IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20/12/2016

C O R A M

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice M.Govindaraj

Writ Petition Nos.43726 and 43727 of 2016
& WMP.No.37528/2016 in W.P.No.43727/2016

M/s. Thirumalai Tile House
A partnership firm
rep. By its Partner
Mr.A.Palanisamy
No.50 A Pera Naidu Street
Bharathiyar Main Road
Pappanaickenpalayam
Coimbatore.

Godown at

No.202 D Sakthi Main Road (West)
Saravanampatti
Coimbatore 641 035. ... Petitioner in both petitions

Vs

1. The Lakshmi Vilas Bank Ltd
rep. By its Authorised officer
Ramanathapuram Branch
1678 Ground Floor
Trichy Road
Ramanathapuram
Coimbatore 641 045.
2. The Registrar
The Debts Recovery Tribunal
Coimbatore.
3. A. Palanisamy
4. P. Sathya ... Respondents in both petitions

(Respondents 3 and 4 are given up)

Petitions filed under Article 226 of the Constitution of India praying for the issuance of writs of mandamus, seeking a direction as against the second respondent to hear and adjudicate and pass orders in I.A.Nos.1998 and 1999 of 2016.

For petitioner ... Ms.A.Ananda Gomathy

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C O M M O N   O R D E R

(Order of the Court was made by S.Manikumar,J)

Borrower, M/s. Thirumalai Tile House, a partnership firm, represented by its Partner, Mr.A.Palanisamy, Coimbatore has availed loan. For default, Notice, dated 9/6/2016, has been issued under Section 13 (2) of the SARFAESI Act, intimating that on 29/5/2016, the account of the petitioner has been classified as Non-Performing Asset. The first respondent, has called upon the petitioner, to pay an outstanding amount of Rs.5,45,55,497.95, within sixty days, from the date of the said notice. Thereafter, possession notice, dated 18/8/2016 issued by the Authorised Officer of Lakshmi Vilas Bank Ltd., Coimbatore/first respondent has been received by the petitioner, wherein it is stated that symbolic possession of the property specified in the said notice has been taken. Subsequently, the Authorised Officer of Lakshmi Vilas Bank/first respondent, has issued a notice of sale of the immovable property, under Rule 8 (6) and 9 (1) of the Security Interest (Enforcement Rules) 2002.

2. According to the petitioner, the Authorised Officer has not taken proper valuation of the property sought to be sold. It is the case of the petitioner that market value of the property is Rs.12 crores, whereas, the reserved price fixed by the Authorised Officer of Lakshmi Vilas Bank Ltd/first respondent is Rs.7,80,00,000/-. In support of the above, writ petitioner has relied on the valuation report given by Mr.E.Nakkeeran, Chartered Engineer & I.T.Valuer.

3. The Writ petitioner has further contended that being aggrieved by the sale notice, S.A.No.192 of 2016 was filed, on the file of the Debts Recovery Tribunal, Coimbatore. The petitioner has also taken out two applications in I.A.Nos.1627 and 1628 of 2016, seeking stay of the sale and prayed for a direction to bring the hypothecation for sale, which according to the writ petitioner would fetch Rs.2.25 crores.

4. On 24/9/2016, the Debts Recovery Tribunal, Coimbatore, has directed the petitioner, to deposit Rs.75 lakhs, on or before 24/10/2016, as first instalment and another sum of Rs.75 lakhs, on or before 24/11/2016, as second instalment and ordered stay of confirmation of sale. Debts Recovery Tribunal, Coimbatore has also directed the petitioner to produce the list of hypotheca, which could be sold in the market.

5. Reiterating that hypothecated properties could be sold and the order, dated 24/9/2016, imposing condition to deposit a huge sum, with little time, requires intervention, the petitioner, is stated to have filed A.I.R.No.419 of 2016, before the Debts Recovery Appellate Tribunal. During the course of arguments of the instant writ petition, Ms.Ananda

Gomathy, learned counsel for the petitioner submitted that A.I.R.No.419 of 2016 is still pending, on the file of the appellate authority.

