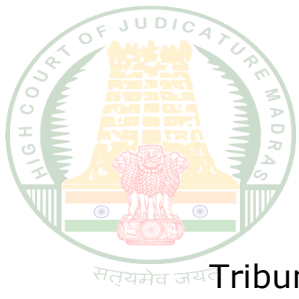


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chairpersons of banks and the financial institutions to approach the Home Ministry to issue a lookout notice against an individual borrower or a person who may be in control of a business entity which has borrowed heavily from the relevant bank or financial institution. The first respondent, however, maintains that the concerned bank or financial institution or its chairperson has no authority to issue the lookout notice. Such person may only request the Union Home Ministry and the prerogative of issuing the notice is only that of the Home Ministry.

7. Whatever may be the circumstances pertaining to the issuance of a lookout notice and whoever may have been the appropriate authority for issuing a lookout notice, it is evident that the first respondent was not aware of any lookout notice having been issued against the first respondent. In any event, no specific lookout notice was referred to in the affidavit in support of the interim application nor was a copy thereof appended thereto.

8. It must also be appreciated that two independent applications were simultaneously carried by the first respondent before the relevant



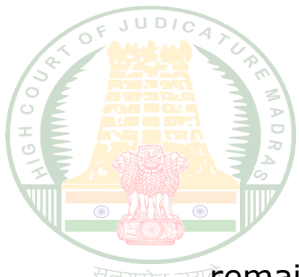
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Tribunal: one specifically for modification of the order dated January 25, 2020 and the other in respect of the so called lookout notice. It cannot also be missed that the Tribunal has specifically recorded at paragraph 17 of the impugned order that the Tribunal "is not inclined to recall the order of this Tribunal dated 25.1.2020 made in IA No.46 of 2020 so as to accept the proposed travel submitted by the petitioner ...". Yet, in the same breath, the Tribunal issued directions pertaining to what can at best said to be an imaginary lookout notice where the directions completely override the order dated January 25, 2020.

9. There is much more to the order impugned than meets the eye.

10. If two applications were carried by the same applicant, the two should have been clubbed together to be heard or one could have been heard ahead of the other; but, when it was specifically recorded that the other application would not be taken up, it was not open to the Tribunal to virtually allow the other application by a side-wind while dealing with an application pertaining to a lookout notice that



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remained undated in the affidavit and no copy whereof was produced by the applicant. At any rate, the Tribunal may not have had the authority to interdict any lookout notice issued by the Home Ministry, if indeed there is a lookout notice which has been issued in respect of the first respondent.

11. The Tribunal appears to have gone out of its way to facilitate the first respondent's departure from this country and short of booking a ticket and reserving the hotel, the directions in the impugned order have done everything else to facilitate the flight of a person who is at the helm of several business entities which have defaulted in making repayments to their bankers.

12. It is possible that there is a lookout notice. If such lookout notice exists, the first respondent will be well within his rights to challenge the same in accordance with law before the appropriate forum; but, such appropriate forum could not have been the DRT II, Chennai, in the event the lookout notice has been issued by the Union Ministry of Home or authorised by such Ministry to be issued.



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13. On behalf of the first respondent, it is submitted that it is not the understanding of the first respondent that the order dated January 25, 2020 has been diluted in any effect by the directions issued in the order impugned herein. The first respondent says that the order impugned and the directions contained therein must be confined to the lookout notice that may have been issued by the chairperson of the petitioning bank.

14. The order impugned dated November 01, 2021 passed by the DRT II, Chennai in IA No.1167 of 2021 in IA No.46 of 2020 in OA No.30 of 2020 is set aside in its entirety, including each of the directions in paragraph 20 thereof. However, this order will not prevent the first respondent herein from making a prayer before the relevant Tribunal to take up IA No.1168 of 2021 as expeditiously as the business of that Tribunal would permit and notwithstanding the observation in paragraph 17 of the order impugned herein.

15. If such application, I.A.No.1168 of 2021, is taken up by the DRT II, Chennai, it shall be disposed of after giving due opportunity to the petitioning bank herein to present its case.



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16. If a lookout notice has been issued by the Union Ministry of Home in respect of the first respondent herein, it will be open to the first respondent to seek a copy thereof from the relevant Ministry, whereupon the relevant Ministry should facilitate the making over of a copy of the notice as expeditiously as possible.

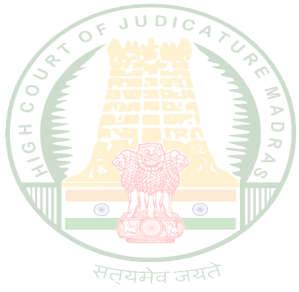
17. Since the petition itself is disposed at the admission stage without calling for any affidavit, it will be open to the first respondent to demonstrate before the Tribunal that a substantial part of the debt due from the entities controlled by the first respondent may have been repaid to the relevant banks.

18. W.P.No.24466 of 2021 is allowed. WMP No.25784 of 2021 is closed. The first respondent will pay cost assessed at Rs.10,000/- to the petitioning bank herein.

(S.B., CJ.) (P.D.A., J.)
15.11.2021

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