

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 29.09.2016

CORAM:

THE HON'BLE MR. JUSTICE S. MANIKUMAR
AND
THE HON'BLE MR. JUSTICE N.ATHINATHAN

W.P.No.15505 of 2016
and
W.M.P.Nos.13487 & 29335 of 2016

1.Tmt.Suriyakala
2.Tmt.Karthikeyani ... Appellants

Vs.

1.The Authorised Officer
State Bank of Bikaner and Jaipur
No.244, L.G.B. Complex
Big Bazaar Street
Coimbatore - 641 001

2.S.Velliangiri

3.M/s.Jai Maruthi Energies Pvt. Ltd.,
Rep. by its Director Senthilkumar
C-295, Cheran Managar
Vilankurichi Road
Coimbatore - 641 035

4.Karthikeyan

5.Kalaiselvan

6.S.Senthilkumar

7.The Presiding Officer
Debts Recovery Tribunal
1670, Trichy Road
Ramanathapuram
Coimbatore - 641 045

8.The Debts Recovery Appellate Tribunal
4th Floor, Indian Bank Circle Office
55, Ethiraj Salai
Chennai - 600 002

... Respondents

Writ petition filed under Article 226 of the Constitution of India for a writ of mandamus directing the seventh respondent Tribunal to consider the objection raised by the petitioners in I.A.No.179/2016 in S.A.No.25/2016 on the file of the seventh respondent that the property brought for sale by the first respondent bank, is an agricultural property and therefore exempted from purview of SARFAESI Act, 2002, in view of clause (i) of Section 31 of the Act and pass an appropriate speaking order and directing the first respondent bank not to proceed with the auction sale of the property, mentioned in the application/appeal bearing S.A.No.25/2016 and I.A.No.179/2016 on the file of the seventh respondent, till the said objection is adjudicated upon by either the seventh respondent or the eighth respondent Tribunals or any other writ, order, or direction or relief, with cost.

For Petitioner : Mr.P.Ulaganathan

For Respondents: Mr.N.Kishore Kumar for R1

R2, 4 to 6: No. appearance

R7 & R8 : Tribunals

R3 : Tapal returned not,
claimed

ORDER

(delivered by S.MANIKUMAR, J.)

Material on record discloses that M/s.Jai Maruthi Energies Pvt. Ltd., represented by its Director Senthilkumar, C-295, Cheran Managar, Vilankurichi Road, Coimbatore - 641 035, has borrowed loan, from State Bank of Bikaner and Jaipur, Coimbatore. S.Velliangiri, has stood as guarantor. Sister and daughter of the said Velliangiri, have filed I.A.No.179/2016 in S.A.No.25/2016, for an interim injunction restraining the bank or its men or agents from in any manner proceeding with the proposed auction sale scheduled on 24.2.2016, in respect of the schedule property, pursuant to the auction sale notice dated 13.1.2016 and publication of the said notice, in Dina Mani on 14.1.2016. In the said application, besides contending that they are the co-owners of the subject property brought for auction, by referring to Section 31 of the SARFAESI Act, 2002, the third parties, namely sister and daughter of Velliangiri/guarantor, have further contended that the subject property being an agricultural property, is excluded from the purview of any action under SARFAESI Act, 2002. To substantiate their contention that the subject property brought for auction, is an agricultural property, applicants/petitioners therein, have produced Adangal extract for Fasli 1424, as plaint document No.5. Responding to the prayer sought for in I.A.No.179/2016 in S.A.No.25/2016, the Bank has filed a reply statement.

2. Adverting to the rival contentions, the Debts Recovery Tribunal, Coimbatore, has passed an order on 23.2.2016, which is impugned in this writ petition. The said order is extracted hereunder:

" PROCEEDING ORDER DATED 23.02.2016

I.A.No.179/16: Stay Petition. This petition has been filed by the petitioners/applicants to stay all further proceedings in pursuance of the impugned Auction sale Notice dated 13.01.2016, and the Sale which is fixed on 24.02.2016.

The petitioners are the daughters of R-2, who are claiming share in the property by inheritance through their father R-2. It is alleged that the secured asset has been acquired from out of the common nucleus of the Joint Hindu Family and claiming 2/3rd share in the property. It is the further allegation of the petitioners/applicants is that the property being an agricultural property, is insulated by S.31(i) of the SARFAESI Act.

