IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:- 02-02-2015

Coram

The Honourable Mr. Justice SATISH K. AGNIHOTRI
and
The Honourable Mr. Justice M. VENUGOPAL

W.P. No.35019 of 2014
and
M.P.No.1 of 2014

N.Prabhu ... Petitioner

Vs

1 Authorised Officer and
Chief Manager Indian Bank
Padi Branch, Chennai

2 M/s.A.P.S.
No.27 Alappakkam Main Road
Erikari, Maduravoyal Chennai 600 095

3 Mr.P.Gnanasekaran
S/o.K.Paranthaman No.39/90 Kaliyamman Koil
Street Natesan Nagar Virugambakkam
Chennai 600 092 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of declaration declaring the proceedings initiated by the 1st Respondent/Bank under SARFEASI Act as ultra vires and null and void.

For petitioner : Mr. R. Nithyanandam for M/s. S. Mathivanan
For respondents: Mrs. Rita Chandrasekaran for R1
For RR2 & 3 - Not ready - No appearance

ORDER

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

Mrs. Rita Chandrasekaran, learned counsel for the first respondent bank submits that proper notice at every stage had been given to all the parties concerned. Thus, the allegation that the authority had taken steps to dispose of the property by way of auction without compliance of statutory prescription is misplaced and without any basis.

2. The petitioner and the third respondent are stated to be the guarantors to the loan to the tune of Rs.6.00 lakhs (Rupees Six lakhs only) sanctioned to the second respondent by the first respondent bank. It is further stated that the third respondent has offered his property as scheduled under e-auction notice, viz., land and building measuring 967 ½ sq.ft.or 89.5 sq.meters (i.e.963.378sq.ft.)at Old No.4/New No.7, Muktha-runnisa Begam Street, Sixth lane, Mount Road, Chennai - 600 002 in O.S.No.264, R.S.No.76 (part), Present R.S.No.76/69, Certificate C.A.No.73/69-70, Old patta C.A.No.307/79-80 dated 24.10.1979, New Patta C.A.No.747/2006/07 dated 22.06.2006 as per Patta R.S.No.76/62, Block No.2, situated at Triplicane Village, Mylapore-Triplicane Taluk, Chennai District, as security. It is stated that without following the process of law as required under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act 2002"), the first respondent bank has issued the auction sale notice dated 19.11.2014 fixing the auction of the property of the third respondent on 30.12.2014. The instant auction notice is on record.

3. On a perusal of the auction notice, it appears that the second respondent had failed to pay the outstanding to the first respondent-bank. Thereafter, a demand notice dated 18.10.2013 was issued under Section 13(2) of the Act 2002, calling upon the second respondent to pay the amount to the tune of Rs.57,15,176.41p(Rupees Fifty seven lakhs fifteen thousand one hundred seventy six and forty one paise only) as on 01.10.2013. Thereafter, steps were taken under the provisions of Section 13 of the Act 2002. After having taken over possession, the first respondent-bank has caused to issue notice to recover the loan amount from sale of the secured asset. The petitioner, who is a guarantor, had not taken any step after a measure was taken under Section 13(4) of the Act 2002.

4. The instant petition has been filed stating therein that no steps, as required under the provisions of the Act 2002, i.e., Section 13(2) notice and measures under Section 13(4) have been taken. The notice of intended sale has been issued under Rule 6(2) of the Security Interest (Enforcement) Rules, 2002. Thus, this stage has come after exhausting all the measures, which are prescribed under the provisions of the Act 2002 as is also clear from the text of the notice. Thus, it can safely be held that the petitioner has not come up with clean hands.

5. Even at this stage, the petitioner can approach the prescribed authority before sale is completed to settle the dues and take the property into possession. The real borrower, it appears, has not come forward seeking redressal of any grievance. The property, admittedly, does not belong to the guarantor and steps have been taken to recover the loan amount by sale of the secured asset and as such, no interference is warranted.

6. Thus, the writ petition is dismissed, being devoid of merits. However, liberty is reserved to the petitioner to take recourse to the appropriate forum to seek redressal of his grievance, under the provisions of law. The connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

glp

The Authorised Officer and
Chief Manager Indian Bank
Padi Branch
Chennai

+ 1 cc to M/s. Aiyar and Dolia, Advocate SR.5186

W.P. No.35019 of 2014
and
M.P.No.1 of 2014

TS(CO)
Eu 17.02.15