IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 07.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.30274 of 2016 &
W.M.P.Nos.26268 & 26269 of 2016

Sajjan M.Sharma,
Prop. SMS Corporation,
C-603, Sivalaya Building,
Commander-in Chief Road,
Egmore, Chennai - 600 008 ... Petitioner

-vs-

1.The Authorised Officer,
Lakshmi Vilas Bank Limited,
Chennai Main Branch,
No.275, Tambu Chetty Street,
Chennai - 600 001.

2.Subash Chand Jain ... Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings in Crl.M.P.No.2522 of 2015, dated 03.06.2015, pending on the file of the Chief Metropolitan Magistrate, Egmore and quash the same as illegal, arbitrary and consequently, direct the first respondent to permit the petitioner to redeem the property.

For Petitioner : Mr.S.Sethuraman
For Respondent No.1 : Mr.A.V.Radhakrishnan
For Respondent No.2 : Mr.Shankarmurali

O R D E R

[Order of the Court was made by N.AUTHINATHAN, J.]

The petitioner has come up with the present Writ Petition for a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings in Crl.M.P.No.2522 of 2015, dated 03.06.2015, pending on the file of the Chief

Metropolitan Magistrate, Egmore and quash the same as illegal, arbitrary and consequently, direct the first respondent to permit the petitioner to redeem the property.

2.The facts necessary for the disposal of the Writ Petition are as follows:

2.1.The petitioner is the proprietor of SMS Corporation. He has availed overdraft facility from the first respondent-bank to the tune of Rs.82 lakhs. The petitioner has created security interest on the property bearing Flat No.D-1, III Floor, Kali Flats, together with undivided share of land situated at Basullah Road, T.Nagar, Chennai, for the repayment of the said loan facility by way of equitable mortgage. He has committed default in repayment. The loan account became "non-performing asset" [NPA] on 29.09.2010.

2.2.The Bank issued notice dated 08.04.2011 under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act") calling upon the petitioner to pay a sum of Rs.95,04,060.17 as on 31.03.2011. Thereafter, the possession notice dated 18.07.2011 was issued by the Bank for taking symbolic possession of the secured asset. Subsequently, the Bank issued sale notice dated 09.07.2012 for sale of the property.

2.3.The property was sold to the second respondent for Rs.1,50,67,800/-. The Bank has executed sale Certificate on 25.02.2013. At the instance of the Bank, the Chief Metropolitan Magistrate, Egmore, passed an order dated 03.06.2015, in terms of Section 14 of SARFAESI Act in Cr.M.P.No.2523 of 2015, appointing an Advocate Commissioner to take possession of the property in question and hand over the same to the Bank.

2.4.Aggrieved by the order dated 03.06.2015 passed by the Chief Metropolitan Magistrate, Egmore, Mrs.Saroj Sharma, the wife of the petitioner, approached the Debts Recovery Tribunal - II, Chennai, by filing S.A.No.88 of 2015. The Writ Petitioner has also approached the Debts Recovery Tribunal - II, Chennai, by way of an application in the pending S.A.No.88 of 2015 for redemption of the mortgaged property.

2.5.Pending disposal of the said S.A.No.88 of 2015 and the application filed by the petitioner before the Debts Recovery Tribunal - II, Chennai, the petitioner has come forward with the present writ petition challenging the very same order dated 03.06.2015 of the Chief Metropolitan Magistrate, Egmore.

3.The petitioner submits that the Debts Recovery Tribunal - II, Chennai, without appreciating his earnestness to settle the matter adjourned the cases on the ground that the lawyers were on strike. His petition for an early hearing was also not entertained.

4.The learned counsel for the petitioner would submit that the petitioner's right of redemption still subsists and the action initiated by the bank under Section 14 of SARFAESI Act, is illegal and liable to be quashed, as it was barred by limitation.

5.The learned counsel for the first respondent-bank would submit that the Bank approached the Chief Metropolitan Magistrate, Egmore, for taking possession of the property, since the petitioner and his wife did not allow the auction purchaser to take physical possession of the property. He also contended that after registration of the sale certificate, the petitioner cannot redeem the mortgaged property.

6.In KANAIYALAL LALCHAND SACHDEV vs. STATE OF MAHARASHTRA [(2011) 2 SCC 782], the Hon'ble upreme Court has held that an action under Section 14 of SARFAESI Act constitutes an action after the stage of 13(4) and therefore, the same would fall within the ambit of Section 17(1) of SARFAESI Act. It has also been held that SARFAESI Act contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by providing for an appeal before the Debt Recovery Tribunal. Its a case arising under Section 14 of SARFAESI Act.

7.Admittedly, an Appeal under Section 17 is pending on the file of the Debts Recovery Tribunal - II, Chennai, challenging the order of the Chief Metropolitan Magistrate, Egmore. The petitioner's application for redemption of the mortgaged property is also pending before the Debts Recovery Tribunal - II, Chennai. The limited grievance of the petitioner is that the Debts Recovery Tribunal - II, Chennai, has not chosen to dispose of the matters pending on his file expeditiously. The mere delay in disposal of the matters would not be a ground to entertain the writ petition. In the light of the aforementioned dictum laid down by the Supreme Court, we are not inclined to entertain the writ petition. However, we are of the considered view that the ends of justice would be met by directing the Debts Recovery Tribunal - II, Chennai, to dispose of the matter expeditiously in any event, not later than two months.

8.In the course of arguments, the learned counsel for the petitioner would also submit that such a direction would be sufficient. This Court by way of an interim order dated 31.08.2016 directed the parties to maintain status quo. The learned counsel for the petitioner prayed that the interim order passed by this Court be extended till the petitioner files an appropriate application before the Debts Recovery Tribunal - II, Chennai. However, we are not inclined to grant any transitory order. It is for him to work out his remedy before the Debts Recovery Tribunal - II, Chennai.

9.All the learned counsel appearing for the parties, have consented for disposal of S.A.No.88 of 2015, within two months from the date of receipt of a copy of the order. Accordingly, there shall be a direction to the Debts Recovery Tribunal - II, Chennai, to dispose of the Appeal, within the aforesaid time. In the meantime, in the interest of justice, the first respondent-bank is directed to deposit the balance amount in a 'no lien interest bearing account'.

10.The Writ Petition is disposed of on the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Chief Metropolitan Magistrate,
Egmore.

2.The Presiding Officer,
Debts Recovery Tribunal-II,
Chennai.

3.The Authorised Officer,
Lakshmivilas Bank Branch, Limited,
No.275, thambuchetty Street,
Chennai-600 001.

+1cc to Mr.K.S.Shankar Murali, Advoate Sr.63536
+1cc to Mr.A.V.Radhakrishnan, Advocate Sr.63622
+1cc to Mr.S.sethuraman, Advocate Sr.63876

ug[co]
srg 05/12/2016