

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6.10.2016

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Petition No.27855 of 2016

and

WMP Nos.24030 & 27861 of 2016

M/s.Wilson Industires

Rep. by its Prop. Mr.K.Wilson

No.19, Krishna Avenue

Sivanandapuram

Saravanampatti

Coimbatore - 641 035

..... Petitioner

vs.

1.Indian Overseas Bank

Regional Office

Rep. by its Regional Manager

Gandhipuram, Coimbatore

2.Indian Overseas Bank,

Specialised Asset Recovery Management Branch

Represented by the Authorised Officer

11/952, Cross Cut Road

Coimbatore - 641 012

..... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, calling for the records of the respondent bank in Proceedings No.ARGB/1551/607/2014-15 Dt.24.06.2016 on the file of the Respondent No.2 and quash the same as ultra vires, unconstitutional, contrary to the provisions of the SARFAESI Act and Rule 7(2) of the Rules there under and against principles of natural justice and consequently direct the respondent to hand over the physical possession of the immovable property item No.2 as detailed in the Tender Document as well as in the sale confirmation made by the respondent No.2 on 25.7.2016 to the prima facie title holder (i.e.) the petitioner herein, in respect of residential house property in Door No.76, 76-A, Ilango Nagar, Krishnarayapuram, Peelamedu, Coimbatore, measuring 2248 sq.ft. of land, without any further loss of time and further directing the respondent Nos.1 and 2, being the possession holders of the above property, as per Sec.13(4) of the SARFAESI Act, not to allow anyone including the successful bidder in the auction held on 25.7.2016 not to deal with the

property in Door No.76, 76-A, Ilango Nagar, Krishnarayapuram, Peelamedu, Coimbatore.

For Petitioner : Mr.B.Karthikeyan

For Respondents : Ms.Ananda Gomathy (R1 & R2)

ORDER
(delivered by S.MANIKUMAR, J)

Sale Notice dated 24.6.2016 issued under Rule 8(5) and 9(1) of the Security Interest (Enforcement) Rules, 2002, is the challenge in the instant writ petition, and the petitioner has sought for a writ of certiorari mandamus to call for the records of the respondent bank in Proceedings No.ARGB/1551/607/2014-15 Dt.24.06.2016 on the file of the 2nd Respondent and quash the same as ultra vires, unconstitutional, contrary to the provisions of the SARFAESI Act and Rule 7(2) of the Rules there under and against principles of natural justice and consequently direct the respondents to hand over the physical possession of the immovable property item No.2 as detailed in the Tender Document as well as in the sale confirmation made by the respondent No.2 on 25.7.2016 to the prima facie title holder (i.e.) the petitioner herein, in respect of residential house property in Door No.76, 76-A, Ilango Nagar, Krishnarayapuram, Peelamedu, Coimbatore, measuring 2248 sq.ft. of land, without any further loss of time and further directing the respondent Nos.1 and 2, being the possession holders of the above property, as per Sec.13(4) of the SARFAESI Act, not to allow anyone including the successful bidder in the auction held on 25.7.2016 not to deal with the property in Door No.76, 76-A, Ilango Nagar, Krishnarayapuram, Peelamedu, Coimbatore.

2. On 26.9.2016, with the consent of the learned counsel appearing for both parties, we passed the following order:

"When the matter came up on 22.9.2016, Proprietor of M/s.Wilson Industries and Managing Partner in JMJ Industries, filed an affidavit dated 21.9.2016, undertaking to pay Rs.52,00,000/- (Rupees Fifty two lakhs) in one single payment, within a period of 21 days, to redeem the scheduled property, namely item 2, mentioned in the sale notice dated 21.6.2016, which is hereunder:

"2. All that part and parcel of 2284 sq ft of land and 1435 sq ft of building thereon (RC Roofing 825 sq ft; AC Sheet Roofing 610 sq ft) with all appurtenances thereto situated at Door No.76, 76 a, Ilango Nagar, Krishnarayapuram, Coimbatore, in the Peelamedu Sub-Registration District and Registration

District of Coimbatore, standing in the name of Mr.K.Wilson bounded by:

Doc No.1410/2006 :

North	: Site No 230
South	: R Neelaveni & Gunasekaran Property
East	: Site No.228
West	: 40' 0" Wide Road

Doc No 1411/2006:

North	: Mrs.Saraswathy property
South	: 20' 0" Wide Road
East	: Site No.229
West	: 40' 0" Wide Road"

2. Today, Mr.B.Karthikeyan, learned counsel for the writ petitioner, submitted that a sum of Rs.52,00,000/- stated supra, would be paid in one single payment on or before 5.10.2016, for redemption of the property stated supra. Submission is placed on record.

3. Ms.Ananda Gomathy, learned counsel appearing for the respondent bank, has agreed for the above proposal. Her submission is also placed on record.

4. In view of the above, without going into the merits of this case, there shall be a direction to the writ petitioner M/s.Wilson Industries, Saravanampatti, Coimbatore - 641 035, to pay a sum of Rs.52,00,000/- in one single payment on or before 5.10.2016 to the respondent bank. On such payment, the respondent bank, shall redeem the schedule property, namely item No.2 in the sale notice dated 21.6.2016, along with documents pertaining to the said property, within 10 days from the date of receipt of payment. It is made clear that no further extension of time will be granted to the petitioner.

Post the matter on 6.10.2016"

3. Today, when the matter came up for further hearing, Ms.Ananda Gomathy, learned counsel for the respondents submitted that a sum of Rs.52,00,000/-, as ordered, in the foregoing paragraphs, has been made on 5.10.2016, by way of a demand draft and that the same has been presented for encashment. Learned counsel for the bank also submitted that as early as on 17.10.2014, the District Magistrate passed orders under Section 14 of the Act giving assistance for taking possession.

4. She also submitted that pursuant to the above, physical possession of all the three items mentioned in the sale notice, has been taken. Learned counsel for the bank submitted that,

physical possession would be given to the petitioner. Her submission is placed on record. Inasmuch as the writ petitioner, has paid Rs.52,00,000/- in one single installment, we direct that the bank, would not only, redeem the second item of the schedule property, in the sale notice dated 21.6.2016, along with documents pertaining to the property, and also hand over physical possession of item No.2 of the sale notice, as expeditiously as possible, and by not later than 10 days from the date of payment.

5. With the above directions, sale notice dated 24.6.2016 impugned in the present writ petition is set aside insofar as item No.2 is concerned. All the consequential actions of the bank also are rescinded, insofar as item No.2 is concerned. Bank is directed to honour the commitment.

With the above directions, writ petition is disposed of. However, there shall be no order as to cost. Consequently, the connected writ miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

asr

+2 cc to Mr.S.V.Pravin Rathinam Advocate sr.57586/16
+1 cc to Ms.Ananda Gomathy Advocate sr 57601/16

W.P.No.27855 of 2016
and

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