



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:11.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

AND

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD).Nos.15711 to 15714 of 2015

and

M.P(MD)Nos.1,1,1 & 1 of 2015

Mascow Malar	..	Petitioner in W.P(MD)No.15711 of 2015
J.Sivakurumban	n	.. Petitioner in W.P.(MD)No.15712 of 2015
R.Leninkumar	..	Petitioner in W.P.(MD)No.15713 of 2015
A.Ramamoorthy	..	Petitioner in W.P(MD)No.15714 of 2015

Vs.

1. Presiding Officer,
In the Debts Recovery Tribunal
at Madurai,
Near Meenakshi Mission Hospital,
Madurai.

2. The Authorized Officer,
UCO Bank,
K.K.Nagar Branch,
Plot No.651, Eighty Feet Road,
K.K.Nagar,
Madurai-625 020.

.. Respondents in all Writ Petitions

Writ Petitions are filed Under Article 226 of Constitution of India, praying to writ of Certiorarified Mandamus, calling for the records for the auction sale steps taken by the second Respondent under the Provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "SARFAESI Act") culminating in the Demand Notice issued under Section 13(2) of the Act, dated 20.08.2015 consequent to orders made in O.A.No.44 of 2009, O.A.No.45 of 2009, O.A.No.46 of 2009 and O.A.No.47 of 2009 respectively, by the first respondent, dated 01.07.2015, 02.07.2015, 02.07.2015 & 02.07.2015 respectively and quash the same and forbear the second Respondent from taking any action under the SARFAESI Act as well as on the basis of the order passed by the first respondent in O.A.No.44 of 2009, O.A.No.45 of 2009, O.A.No.46 of 2009 and O.A.No.47 of 2009 dated 01.07.2015, 02.07.2015, 02.07.2015 & 02.07.2015 respectively.

For Petitioners : Mr.E.Somasundaram
in all the writ petitions

For R2 : Mr.P.T.S.Narendravasan
in all the writ petitions



C O M M O N O R D E R

[Order of the Court was made by V.M.VELUMANI, J]

The petitioners have filed these writ petitions challenging the auction sale steps taken by the second Respondent under the Provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "SARFAESI Act") culminating in the demand Notice issued under section 13(2) of the Act, dated 20.08.2015 consequent to order made in O.A.No.44 of 2009, O.A.No.45 of 2009, O.A.No.46 of 2009 and O.A.No.47 of 2009 respectively, by the first respondent, dated 01.07.2015 and quash the same and forbear the second Respondent from taking any action under the SARFAESI Act as well as on the basis of the order passed by the first respondent in O.A.No.44 of 2009, O.A.No.45 of 2009, O.A.No.46 of 2009 and O.A.No.47 of 2009 respectively, dated 01.07.2015.

2.The issue and the facts involved in all these writ petitions are one and the same, hence, all the writ petitions are disposed of by this common order.

3.Facts of the case:-

The petitioners in all the four writ petitions borrowed Rs.10,00,000/- each, from UCO Bank, the second respondent herein. They executed necessary documents. According to the petitioners, they were regularly paying the EMI with interest. Suddenly, they incurred heavy loss in their business and they could not pay the EMI regularly to the Bank. The second respondent Bank filed O.A.Nos.44 to 47 of 2009 against all the four petitioners before the first respondent. The first respondent passed an Ex-party order, on 01.07.2015 against all the petitioners. As per the said order, the petitioners are personally, jointly and severally liable to pay the following amounts:

Writ Petitions	Name of the petitioner	Amounts
1.W.P.No.15711/2015	Masow Malar	Rs.17,31,717
2.W.P.No.15712/2015	J.Sivakurumban	Rs.17,50,216
3.W.P.No.15713/2015	R.Lenin Kumar	Rs.16,95,814
4.W.P.No.15714/2015	A.Ramamoorthy	Rs.15,58,403

4.According to the petitioners, the first respondent did not give any opportunity of hearing to them before passing order, dated 01.07.2015 in violation of provisions of law. Further, the second respondent has issued a notice U/s.13(2) of SARFAESI Act and has taken symbolic possession of property mortgaged to the Bank U/s.13(4) of SARFAESI Act. The second respondent had decided to sell the properties and issued notice, dated 20.08.2015 calling for tenders from public on or before 21.09.2015 by 5.00 p.m., fixing the date of auction as 25.09.2015 from 11.30 a.m., to 01.30 p.m., challenging the said sale notices, dated 20.08.2015, the petitioners have filed these above writ petitions.

