

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.12.2016

C O R A M

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

Writ Petition No.44034 of 2016
W.M.P.No.37850 of 2016

Mr.Sajid Ahmed,
Director,
Oragadam City Developers Pvt. Ltd.,
Chennai. Petitioner

Vs

1. The Authorised Officer & Chief Manager,
State Bank of India,
Stressed Assets Management Branch,
Red Cross Buildings,
32, Montieth Road,
Egmore, Chennai-8.
2. The Chief Manager & Relationship Manager,
State Bank of India,
Industrial Finance Branch,
155, Anna Salai,
Chennai-102. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorarified Mandamus, to call for the records and quash the notice, dated 15.12.2016, issued by the first respondent and consequently, direct the 2nd respondent to permit the petitioner to sell individual residential plots to prospective buyers by granting a no objection certificate, so as to enable the petitioner to discharge the one time CC limit availed from the 2nd respondent.

For petitioner ... Mr.S.Ravi

O R D E R

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

Oragadam City Developers Pvt. Ltd., is a company, incorporated under the Companies Act, 1956 and engaged in the business of promoting real estate projects, in and around the city of Chennai. It floated a project of real estate development, under the name and style of "Inno-Geo-city" at Oragadam, on the land, ad-measuring an extent of 130.98 acres. The promoters contributed a share capital of 93.26 crores, towards equity and a sum of Rs.12.97 crores was brought in, as loan, by the Promoters for the said project. With the aforesaid equity and loan contribution from the promoters, land was acquired by the Oragadam City Developers Pvt. Ltd.

2. The company applied for approval of layout, from the Directorate of Town and Country Planning, Chennai and obtained the layout approval for the entire extent of 130.98 acres. It also obtained building approval for construction of houses, envisaged in Sector-1 & Sector-2. The project envisaged development of land into several plots and construction of Villa type houses in the developed plots. All the houses in Sector-1, comprising of number of plots have been completed and Sector-2 has been partially completed.

3. Apart from equity contribution and loan brought in, by the promoters, the company has availed a sum of Rs.15 crores, as term loan from State Bank of India, Industrial Finance Branch, the second Respondent herein, for construction of houses, in Sector-2. This was sanctioned by the 2nd Respondent, vide Sanction letter, dated 08.03.2012. The entire term loan of Rs.15 crore was repaid fully, by the promoters, by bringing in additional capital infusion. In addition to the above, the company also obtained a non-fund based limit of Rs.15 crore from the second respondent for material procurement, which was also fully repaid and then, their limit was surrendered to the second respondent, during March' 2015. The third facility availed by the company from the second respondent is a one-time cash credit limit of Rs.27 crores for infrastructural development. This was sanctioned to the company by the 2nd respondent, under the sanction letter, dated 12.04.2013.

4. At the time of sanction of loans, the primary security was equitable mortgage of 359 plots, admeasuring 9.38 acres and super built-up structures of 550 units on the above plots. During the sanction of cash credit limit, the primary security was modified into equitable mortgage of 284 plots, measuring

4,66,209.42 Sq.ft., and super built-up structures of 568 units on the above plots. In addition to the above, 43.1283 Acres of land was offered as collateral security. When cash credit limit of 27.00 crores was sanctioned, the primary security for the one-time cash credit limit, was equitable mortgage on the plots admeasuring 5.15 acres and EM on 42.19 acres of land, was given as Collateral security. The reason for making the approved residential plots on an extent of 5.15 acres, as primary security was to enable the company to sell the fully developed residential plots to the prospective buyers, without any construction of super structure.

5. The company has further submitted that pursuant to the aforesaid limits duly modified in the sanction letter, dated 12.04.2013, the respondent-Bank periodically gave no objection letter to them for sale of the developed plots, in favour of the prospective buyers. Whenever any plot of land is sold, the company would apply to the second respondent for release of the charge and based on the said application, the second respondent granted no objection for release of the charge, on condition that the total consideration payable by the prospective buyers should be deposited to the designated account maintained with the second Respondent bank.