6. Material on record discloses that when Lakshmi Vilas Bank Ltd, Coimbatore/first respondent has brought the property for auction/sale, by another sale notice, dated 15/11/2016, fixing the auction sale on 20/12/2016, the petitioner has filed I.A.No.1998 of 2016, in S.A.No.192 of 2016, seeking to amend the prayer, in order to challenge the subsequent action of the Bank in bringing the property for sale once again, vide, sale auction notice, dated 15/11/2016 and also filed another application in I.A.No.1999 of 2016, to restrain the Bank with the proposed auction, scheduled to be held on 20/12/2016.

7. According to the petitioner, when the I.As were taken up on 15/12/2016, by the Debts Recovery Tribunal, Coimbatore, the matters were adjourned to 30/1/2017, for filing counter by the Lakshmi Vilas Bank Ltd., Coimbatore.

8. Contention has been made that there been a final order passed in the above said I.As., the petitioner would have approached the Debts Recovery Appellate Tribunal, by way of an appeal, under Section 18 of the SARFAESI Act, 2002, but no order has been passed. In the meanwhile, auction is scheduled on 20/12/2016 and in such circumstances, the petitioner would be prejudiced, in not adjudicating on any of the issues, regarding undervaluation of the subject property sought to be sold, availability of the hypothecated property at Rs.2.25 crores for realisation by sale and such other grounds, raised in the amendment petition, I.A.No.1998 of 2016 and injunction petition No.1999 of 2016. According to the petitioner, left with no other alternative, the petitioner has approached this Court, under Article 226 of the Constitution of India in directing the Debts Recovery Tribunal, to hear and pass orders, in I.A.No.1998 and 1999 of 2016 in S.A.No.192 of 2016, pending on the file of the Tribunal.

9. We have heard Ms.Ananda Gomathy, learned counsel for the petitioner on the above averments.

10. Material on record discloses that earlier, when sale notice, dated 31/8/2016, was issued by the Bank, fixing the auction sale, on 7/10/2016, the writ petitioner has filed an appeal, in S.A.No.192 of 2016, on the file of the Debts Recovery Tribunal.

11. The writ Petitioner, has filed I.A.No.1627 of 2016, to stay the auction notice, dated 31/8/2016 and a direction petition, I.A.No.1628 of 2016, directing the Authorised officer of the respondent Bank, to take steps, for sale of immovable properties, hypothecated, more fully described in schedule 2 of I.A.No.1628 of 2016.

12. After hearing both the parties, by a common order, dated 24/9/2016, in S.A.No.192 of 2016, Debts Recovery Tribunal, Coimbatore has granted interim injunction against the Lakshmi Vilas Bank Ltd, not to confirm the sale till 25/11/2016, subject to the payment of Rs.75,00,000/-, directly before the Bank, on or before 24/11/2016, as first instalment and another sum of Rs.75,00,000/-, to the Bank, on or before 24/11/2016. The Tribunal, further ordered that in the event of failure to pay even a single instalment, as ordered above, ad interim injunction granted against the Bank, not to confirm the sale, till 25/11/2016, would stand vacated automatically and thereafter, the respondent Bank would be at liberty to proceed against secured assets, as per law.

13. In so far as, I.A.No.1628 of 2016, is concerned, the Tribunal has permitted the writ petitioner to check the immovable properties/hypotheca and prepare a list and produce the same before the Tribunal, on 25/11/2016.

14. When a conditional order made in I.A.No.1627of 2016, in S.A.No.192 of 2016, was challenged, in W.P.No.35393 of 2016, this Court, on 18/10/2016, declined to entertain the writ petition. While doing so, this Court also declined to issue a direction to the Tribunal, for extension of time, for payment of the statutory deposit, as contemplated under Section 18 of the SARFAESI Act, 2002, thereby, making it clear that as on the date of disposal of the writ petition No.35393 of 2016, dated 18/10/2016, the writ petitioner has not deposited the statutory amount, into the Tribunal, for entertaining an appeal, under Section 18 of the SARFAESI Act, 2002. Thereafter, when S.A.No.192 of 2016 was pending, the Authorised Officer of the respondent Bank has issued another e-auction notice, dated 15/11/2016, and auction sale is scheduled on 20/12/2016. At this juncture, writ petitioner has filed I.A.No.1998 of 2016 for amendment of the prayer in S.A.No.192 of 2016 and I.A.No.1999 of 2016 for stay of auction.

