

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 24.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.31508 of 2016 &

W.M.P.No.27348 of 2016

M/s.Thiru Thillai Yarns,
Rep.by its Partner S.Natarajamoorthy,
No.10, Municipal Office Road,
Thyaga Sudar Maaligai,
Valarmathi Lane,
Tiruppur - 641 604.

... Petitioner

-vs-

The Authorised Officer,
Tamil Nadu Mercantile Bank,
Tiruppur Branch,
223- 236, Palladam Road,
Tiruppur - 641 604.

... Respondent

Prayer: Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the records of the Debt Recovery Tribunal, Coimbatore, in the order dated 27.07.2016 passed in I.A.No.1240 of 2016 in S.A.No.138 of 2012 and quash the same.

For Petitioner : Mr.S.Mohan

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 Certiorari, to call for the records of the order passed by the Debt Recovery Tribunal, Coimbatore, in I.A.No.1240 of 2016 in S.A.No.138 of 2012, dated 27.07.2016 and to quash the same.

2.The respondent sanctioned cash credit facilities to the tune of Rs.15 lakhs to the petitioner. The petitioner created an equitable mortgage in respect of an immovable property. The petitioner availed financial facilities with an undertaking for repayment. However, the account of the

petitioner has become irregular. Hence, the account was classified as "non-performing asset" [NPA].

3.The Bank issued notice dated 19.07.2012 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.14,83,720/-. Thereafter, a notice dated 10.10.2012 was issued by the Bank for taking symbolic possession of the secured asset.

4.The petitioner approached the Debt Recovery Tribunal, Coimbatore, assailing the demand notice and possession notice in S.A.No.138 of 2012. An interim stay was granted subject to the condition to pay a sum of Rs.5,50,000/-. However, the stay order was subsequently vacated on the ground that there was no representation for the petitioner. Pending disposal of the above Application, the respondent Bank issued auction sale notice for the sale of the mortgaged property. The sale was fixed for 29.07.2016.

5.The petitioner filed an Application in I.A.No.1240 of 2016 in S.A.No.138 of 2012 before the Debt Recovery Tribunal seeking permission to add a prayer by way of amendment to challenge the auction sale notice. The Debt Recovery Tribunal, Coimbatore, by an order dated 27.07.2016 dismissed the Application filed by the petitioner as not maintainable. However, it observed that it was open to the petitioner to file a separate SARFAESI Application to challenge the auction sale notice. Challenging the order dated 27.07.2016 of the Debt Recovery Tribunal, Coimbatore, the present Writ Petition has been filed.

6.Mr.S.Mohan, learned counsel appearing for the petitioner would submit that the subsequent events can be taken note of and the petitioner is entitled to ask the Tribunal to mould the relief. According to him, to avoid multiplicity of proceedings, the proposed amendment is necessary.

7.The respondent Bank opposed the application for amendment before the Debt Recovery Tribunal, stating that the auction sale notice can be challenged by way of an independent SARFAESI Application and not by means of amendment in the pending SARFAESI Application.

8.It appears from the records that the petitioner herein has chosen to challenge the demand notice and possession notice issued by the Bank invoking the provisions of SARFAESI Act in S.A.No.138 of 2012. He seeks to get the Original Application amended by adding a prayer for setting aside the auction sale notice. In the scheme of the Act different stages

are contemplated, namely, demand, possession and sale. They are independent actions. The causes of action are distinct and independent. The sale notice, in our considered view, is an independent and distinct stage and as such a challenge in this behalf tantamounts to the arrisal of an independent cause of action. In the facts and circumstances of the case, we are of the view that the petitioner cannot be permitted to introduce a new cause of action in a pending application. The Debt Recovery Tribunal has already indicated in its order that it is open to the petitioner to file an independent SARFAESI Application to challenge the auction sale notice. In these circumstances, we hold that the impugned order of the Debt Recovery Tribunal, Coimbatore, dated 27.07.2016 does not warrant any interference.

9. In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

-sd-
Assistant Registrar

/true copy/

Sub Assistant Registrar

sri

To

1 The Presiding Officer
Debt Recovery Tribunal
Coimbatore

+1 CC to M/s.S.Mohan, Advocate Sr.No.60469

+1 CC to M/s.V.Chandrasekaran, Advocate Sr.No.60675

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W.P.No.31508 of 2016