The Ld. Counsel for the R/Bank strongly objected to the plea of the Petitioners/Applicants on the ground that the secured asset has not been purchased from out of the common nucleus of the Joint Hindu Family, but it is the absolute property of R-2 and their brothers. The Ld. Counsel further submitted that the property has been first purchased by the 2nd Respondent, his father and his brother by way of release deed bearing Doc. No.447/1986 dated 09.06.1986 and thereafter, both became absolute owners of the property by virtue of the release deed. The Ld. Counsel further submitted that the schedule mentioned property and other properties were partitioned between the 2nd Respondent and his brother on 11.6.1986 bearing Doc. No.448/1986 and the schedule mentioned properties were allotted to the 2nd Respondent by virtue of the Partition Deed dated 11.6.1986 and the 2nd Respondent has been in possession and enjoying the properties as absolute owner. The Ld. counsel further added that the 2nd Respondent, as absolute owner of the schedule mentioned property had executed a valid mortgage in favour of the 1st Respondent Bank and availed the loan and the 2nd Respondent and Respondents 4 to 6, who are the directors of 3rd respondent company had availed the facility from the 1st respondent and the other respondents stood as guarantors. It is the further case of the 1st Respondent is that since the account became NPA, SARFAESI proceedings were initiated and R-2 to R-6 said to have been

aggrieved by the issuance of the Possession Notice, challenged the sale by filing SA 189/2015, SA 190/15 and SA 191/2015, in which a conditional order were passed, which were not complied with and consequentially the Ad Interim Injunction granted therein, were got vacated automatically. It was after the Interim Order got vacated, the 1st Respondent, issued Sale Notice under R.8(5) of the SARFAESI Act on 13.01.2016 and fixed the sale on 24.2.2016. It is alleged that the present exercise is a collusive exercise of the petitioners/applicants and R-2 to R-6 with a view to thwart the recovery process initiated by R-1. The 1st Respondent Bank has denied all the allegations raised by the Petitioners/ Applicants in r/o. heirship, entitlement and the nature of the properties. It is also alleged that the Suit said to have been filed by the petitioners in OS 27/2016 has nothing to do with the proceedings and has no bearing on the proceedings initiated by the 1st Respondent and it is an inter se dispute between the Petitioners and the 2nd Respondent. The Ld. Counsel for the 1st Respondent sought to consider the above circumstances and to dismiss the petition.

Having taken into consideration of the above factors, this Tribunal is of the view that the petitioners, who claimed themselves as aggrieved by the present proceedings have taken appropriate recourse before the appropriate Forum. It is open to the petitioners/applicants to work out their remedy in OS 27/2016 which is pending before the Ld. District Judge, Coimbatore. The counter averments and the submissions made by the Ld. counsel for the 1st Respondent bank suggests that the prima facie case and the balance of convenience is not in favour of the petitioners, but both factors tilted towards the 1st Respondent Bank. Therefore, this Tribunal is of the view that if any interim order is passed, it would amount to misplaced sympathy and it would lead to miscarriage of justice. Hence, the petitioners are not entitled for the interim order sought in the petition and accordingly, this petition is dismissed. No costs.

For filing Proof Affidavit, by 19.4.2016."

3. Material on record further discloses that as against the order in I.A.No.179/2016 in S.A.No.25/2016, dated 23.2.2016, on the file of the Debts Recovery Tribunal, Coimbatore, writ petitioners have filed an appeal on 18.3.2016, before the Debts Recovery Appellate Tribunal, Chennai and it is in preliminary stage and stated to have been numbered as AIR.143/2016. Learned counsel appearing for the respondent bank submitted that AIR, means for Appeal Inward

Register number, which the Tribunal assigns, before numbering the appeal.

4. Mr.P.Ulaganathan, learned counsel for the writ petitioners, submitted that under Section 18 of the SARFAESI Act, 2002, for entertaining an appeal, a statutory deposit has to be made. Contending inter alia that there was no obligation on the part of the petitioners to make any statutory deposit, appeal was filed. We have perused the prayer made in AIR.143/2016 filed before the Debts Recovery Appellate Tribunal, Chennai.

5. Prayer made in the instant writ petition and AIR.143/2016, is, one and the same. But the fact that the Debts Recovery Appellate Tribunal at Chennai, is not functional regularly, due to the delay in appointment of a Hon'ble Member is known to all. Instant writ petition, has been filed on 12.4.2016. It is also contended by the learned counsel for the petitioners, that though notice in the writ petition, was ordered, as early as on 26.4.2016, by a Hon'ble Division Bench of this court, the respondents, have issued another auction sale notice dated 26.8.2016, fixing the date of auction as 6.10.2016. Attention of this court was also invited to the order dated 23.2.2016 impugned in this writ petition.

6. Inviting attention of this court to the Adangal extract issued by the Village Administrative Officer, 46, Chettipalayam, Madhukarai Taluk, Mr.P.Ulaganathan, learned counsel for the petitioners, submitted that on the date of issuance of the above said extract, there were coconut trees in the said land, brought for auction. He further submitted that electricity consumption card issued in the name of Mr.Velliangiri/guarantor/director of M/s.Jai Maruthi Energies Pvt. Ltd. would show that free electricity has been given to the subject property. He also referred to the original sale deed dated 6.3.1985 executed in favour of Velliangiri, the guarantor, wherein, the subject property has been shown only as agricultural property. According to the learned counsel for the petitioners, when the above said documents were filed along with I.A.No.179/2016 in S.A.No.25/2016, the Debts Recovery Tribunal, Coimbatore, has not even adverted to the pleadings and evidence adduced and failed to consider as to whether the petitioners have substantiated their contention that the subject property is excluded from the purview of SARFAESI Act, 2002. On the above submissions, we have perused the order impugned.