15. Conditional order, passed earlier, in I.A.No.1627 of 2016 in S.A.No.192 of 2016, dated 24/9/2016, on the file of the Debts Recovery Tribunal, Coimbatore, has already been challenged by way of an appeal, under Section 18 of the SARFAESI Act, 2002, in A.I.R.No.419 of 2016, on the file of the Debts Recovery Appellate Tribunal.

16. Had the petitioner deposited the statutory amount, appeal under Section 18 of the SARFAESI Act, 2002, would have been entertained by the Debts Recovery Appellate Tribunal. There is no averment as to whether any waiver application has been filed. Order made in I.A.No.1627 of 2016, categorically states that in the event of failure of making even one single instalment, as stated supra, interim order, granted on 24/9/2016, would automatically stand vacated. At this

juncture, it is also to be noted that Debts Recovery Tribunal, Coimbatore, has further made it clear that the respondent Bank is at liberty to proceed with the proposed sale, subject to the conditions specified.

17. Subsequently, another e-auction notice, dated 15/11/2016 has been issued. After considering the prayer sought for, in I.A.Nos.1998 and 1999 of 2016, the Debts Recovery Tribunal, Coimbatore, has passed a common order, dated 15/12/2016, in S.A.No.192 of 2016 as hereunder:-

> "I.A.No.1998/16: (Amendment Petition). This petition has been filed by the petitioners/applicants to amend the S.A, as detailed in the petition. Admittedly, the impugned auction sale notice is the 2nd sale notice issued by the R/Bank. The 1st auction sale notice was sought to be stayed in I.A.1627/16 and this Tribunal has granted conditional stay on 24.9.2016, but the said conditions were not complied with. Thereafter, a direction petition in I.A.1628/16 was filed, in which direction was sought by the petitioners to bring the mud-tiles, which is the principal security, for sale. After hearing both sides, this Tribunal has directed the petitioners to file a list of movable property/hypotheca within a week. Accordingly, the list was filed before this Tribunal on 02.12.2016. When the proceedings are such, the R/Bank has issued the impugned auction sale notice, which is arising out of a fresh cause of action and not in continuation of the earlier proceedings. Therefore, this petition deserves to be disposed of on merits only. Hence, the R/Bank is directed to file counter by 30.01.2017. Call on 30.01.2017. I.A.No.1999/16: Stay Petition. In view of the order passed in I.A.No.1998/16, I.A.No.1999/2016 is also posted on the same day for filing counter by the R/bank. Call on 30.01.2017."

18. Conditional order has not been complied with. For realising the outstanding amount, the secured creditor can take any of the measures under Section 13 (4) of the SARFAESI Act, 2002. As per the statutory provisions, for sale, one month notice has to be given. Therefore, the respondent Bank has issued another auction notice, dated 15/11/2016, to bring the property for auction, on 20/12/2016. According to the petitioner, to avoid multiplicity of proceedings and filing another application, under Section 17 of the SARFAESI Act,

2002, challenging the subsequent sale notice, dated 15/11/2016, amendment has been sought for. Challenge to the earlier sale notice and the averments made in I.A.No.1998 of 2016 are more or less same, undervaluation has been raised. On the facts and circumstances of this case, the petitioner cannot be permitted, to intervene at each and every stage, whenever the property is brought for auction, on the same cause. The Tribunal, vide common order, dated 15/12/2016, has also observed that the auction sale notice, is a fresh cause of action and not in continuation of the earlier proceedings. The Tribunal has directed both the applications to be posted on 30/1/2017, for filing counter affidavit by Lakshmi Vilas Bank Ltd.

19. On the facts and circumstances of the case, we are not inclined to grant stay of the auction, scheduled on 20/12/2016. However, the Debts Recovery Tribunal, Coimbatore, is directed to advance the hearing of I.A.Nos.1998 and 1999 of 2016, before fifteen days, from the date of auction sale, after giving notice to the learned counsel appearing for the parties/parties and dispose of the above said applications, as expeditiously as possible. It is made clear that the contesting parties should not protract the hearing of I.As, except for genuine and bona fide reasons, subject to the satisfaction of the Tribunal.

20. With the above directions, these writ petitions are disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Registrar
The Debts Recovery Tribunal
Coimbatore.

+2ccs to M/s.Ananda Gomathy, Advocate, S.R.No.74228

Writ Petition Nos.
43726 and 43727 of 2016

(CO)
CS(21/12/2016)