5.In the case of *S.J.Lakshminarashimha Shastri Vs.Bank of India* reported in 11 (2015) BC 157 (Kar.) the Karnataka High Court set aside the said order on the ground that the Tribunal adopted hyper technical approach. The relevant portion of the order is extracted hereunder:-



"5. When the order as at Annexure-F was passed, concededly, there was no representation for the petitioner. The reason for non-appearance, when the said order was passed, has been stated in the application filed to recall the said order. The Tribunal, in the facts and circumstances of the case, ought to have adopted the pragmatic approach and granted an opportunity of hearing; to the petitioner herein. Instead, by adopting an unreasonable approach, which is irrational, the order as at Annexure-K has been passed. If the impugned orders herein are not set aside, there will be failure of justice."

6. The second respondent filed counter affidavit in all the four writ petitions. In the counter, the second respondent stated that petitioners have borrowed Rs.10,00,000/- each from the second respondent totalling Rs.40,00,000/- on 22.06.2004. The petitioners committed default in payment of EMI. The second respondent issued a notice U/s.13(2) of SARFAESI Act on 18.05.2006 and issued a possession notice U/s.13(4) of SARFAESI Act on 15.09.2006. The second respondent filed the O.A's for recovery of money before the first respondent, the Debt Recovery Tribunal against the petitioners, and the details are as follows:-

O.A.Nos.	Name	Amounts due
O.A.No.44 of 2009	Mascow Malar	Rs.26,62,515
O.A.No.45 of 2009	J.Sivakurumban	Rs.26,91,727
O.A.No.46 of 2009	R.Lenin Kumar	Rs.26,07,314
O.A.No.47 of 2009	A.Ramamoorthy	Rs.23,96,045

The first respondent passed the final order on 01.07.2015.

7. The second respondent filed Crl.M.P.No.486 of 2010, before the Chief Judicial Magistrate, Madurai U/s.14 of SARFAESI Act for taking physical possession of the secured assets and the same was ordered on 03.05.2010. The petitioners and others adopted various methods and filed several writ petitions and prevented the second respondent from taking possession of the properties. The petitioners Mascow Malar and Ramamoorthy filed several applications before the first respondent and the same were dismissed. 11 suits were filed by third parties in collusion with the petitioners before the District Munsif Court, Madurai Town and the same were dismissed. The petitioner Ramamoorthy filed a writ petition in W.P.No.7132 of 2010 and this Court, by order, dated 20.07.2010, directed him to deposit Rs.40,00,000/- as condition for stay on or before 10.08.2010. He did not comply with the said order. This Court, by order, dated 10.08.2010, dismissed the writ petition. The petitioner Mascow Malar filed the writ petitions in W.P.No.2671 of 2011 and W.P.No.1077 of 2012. Both the writ petitions were also dismissed by this Court, on 14.03.2011 and on 24.07.2011 respectively.

8. In these circumstances, the petitioners have come forward with present writ petitions with untenable grounds. Notice U/s.13(2) of SARFEASI Act on 18.05.2006 and possession notice U/s.13(4) of SARFAESI Act on 15.09.2006 were issued to the petitioners. The impugned notice, dated 20.08.2015 is a sale notice fixing the date of sale on 25.09.2015. The second respondent has submitted that the petitioners are not entitled to file the writ petitions and they are not maintainable either in law or on facts and prayed for dismissal of the writ petition.

