

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S). 4843 OF 2017

**COCHIN MALABAR ESTATES &
INDUSTRIES LTD. . . . APPELLANT(S)**

VERSUS

**THE FEDERAL BANK LTD. &
ANR. . . . RESPONDENT(S)**

ORDER

1. Having regard to the statements made in the application, I.A. No.95554 of 2017 for impleadment of Joonktolee Tea and Industries Ltd. as appellant No.2 is allowed.

2. The original appellant - M/s Cochin Malabar Estates and Industries Ltd. (hereinafter referred to as "the appellant"), to secure the borrowings made from the respondent-Bank i.e. Federal Bank, had charged two estates, namely, 'Kinnalur

Estate' in Kerala and 'Sampaji Estate' in Karnataka as security for the loan availed of. On default being committed, an Original Application (i.e. O.A. No.167 of 2000) was filed by the respondent - Bank before the Debts Recovery Tribunal, Ernakulam, Kerala. A Recovery Certificate dated 5th November, 2002 was issued for a sum of Rs.12,16,02,364.96 with interest thereon at the rate of 12.5% per annum with effect from 23rd June, 2000 till the date of the final order and thereafter at the rate of 12% per annum.

3. The attempted sale of 'Kinnalur Estate' did not fructify and while proceedings were going on with regard to the said sale, the Recovery Officer, Debts Recovery Tribunal, Ernakulam took steps for sale of 'Sampaji Estate'. Thereafter the said property was sold to M.T. Thomas

(Junior), the respondent No.2, the auction purchaser. This was unsuccessfully challenged by the appellant before the Debts Recovery Tribunal as also before the Debts Recovery Appellate Tribunal. Aggrieved by the refusal to grant relief the appellant moved the High Court of Madras wherein the impugned order has been passed in the writ petition filed.

4. It would be appropriate to notice that during the pendency of the writ petition a One Time Settlement (O.T.S.) agreement dated 1st February, 2005 was arrived at by and between the respondent - Bank and the appellant, the salient features of which are reproduced herein below:

“(a) The Bank shall be paid on or before 31.03.2005 an amount of Rs.18.58 Crores (Rupees Eighteen Crores and Fifty Eight lakhs only) including Rs.8.50 Crores already received by the

Bank through the Recovery Officer of the DRT, Ernakulam being the sale proceeds of the Sampaji Estate.

(b) The Borrower Company shall withdraw all cases pending before the High Court challenging/praying for setting aside the auction sale of Sampaji Estate conducted by the Recovery Officer of the DRT, Ernakulam in DRC No.1057 in OA No.167/2000.

(c) The Borrower Company shall furnish an undertaking to the Bank to the effect that no further proceedings will be initiated before any courts/forum challenging/praying for setting aside the auction sale of Sampaji Estate conducted by the Recovery Officer of the DRT, Ernakulam in DRC No.1057 in OA No.167/2000.

(d) The Borrower Company shall also furnish to the Bank an undertaking to the effect that in case the company initiates, on account of any compelling reason, any legal proceedings for setting aside the sale of the Sampaji Estate, the company shall deposit with the Bank before initiating such proceedings whatever amount received by the Bank being the sale proceeds of the Sampaji Estate through DRT, Ernakulam together with interest and cost thereon."

5. The High Court hearing the writ petition took the view that though under the terms of the O.T.S. it may have been open for the appellant to challenge the sale so far as the 'Sampaji Estate' is concerned, the condition precedent to such a challenge, namely, deposit of the sale proceeds of the 'Sampaji Estate', which were taken into account in computing the amount payable by the appellant under the O.T.S., had not been pre-deposited by the appellant. The High Court also took into account the fact that in view of the subsequent developments it would be highly inequitable and inappropriate to grant relief to the appellant. Aggrieved this appeal has been filed.

6. We have heard Shri Dushyant Dave, learned Senior Counsel appearing for the appellant; Shri R. Basant, learned Senior

Counsel appearing for the respondent - Bank and Shri Vivek Chib, learned counsel for the respondent No.2 - the auction purchaser.