6. The company has sold the fully developed 95 plots between February' 2014 and January' 2015 and the entire sale consideration of Rs.10 Crores was remitted to the respondent-Bank, towards the designated account. By infusion of additional capital, the company has fully repaid the term loan and also surrendered the non-fund based limits of Rs.15 Crores. Insofar as the one-time cash credit limit is concerned, the second respondent-Bank, by sanction letter, dated 27/3/2015, increased the limit from 27.00 crores to 31.00 crores, which was repayable in 18 monthly instalments, starting from November 2015 and ending on April 2017. However, quite unfortunately, while increasing the limit for the cash credit loan, the second respondent-Bank imposed a condition that the issue of NOC, towards primary security thereafter, will be subject to proportionate reduction in the exposure of the bank, repayment of the loan as per the proposed repayment schedule and commencement of construction on the site/plot, for which NOC is sought. The said condition has virtually prevented the company from selling any residential plot, in view of the fact that the second respondent has refused to give NOC and contrary to fact that when all the three limits were sanctioned, the primary security for the bank was only approved residential plots in Sector-2 and the building to be built thereon. 54 acres of the DTCP approved residential layout plot was only offered as the collateral security and the value of both, put together, was more than 140 crores.

7. The company has further submitted that the very purpose of making the 5.15 acres of the DTCP approved residential layout plots as the primary security, is to enable the respondent bank to issue no objection certificates to the prospective buyers, so that they can buy the residential plot and thereafter, apply for loan from other financial institutions for construction of houses in the developed plots. Only for that purpose, the layout land, which was originally given as collateral, was made as part of the primary security and based on the same, the second respondent-bank, in fact, had given no objection for sale of several plots and the entire income derived thereon have been fully routed only through the designated bank account of the second Respondent.

8. The company has further submitted that by virtue of the revised terms contained in the sanction letter, dated 27.03.2015, the Company has been effectively precluded from selling approved residential plot of land. Consequently, the prospective purchasers could not get release of housing loans for construction, until the plot is registered in their name and security created in favour of the housing finance companies, which prevented the company to derive income from March' 2015 onwards. Had the second respondent permitted the sale of developed plots, the company would have continued to meet the repayment schedules of the one-time cash credit limit. In spite of repeated request from the company, the second respondent-bank did not make any attempt to permit them to sell the developed plots. Notwithstanding the same, the promoters of the company from their personal resources infused further funding amounting to Rs.45 Lakhs every month to service the one-time cash credit limit, till October, 2015, by which time, the promotions had exhausted their personal resources as well.

9. The company has submitted that in spite of several visits, the 2nd respondent-Bank did not show any indulgence with the result that the one-time cash credit limit of the company became as NPA. Promptly, the second respondent has issued a notice under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Immediately, on receipt of the said letter, the company has sent a detailed representation, dated 29.04.2016, clearly pointing out that because of the refusal of the second respondent to grant NOC for sale of the developed plots servicing of the cash credit limit had become impossible. The company also pointed out that during the period 2014-15, it had sold about 95 plots and realised close to Rs.10 crore and through the second respondent bank and the cash credit limit was serviced, without any default. The company also highlighted the huge infusion of funds made by the promoters to ensure that the financial limits are kept in order.

10. In spite of the said reply, dated 29.04.2016, from the company, there was no response from the second respondent-Bank. Suddenly, on 28.07.2016, the company has received a notice from the second respondent that the cash credit limit of the account had been transferred to the stressed assets management division of the second Respondent-Bank. Consequent to the aforesaid migration, the company received a legal notice from the counsel for the respondents on 22.08.2016, alleging that the company had defaulted, in making payment of the one-time cash credit limit and that a sum of Rs.30.60 crores was due. In response to the said notice, the company has sent a detailed reply on 17.09.2016, wherein, he has clearly pointed out that once the bank gives NOC for sale of the plots, they would be able to service the cash credit limit as well as repay the same without any default. The company has also clearly pointed out that the present situation is only due to the unilateral and sudden change in the terms of the respondent-bank in refusing to grant permission to sell the residential plots. Subsequent to the same, the company was sent another letter on 06.10.2016, pointing out that they have identified buyers for certain plots from which they would realise a sum of rupees one crore, out of which a sum of Rs.25 lakhs was deposited during September, 2016. They also promised to deposit the balance sale consideration of Rs.75.00 Lakhs by 15.11.2016. The company also promised that they will be making one more booking for the sale of plots, which will also fetch a further sum of rupees one crore which will be paid by December 2016. This booking was also done and the company paid a further Rs.25.00 Lakhs in October, 2016. The company also gave a definite plan for payment to the bank and promised to pay a sum of rupees Rs.1 Crore every month from November' 2016 to March' 2017. The company pointed out that the above plan can materialise only by sale of residential plots.