9. We have heard the learned counsel appearing for the petitioners and the respondents.

10. From the records, it is seen that the second respondent has issued notice, dated 18.05.2006 U/s.13(2) of the Act and possession notice dated 15.09.2006 U/s.13(4) for taking possession. The second respondent also filed CrI.M.P.No.486 of 2010 before the Chief Judicial Magistrate, Madurai Town for taking physical possession of secured assets and the same was ordered on 03.05.2010. The petitioner Ramamoorthy filed writ petition in W.P.No.7132 of 2010 before this Court. The said writ petition was dismissed by this Court, on 10.08.2010 as the petitioner Ramamoorthy did not comply with the conditional order. The petitioner Masco Malar filed writ petitions in W.P.Nos.2671 of 2011 and 1077 of 2012 and they were also dismissed by this Court.

11. The contention of the petitioners that the first respondent did not give any opportunity of hearing to contest O.A's filed against them, is contrary to facts. From the order of the first respondent, dated 01.07.2015 it is seen that the petitioners have entered appearance through counsel, however they did not file any reply statement denying the claim of the second respondent. In these circumstances, the petitioners were set ex-parte on 16.03.2010. After 5 years only, the first respondent recorded evidence let in by second respondent and marked documents filed by the second respondent. After considering the oral and documentary evidence, the first respondent has passed an order, dated 01.07.2015. Therefore, the contentions of the learned counsel for the petitioners that no opportunity was given to petitioners is untenable and not acceptable. The judgment relied on by the learned counsel for the petitioner is not applicable to the facts of the present case. In that case, on the very same day, an ex-parte order was passed. An application was filed to recall the said order. The same was dismissed by the Tribunal.

12. However, in the present case, the petitioners have not filed any application to set aside the ex-parte order. Further, the Tribunal set the petitioners ex-parte on 16.03.2010 and the order was passed only on 01.07.2015. The petitioners have not taken steps to set aside the order passed against them setting them as ex-parte in the proceedings.

13. Further, the present writ petitions are not maintainable in the light of Section 20 of Debt Recovery Tribunal Act 1993. As per the Section 20 of the Act, the petitioners have right of appeal, but they have not availed the said remedy. Further, the second respondent issued a notice U/s.13(2) of SARFAESI Act on 18.05.2006 and notice U/s.13(4) of SARFAESI Act on 15.09.2006 for taking possession. As per 17 of SARFAESI Act, the petitioners are having right to file appeal before the Debt Recovery Tribunal, within 40 days. The petitioners have not availed the said appellate remedy also. The petitioners are challenging only sale notice, dated 20.08.2015. The petitioners have not denied the averments of the second respondent that:-

- i) They have filed the writ petitions before this Court on earlier occasion and this Court dismissed all the writ petitions.
- ii) The petitioner Ramamoorthy filed various applications before DRT and DRT dismissed all those applications.

<https://hcservices.courts.gov.in/hcsservices/>
 14. In the investigation of petitioners, third parties filed 11 suits before the learned District Munsif, Madurai and all the suits were dismissed.



In view of this undisputed fact that they have not availed the appellate remedy available Under Sections 17 and 20 of SARFEASI Act before the Debt Recovery Tribunal and they are only challenging the sale notice. We find no merit in these writ petitions.

14. Accordingly, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar

\\True copy\\

Sub Assistant Registrar

To

1. Presiding Officer,
In the Debts Recovery Tribunal
at Madurai,
Near Meenakshi Mission Hospital,
Madurai.
2. The Authorized Officer,
UCO Bank,
K.K.Nagar Branch,
Plot No.651, Eighty Feet Road,
K.K.Nagar, Madurai-625 020.

+1 cc to MR.E.Soma Sundaram, ADVOCATE, SR No.54528.

+1 cc to MR.PT.S.Narendravasan, ADVOCATE, SR No.53919.

Am

5P/5C

SH:JGB-MP:08.10.2015

W.P (MD) .Nos.15711 to
15714 of 2015
11.09.2015