7. From the materials on record, it is clear that the O.T.S. entered into by and between the Bank and the appellant was for an amount of Rs.18.58 crores (Rupees Eighteen Crores and Fifty Eight lakhs) including the sum of Rs.8.50 crore (Rupees Eight crore Fifty lakh) already received by the Bank through the Recovery Officer of the DRT, Ernakulam against the sale proceeds of the 'Sampaji Estate'. This very fact is suggestive of the acceptance of the sale of the 'Sampaji Estate' by the appellant which it now seeks to question for non-compliance of Section 19(23) of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as "the DRT Act")

and also for non-compliance of requisite notice besides alleging that such sale was affected by a cartel and, therefore, is not a bona fide exercise. That apart, the terms of the O.T.S. clearly stipulates that the appellant, as a pre-condition to the acceptance of the O.T.S., was required to withdraw all cases pending before the High Court challenging the auction sale of the 'Sampaji Estate' which would include the writ petition in which the impugned order has been passed. Another clause of the O.T.S. stipulated that the appellant will undertake that no further proceedings will be initiated before any Court/Forum for setting aside the auction sale of the 'Sampaji Estate'. The attempt to challenge the sale, at this stage, therefore, is clearly contrary to what the appellant had explicitly agreed under the O.T.S. agreement. Clause (d) of the aforesaid

O.T.S. agreement, which may, at first blush, give an impression of conferring a right on the appellant to challenge the sale of the 'Sampaji Estate', if carefully read and if construed in the light of the earlier terms, noted above, clearly contemplates a proceeding for setting aside of the sale of 'Sampaji Estate' on account of compelling reasons which, in our considered view, would only be reasons dictated by operation of law or court's orders or such like reasons. No such fact situation exists in the present case. We, therefore, take the view that the High Court was perfectly justified in coming to the impugned conclusion though our reasons for agreeing with the High Court may be somewhat different. As we have held that in the exercise of jurisdiction under Article 226 of the Constitution of India the High Court was perfectly justified in

refusing relief to the appellant, equally, in the exercise of jurisdiction under Article 136 of the Constitution of India we would be hesitant to afford any relief or even to proceed to examine the contentions raised by the appellant on merits, namely, the scope and effect of the provisions of Section 19(23) of the DRT Act which examination we reserve for consideration in a more appropriate occasion.

8. For the reasons alluded this appeal has to fail and is accordingly dismissed.

....., J.
(RANJAN GOGOI)

....., J.
(R. BANUMATHI)

NEW DELHI
MAY 03, 2018

ITEM NO.110

COURT NO.3

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO(S). 4843/2017

COCHIN MALABAR ESTATES &
INDUSTRIES LTD.

APPELLANT(S)

VERSUS

THE FEDERAL BANK LTD. & ANR.
(AND IA NO.95554/2017-INTERVENTION/IMPLEADMENT)

RESPONDENT(S)

Date : 03-05-2018 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MRS. JUSTICE R. BANUMATHI

For Appellant(s)

Mr. Dushyant A. Dave, Sr. Adv.
Mr. Rajendra Singhvi, Adv.
Mr. K.K.L. Gautam, Adv.
Ms. Arundhati Chakraborty, Adv.
Mr. Brij Bhushan, AOR

For Respondent(s)

Mr. R. Basant, Sr. Adv.
Mr. P. I. Jose, AOR
Mr./Ms. P.S. Chandralekha, Adv.
Mr. Shashank Mishra, Adv.

Mr. Vivek Chib, Adv.
Mr. V. Shyamohan, AOR
Ms. Pracheta Kar, Adv.
Mr. Surya Prakash, Adv.
Mr. Pushkar Prehar, Adv.
Ms. Ruchira Goel, Adv.
Mr. Asif Ahmed, Adv.
Mr. Vikramaditya, Adv.

Mr. John Mathew, AOR

**UPON hearing the counsel the Court made the following
O R D E R**

**Application for impleadment as appellant No.2 is
allowed.**

**The appeal is dismissed in terms of the signed
order.**

**[VINOD LAKHINA]
AR-cum-PS**

**[ASHA SONI]
BRANCH OFFICER**

[SIGNED ORDER IS PLACED ON THE FILE]