11. The company has further submitted that in spite of the abovesaid letter, the respondent refused to grant NOC and insisted that they will permit only sale of bulk portion of lands to discharge the entire cash credit limits, which was completely impossible. The company continued to negotiate with the respondents by pointing out that identifying buyers for bulk sale will not be feasible at this juncture and it will also be completely detrimental to the entire project, in view of the fact that the bulk sale will result in the purchasers offering to buy plots at a huge discount which would cause enormous loss to the company. In fact, the company also offered to sell readily available plotted residential land of at 5.75 Lakhs Sq.ft in Sectors 2 & 3, which on a conservative estimate will fetch about 50 crore over a two-year period. This will not in any way hamper the rights of the respondent since the collateral security available to the respondent, is worth about Rs.90

crores and still be intact. The company pointed out that the grant of NOC by the respondent for sale of each plot of land is very important and that facilitates the company to liquidate the entire dues over a period of two years. In the meanwhile, the company also promised to identify suitable buyers for sale of substantial portion of the project plan on bulk sale basis which will take time to materialise. The company also pointed out that the interest of the bank has been completely protected in the sense that since the value of the security is worth nearly 140 crores the chances of the value getting depreciated or diminished over a period of time will not be a concern in view of the fact that there could be no diminution in the value of vacant land.

12. On the basis of the above averments, Mr.S.Ravi, learned counsel for the petitioner submitted that the entire situation has been brought about only because of the unilateral change in terms of sanction made by the Respondent which was without any basis. Having permitted the company to sell as much as 95 approved plots which realised more than 10 crores and when the company has shown their bonafides by completely liquidating the term loan as well as the LC limit there was no justification for the Respondent to unilaterally change the terms of sanction and prevent the company from selling vacant plots of land.

13. Learned counsel for the petitioner further submitted that the entire approach of the respondent in refusing to permit the company to sell the approved and developed residential plots and initiating proceedings under the SARFAESI Act for sale of the very same plots is clearly arbitrary and malafide in nature. There is no rhyme or reason for the respondents to refuse to grant NOC for sale of individual approved residential plots from March 2015 onwards which completely throttled the cash flow of the company making their account as a non-performing asset.

14. Learned counsel for the petitioner further submitted that the anomaly in the situation is evident from the fact that while the company has been effectively prevented from selling the fully developed plots of land the Respondents by initiating action under the SARFAESI Act, 2002, are seeking to sell the very same plots to prospective buyers in a public auction which can be termed as nothing but illegal and arbitrary. According to him, conduct of the respondents in unilaterally changing the terms of sanction and refusing to grant NOC for sale of approved residential plot is arbitrary and malicious in nature. Though the relationship between the parties are contractual in nature the respondents being an authority of the State has to act fairly and reasonably. When the very terms of the sanction was to develop vacant lands into fully developed plots to sell it to ultimate buyers and when they have given NOC for sale of as many

as 95 plots of land to which the entire sale consideration payable in respect of the said plots of land from which a huge sum of Rs.10 Crores have been realised by the respondent bank there was no justification for the respondents to unilaterally change the terms in March 2015 and prevent the company from selling individual residential plots to prospective buyers.

