

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2016

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR. JUSTICE K.K.SASIDHARAN

W.P No.2812 of 2016
and
W.M.P. Nos.2189 and 2190 of 2016

1.Induja
2.Manojkumar
(Petitioners 1 and 2 are minors
represented by Mother and
natural guardian Parameswari) ... Petitioners

Vs.

1.The Chief Manager and Authorised Officer,
M/s.Andhra Bank,
SME Coimbatore Branch,
Door No.800-B, 1st Floor,
Mettupalayam Road,
Coimbatore.
2.M/s.ES.R.ES. Mills,
represented by its Proprietor
Mr.S.R.Shanmugam,
Anna Nagar 1st Street,
Trichy Road,
Palladam Taluk,
Coimbatore District.
3.Rangasamy @ Mani .. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records pertaining to the public auction sale notice dated 22.12.2015 issued by the first respondent and consequently, to quash the same.

For Petitioners : Mr.Vignesh Karthick

ORDER

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

Challenging the e-auction sale notice dated 22nd December, 2015 issued under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act") by the first respondent bank, this writ petition is filed by the petitioners.

2 The case of the petitioners, who are represented by their mother, is that the property in question is the ancestral joint family property of the third respondent, who is the father of the petitioner and he got the property by way of partition deed dated 16th June, 2003. The mother of the petitioners filed a partition suit against the third respondent in O.S.No.348 of 2011 on the file of the Subordinate Court, Tiruppur, seeking partition of the joint family properties. On transfer to the I Additional Subordinate Court, Coimbatore, the suit is now pending. In the meantime, the third respondent stood as guarantor for the loan availed by the second respondent and mortgaged the property in question. The third respondent deliberately mortgaged the said property along with the shares of the minor children. A demand notice was issued by the bank to the second respondent on 14th February, 2014. Subsequently, a possession notice, dated 24th May, 2014 was also issued to the second respondent. Thereagainst, the second respondent approached the Debts Recovery Tribunal, Coimbatore under Section 17(1) of the SARFAESI Act. The petitioners also filed an application for impleadment before the Debts Recovery Tribunal. While the matter stood thus, the impugned e-auction sale notice has been issued. Further, the property in question is an agricultural land. Therefore, under Section 31(i) of the SARFAESI Act, no proceedings can be initiated under the Act. When the fact of issuance of e-auction sale notice has been brought to the notice of the Tribunal, no interim order has been passed and the matter has been adjourned. Thus, the entire exercise initiated by the first respondent bank is vitiated and deserves to be set aside.

3 It is a well settled principle of law that a person being aggrieved by any action or measure taken under Section 13 (4) of the SARFAESI Act, is competent and entitled to prefer an appeal under Section 17, *ibid*, before the Debts Recovery Tribunal. Admittedly, the demand notice, dated 14th February, 2014 was issued to the second respondent. Thereafter, possession notice under Section 13(4) of the SARFAESI Act was issued on 24th

May, 2014. As no steps have been taken, the impugned e-auction sale notice has been issued.

4 In view of the aforestated backdrop, at this stage, we are not inclined to interfere with the matter. If the petitioners are aggrieved by the impugned sale notice issued by the first respondent bank, they are at liberty to approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act, seeking an appropriate direction against the bank, raising appropriate contentions available to them under the provisions of law. The writ petition under Article 226 of the Constitution of India is not maintainable for the said relief.

5 Resultantly, the writ petition stands dismissed, No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vvk

To
The Chief Manager and Authorised Officer,
M/s.Andhra Bank,
SME Coimbatore Branch,
Door No.800-B, 1st Floor,
Mettupalayam Road,
Coimbatore.

+ 1 cc to Mr.K. Vignesh Karthik, Advocate Sr.4605

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