IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. SAGNIHOTRI
and
THE HON'BLE MR. JUSTICE K.K.SASIDHARAN

W.P. No.32677 of 2014
and
M.P.No.1 of 2014

M/s.Jumma Blue Metals,
rep by its Proprietrix,
M.Nafeesa,
W/o.Mahaboob Basha,
No.24-C, Car Street,
Kanchipuram. ...Petitioner

Vs.

1. The Branch Manager,
   Lakshmi Vilas Bank Ltd.,
   Kanchipuram.

2. The Authorised Officer,
   Lakshmi Vilas Bank Ltd.,
   Kanchipuram.

3. M.A.Razak ...Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of declaration, declaring the auction sale conducted by respondents 1 and 2 pursuant to sale notice dated 1.4.2013 published in Indian Express and issuance of sale certificate dated 13.09.2013 under document number 4171/2013 as null, void, arbitrary against all canons of natural justice and further direct the respondents 1 and 2 to withdraw the amount lying to the credit of the suit in Tr.O.P.Nos.36 and 37 of 2006 on the file of the Subordinate Judge, Kanchipuram.

For petitioner : Mr.M.Rajamathivanan

For respondents : Mr.R.Umasuthan for RR1 and 2

Mr.D.Durairaj for R-3

ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

The petitioner is stated to be the borrower, having obtained a loan of Rs.4,25,000/- from the first respondent Bank on 18th November, 1999. Thereafter, some more amount to the tune of Rs.50,000/- and Rs.1,75,000/- was availed under other schemes. The property in S.No.647/2 and a house property in Door No.58, Old No.55, comprised in S.No.381/4, Kadhar Meeran Street, Vandavasi, were mortgaged with the Bank as security. The petitioner failed to make repayment and as such, a demand notice dated 15th October, 2002 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act") by the second respondent was issued. Thereafter, further notice under Section 13(4) of the SARFAESI Act for symbolic possession was issued on 27th April, 2005. But, there is no response from the petitioner.

2 The petitioner preferred two cases, being Tr.O.P.Nos.36 of 2006 and 37 of 2006 on the file of the Sub Court, Kanchipuram. A suit, being O.S.No.99 of 2005, was filed by the tenant on the file of the District Munsif Court, Vandavasi for injunction. The first respondent also filed a suit for recovery of money in O.S.No.66 of 2008 on the file of the District Court, Chengalpattu, which on transfer to the Sub Court, Kanchipuram, was renumbered as O.S.No.29 of 2011 and the same was decreed on 26th June, 2012. According to the respondents, the said decree was set aside.

3 In the meantime, a notice of sale under Rules 8(5) and 9(1) of the Security Interest (Enforcement) Rules, 2002 was issued on 5th April, 2013 along with publication in the newspaper, notifying the proposed auction of the secured asset on 10th May, 2013. The property in question was sold to the highest bidder in the auction purchase, i.e., to the third respondent, on 10th May, 2013. The sale certificate was also issued on 13th September, 2013. After a period of one and half years, the petitioner has filed this petition, seeking quashment of the sale notice dated 1st April, 2013 and also issuance of sale certificate dated 13th September, 2013.

4 The case of the learned counsel for the petitioner before us is that since the dispute in respect of the recovery of money as well as grant of injunction is pending consideration before the Civil Court, the action of respondents 1 and 2 to sell the property in question on auction is illegal, unauthorised and deserves to be set aside. It is further contended that after issuance of notice under Section 13(4) of the SARFAESI Act, some more payment was made, which was not taken note of by the respondent Bank.

5 On the other hand, Mr.R.Umasuthan, the learned counsel appearing for the respondents Bank would contend that once the sale in favour of the third respondent is confirmed and also the sale certificate pursuant thereto has been issued way back on 13th September, 2013, the only remedy available to the petitioner is to challenge the same under the provisions of law in a manner known to law. Taking recourse to extra-ordinary jurisdiction of this Court after a period of about 18 months may not be entertained as the petitioner is not remediless and effective and efficient alternative remedy is available to him.