15. Learned counsel for the petitioner further submitted that though the company will have a right of appeal against the possession notice dated 15.12.2016, issued by the respondents under the SARFAESI Act, 2002, before the Debts Recovery Tribunal, but the tribunal will have no power to direct the respondents to grant permission to the company to sell vacant plots of land to prospective buyers to liquidate the dues payable by them. Such a power can be exercised only by this Court exercising jurisdiction, under Article 226 of the Constitution of India, in view of the fact that this Court can strike down any action of an instrumentality of the state which is arbitrary and unjust. Such a power will not be available to the tribunal which is a creation of the statute. The tribunal in an appeal under the SARFAESI Act can only go into the question as to whether or not any of the measures initiated by the Respondents are in accordance with the provisions of the Act and the rules framed there under. It may not have the power to hold that the action of the Respondents in changing the terms of sanction and preventing the company from selling vacant plots of land is arbitrary and unjust and issue necessary directions to the Respondent bank to permit the company to sell residential plots to prospective buyers to liquidate the outstanding dues. Such a power can be exercised only by this Court under Article 226 of the Constitution of India and consequently the right of appeal provided under the SARFAESI Act being limited in nature considering the relief sought for by the company in this present petition the right of appeal provided under the act will not be an effective alternate remedy. Consequently since the right of appeal provided under the act is not efficacious this Court can always exercise its discretionary power under Article 226 of the Constitution of India and strike down the action of the Respondents which is on the face of it is arbitrary, unjust and mala fide in nature.

16. It is the further submission of the petitioner that the conduct of the respondents has to be declared as arbitrary unjust and hence has to be set aside will be evident from the fact that while the Respondents permitted the company to sell the residential plots prior to March 2015 they suddenly changed the terms of the sanction while enhancing the cc limit from 27 Crores to 31 Crores, thereby effectively precluding the company from selling residential plots. Having done so the Respondents

by initiating action under the SARFAESI Act, have now sought to bring the very same residential plots and the collateral security for sale through public auction which can be termed nothing but arbitrary unjust and unreasonable. Consequently the impugned possession notice dated 15/12/2016 issued by the Respondents has to be struck down as arbitrary and unjust and the company should be permitted to sell the approved residential plots to prospective buyers after obtaining a "No Objection Certificate" from the Respondents.

Heard the learned counsel appearing for the parties and perused the materials available on record.

17. Though several grounds were raised, challenging possession notice, issued under Section 13(4) of the SARFAESI Act, 2002, repeatedly, the Hon'ble Supreme Court has held that when there is an efficacious and alternate remedy under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act or Securitisation And Reconstructions of Financial Assets Act, 2002, as the case may be, a writ petition is not maintainable. We deem it fit to consider the following decisions.

(i) In Precision Fastenings v. State Bank of Mysore, reported in 2010(2) LW 86, this Court held as follows:

"This Court has repeatedly held in a number of decisions right from the decision in Division Electronics Ltd. v. Indian Bank (DB) Markandey Katju, C.J., (2005 (3) C.T.C., 513), that the remedy of the aggrieved party as against the notice issued under Section 13(4) of SARFAESI Act is to approach the appropriate Tribunal and the writ petition is not maintainable. The same position has been succinctly stated by the Hon'ble the Supreme Court in Transcore v. Union Of India (2006 (5) C.T.C. 753) in paragraph No. 26 wherein the Supreme Court has held as under:-

"The Tribunal under the DRT Act is also the Tribunal under the NPA Act. Under Section 19 of the DRT Act read with Rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993 (1993 Rules), the applicant bank or FI has to pay fees for filing such application to DRT under the DRT Act and, similarly, a borrower, aggrieved by an action under Section 13(4) of NPA Act was entitled to prefer an Application to the DRT under Section 17 of NPA." (Emphasis added) "

(ii) In Union Bank of India v. Satyawati Tondon, reported in 2010 (5) LW 193 (SC), the Hon'ble Apex Court has held as follows:

"16. The facts of the present case show that even after receipt of notices under Section 13(2) and (4) and order passed under Section 14 of the SARFAESI Act, respondent Nos. 1 and 2 did not bother to pay the outstanding dues. Only a paltry amount of Rs. 50,000/- was paid by respondent No. 1 on 29.10.2007. She did give an undertaking to pay the balance amount in installments but did not honour her commitment. Therefore, the action taken by the appellant for recovery of its dues by issuing notices under Section 13(2) and 13(4) and by filing an application under Section 14 cannot be faulted on any legally permissible ground and, in our view, the Division Bench of the High Court committed serious error by entertaining the writ petition of respondent No. 1.