7. As rightly contended, the learned District Judge/Presiding Officer, Debts Recovery Tribunal, Coimbatore, has not adverted to the said aspect, but, he has proceeded to consider the pleadings, with reference to filing of the suit, claiming inter se rights only.

8. Mr.N.Kishore Kumar, learned counsel for the respondent-bank made submissions to sustain the order.

9. Fact remains that when the writ petition is pending before this court, of course, without any interim order, the respondent-bank has issued another auction notice dated 26.8.2016 fixing the auction of the subject property on 6.10.2016. Question raised before us is whether subject property is an agricultural land or not, whether the Tribunal, has addressed this issue or not.

10. As we have already recorded that the Tribunal has not adverted to the above said issue, in the light of what we have considered and extracted, we are inclined to set aside the order dated 23.2.2016 to that extent alone. Debts Recovery Tribunal, Coimbatore, is directed to consider the pleadings, submissions and evidence, adduced by the writ petitioners on the limited aspect, as to whether the subject property is an agricultural property or not, and decide, as to whether the subject property is an agricultural property or not, and whether action under SARFAESI Act, 2002 could be pursued by the bank.

11. As we have set aside the order dated 23.2.2016 of Debts Recovery Tribunal, Coimbatore, respondent-bank, shall not proceed further, with the auction notice dated 26.8.2016. Debts Recovery Tribunal, Coimbatore, is directed to take up I.A.No.179/2016 in S.A.No.25/2016, and pass appropriate orders, in accordance with law, with reference to Section 31 of the Act, after providing opportunity to both parties, within six weeks from the date of receipt of a copy of this order. Mr.N.Kishore Kumar, learned counsel for the respondent-bank, shall communicate the order of this court to the bank, not to proceed with the auction scheduled on 6.10.2016. Writ petition is allowed, as indicated. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

asr

To

1.The Authorised Officer
State Bank of Bikaner and Jaipur
No.244, L.G.B. Complex
Big Bazaar Street
Coimbatore - 641 001

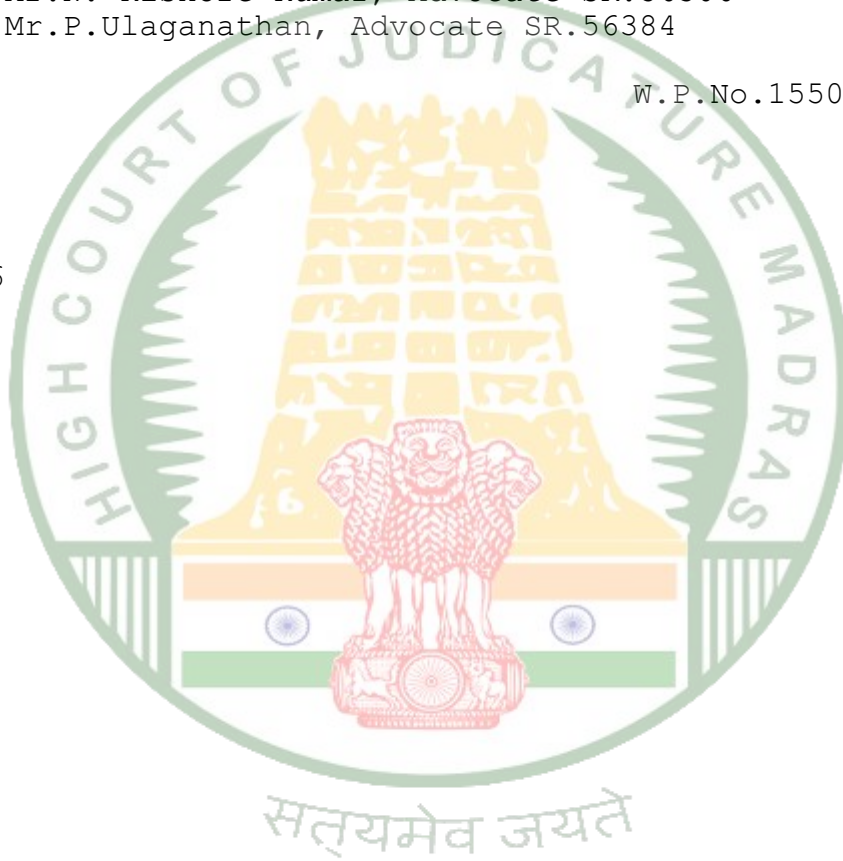
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3.The Debts Recovery Appellate Tribunal
4th Floor, Indian Bank Circle Office
55, Ethiraj Salai
Chennai - 600 002

+ 1 cc to Mr.N. Kishore Kumar, Advocate SR.56306
+ 1 cc to Mr.P.Ulaganathan, Advocate SR.56384

W.P.No.15505 of 2016

VSN(CO)
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