6 We have examined the case in its entirety from all angles. There is no dispute that the dispute in respect of the property in question is pending before the civil court. The property in question was put on sale in accordance with law, as prescribed under the provisions of the Security Interest (Enforcement) Rules, 2002 for disposal of the secured asset.

7 The SARFAESI Act was enacted with a view to regulate securitisation and reconstruction of financial assets and enforcement of security interest and other connected incidental matters and came into force by publication on 18.12.2002. Section 13 of the SARFAESI Act prescribes for enforcement of security interest, which is defined under Section 2(zf), ibid. Sub-section (2) of Section 13 provides for affording an opportunity to the borrower to discharge in full the liability to the secured creditor within 60 days from the notice. In default, sub section (4) of Section 13 comes into effect. Sub section (4) stipulates that if the borrower failed to discharge his liability in full within the period specified in sub-section (2), the secured creditor is competent to take recourse to one or more of the measures prescribed therein. Clause (a) of sub-section (4) provides for taking over possession of the secured asset of the borrower, including the right to transfer by way of lease, assignment or sale for realising the secured asset. One of the measures prescribed under sub section (4) is the sale of the secured asset for recovery of

money for the purpose of enforcement of provisions of the Act. The Central Government is competent to frame rules under Section 38 of the SARFAESI Act. The Central Government in exercise of its power conferred by sub section (1) and clause (b) of sub-section (2) of section 38 read with sub-sections (4), (10) and (12) of section 13, ibid, framed the Security Interest (Enforcement) Rules, 2002 (for short "Rules, 2002").

8 Rule 8 of Rules, 2002 deals with the sale of immovable secured asset, whereunder the authorised officer is obligated to take or cause to be taken possession by delivering possession notice to the borrower and by affixing the said notice on the outer door or at such conspicuous place of the property. Sub-Rule (6) of the said rule stipulates that the authorised officer shall serve a notice of thirty days for sale of the immovable secured assets under sub-rule (5) on the borrower. Rule 9, ibid, stipulates condition for time of sale, issue of sale certificate and delivery of possession, etc. On compliance of condition of sale, as prescribed under sub rules (3), (4) and (5) of rule 9, the authorised officer is required to issue a certificate of sale of the immovable property in favour of the purchaser in the prescribed form.

9 In the case on hand, there is no allegation that conditions for taking over of possession of the secured asset, i.e., the property in question, and also placing the property on sale under the provisions of Rules, 2002 have not been complied with. The sale was conducted in accordance with the provisions of law and the sale certificate to that effect was issued on 13th September, 2013. Now, the petitioner has come up with the instant petition, questioning the legality of sale notice dated 1st April, 2013 and the consequential sale certificate, dated 13th September, 2013.

10 As aforestated, the sale of the secured asset to recover the loan amount is prescribed under sub-section (4) of Section 13 of the SARFAESI Act. Taking over of possession and effecting sale for the purpose of recovery of money is one of the measures under Section 13(4), ibid. In that event, if a person is aggrieved by any action taken by the secured creditor under sub-section (4) of Section 13, ibid and also under the provisions of the Rules framed thereunder, he has to take recourse to the appellate forum available under Section 17, ibid.

11 It is worthwhile to mention here that Section 34, ibid, oust the jurisdiction of the civil court from entertaining any suit or proceedings in respect of any matter, which Debts Recovery

Tribunal or the Appellate Tribunal is empowered by or under this Act to determine. It is further prescribed that no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred under SARFAESI Act or under the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Section 35 of the SARFAESI Act is a non-obstante clause, having over riding effect of other laws.

12 For the reasons and analysis mentioned herein-above, the writ petition stands dismissed, as not maintainable, reserving liberty to the petitioner to take recourse to appropriate forum, as may be advised, under the provisions of law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vvk

To

1. The Branch Manager,
   Lakshmi Vilas Bank Ltd.,
   Kanchipuram.

2. The Authorised Officer,
   Lakshmi Vilas Bank Ltd.,
   Kanchipuram.

1 CC to Mr.D.Durairaj, Advocate SR.No. 43427

1 CC to Mr.P.Sesubalan Raja, Advocate SR.No. 43395

W.P. No.32677 of 2014

PUR (CO)
PSI (03.09.2015)