

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P.No.7037 of 2015
and
M.P.No.1 of 2015

M/s.Karpaga Vinayagar Constructions,
represented by its Proprietor,
Mrs.M.Aruvi,
No.2/32, Arunagirinathar Street,
New Perungalathur,
Chennai-600 063.

... Petitioner

Vs.

1. The Presiding Officer,
Debts Recovery Tribunal-III,
No.770-A, Anna Salai,
Chennai-600 002.

2. The Authorised Officer,
Punjab National Bank,
Teyampet Branch,
No.152, Eldams Road,
Teynampet, Chennai-600 018.

... Respondents

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records relating to the sale notice dated 7.2.2015 issued by the second respondent in respect of the property bearing Door No.2/32, Arunagirinathar Street, New Perungalathur, Chennai-600 063, measuring an extent of 1706 sq.feet, comprised in S.No.145-B, Perungalathur Village, Tambaram Taluk, Kancheepuram District, and quash the same and consequently direct the second respondent not to issue any sale notice in respect of the said property, pending disposal of S.A.No.83 of 2014 on the file of the first respondent.

For Petitioner : Mr.Sundara Kamesh Marthandam
for Mr.J.Karthikeyan

ORDER

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

The petitioner, being the borrower on account of availing certain cash credit facilities from the respondent Bank, has come up with the instant writ petition, questioning the legality and propriety of the e-auction notice dated 7.2.2015.

2. The indisputable facts in the petition are that the property in question, namely, Door No.2/32, Arunagirinathar Street, New Perungalathur, Chennai-600 063, measuring an extent of 1706 sq.feet, comprised in S.No.145-B, Perungalathur Village, Tambaram Taluk, Kancheepuram District, was declared as secured asset on issuance of notice dated 1.11.2013 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act"), demanding a sum of Rs.77,15,405/-. Thereafter, a notice dated 24.1.2014 for symbolic possession under subsection (4) of Section 13 was issued. Feeling aggrieved, the petitioner/borrower filed a SARFAESI application, being S.A.No.83 of 2014 on the file of the first respondent Tribunal.

3. During the pendency of the application, the impugned e-auction notice was issued on 7.2.2015 under the provisions of the SARFAESI Act read with Security Interest (Enforcement) Rules, 2002. Sub Rule (6) of Rule 8 prescribes for service of notice of 30 days for sale of immovable secured assets, to the borrower. It appears that the borrower, after having received the notice, approached this court at the fag end on 11.3.2015, seeking the aforestated relief to quash the same on the ground that the Tribunal had not considered and decided the pending application within the time stipulated under the provisions of law. Secondly, the sale notice ought not to have been issued during the pendency of the said application before the Tribunal. It is also stated that the issuance of notice is not in accordance with the procedure prescribed under the Rules 2002.

4. When the application is pending consideration in S.A.No.83 of 2014 before the Tribunal, the petitioner ought to have approached the Tribunal for appropriate relief. Filing the writ petition under Article 226 of the Constitution of India, at this stage, is not proper and also not maintainable. The petitioner has failed to make

out a case for taking recourse to extraordinary jurisdiction under Article 226 of the Constitution of India. Thus, without expressing any opinion on the merits of the case, we dismiss the writ petition, reserving liberty to the petitioner to take recourse to the appropriate forum under the provisions of law. As pointed out that the S.A.No.83 of 2014 is pending consideration before the Tribunal, the Tribunal is directed to take expeditious steps for the disposal of the pending application at the earliest, in accordance with law and on its own merit. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vvk

To

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W.P.No.7037 of 2015

SR(CO)
CA(23/03/2015)

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