17. There is another reason why the impugned order should be set aside. If respondent No. 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression 'any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves

inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for re-dressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its

case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad AIR 1969 SC 556, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1=1999-2-L.W. 200 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order.

27. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.

28. Insofar as this case is concerned, we are convinced that the High Court was not at all justified in injuncting the appellant from taking action in furtherance of notice issued under Section 13(4) of the Act.

29. In the result, the appeal is allowed and the impugned order is set aside. Since the respondent has not appeared to contest the appeal, the costs are made easy."

(iii) In *Saraspathy Sundararaj v. Authorised Officer and Assistant General Manager, State Bank of India*, reported in (2010) 5 LW 560, the Court held as follows:

"The petitioner has filed this writ petition praying for a Writ of Certiorarified Mandamus calling for the records relating to the possession notice dated 16.09.2004 issued by the respondent under the SARFAESI Act and consequently direct the respondent to effect the settlement in accordance with the SBI OTS-SME 2010 Scheme as contained in its letter dated 18.03.2010 and unconditionally restore physical possession of the six rooms taken physical possession by it at No. 29, Sarojini Street, T. Nagar, Chennai - 17 with such damages.

... When a specific forum has been created which enables the borrower to challenge the action of the financial institution by filing necessary petition under Section 17, the petitioner is not entitled to invoke the writ jurisdiction of this

Court. What could not be achieved by the petitioner by filing a petition before the appropriate Forum, which is at present barred by period of limitation, could not be permitted to be achieved by extending the jurisdiction conferred to this Court under Article 226 of The Constitution of India. Above all, since the petitioner has violated the terms and conditions of the loan by transferring the property in favour of her son, this Court is not inclined to entertain the petition.

7. In this connection, we are fortified by the decision of the Honourable Supreme Court reported in (United Bank of India v. Satyawati Tondon and others) III (2010) BC 495 (SC) = 2010-5-L.W. 193, wherein in para Nos. 17 and 18, it was held thus:—

"17. ...Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution

to issue to any person or authority, including in appropriate cases, any Government directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad AIR 1969 SC 556, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order, (underlining added).

9. In the light of the above decision of the Honourable Supreme Court, the writ petition filed by

the petitioner seeking to set aside the possession notice issued to her long back is legally not sustainable. We are of the considered view that this petition has been filed only to drag on the proceedings and to evade repayment of the loan. That be so, the petitioner has no legal right to compel the bank to accept the one time settlement offer made by her.

13. The present case is identical in nature and it is covered by the judgment of the Supreme Court mentioned supra. In this case, the petitioner has violated the condition of mortgage by transferring the secured asset in favour of her son and therefore, as per clause 1.7 of the OTS Scheme offered by the bank, the petitioner has to be excluded from extending the benefits of the scheme which was rightly done by the bank. In any event, without exhausting the alternative remedy, the relief sought for by the petitioner by invoking the discretionary remedy under Article 226 of The Constitution of India cannot be granted."

18. Properties are offered as secured assets to the loan availed. Earlier, the bank has allowed the company to sell the same and realised part of the loan amount. Now, NOC has been refused, but the Bank has proceeded to issue possession notice, dated 15.12.2016. It is the contention of the petitioner that the bank cannot resile from their earlier action. The Tribunal is competent to decide the said issue and it cannot be contended that there is no efficacious remedy. Tribunal is competent to issue any directions, if an aggrieved person challenges any of the measures, taken under Section 13(4) of the Act.

19. In the light of the above decisions, the writ petition is dismissed, giving liberty to the petitioner, to challenge the possession notice, before the Tribunal. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

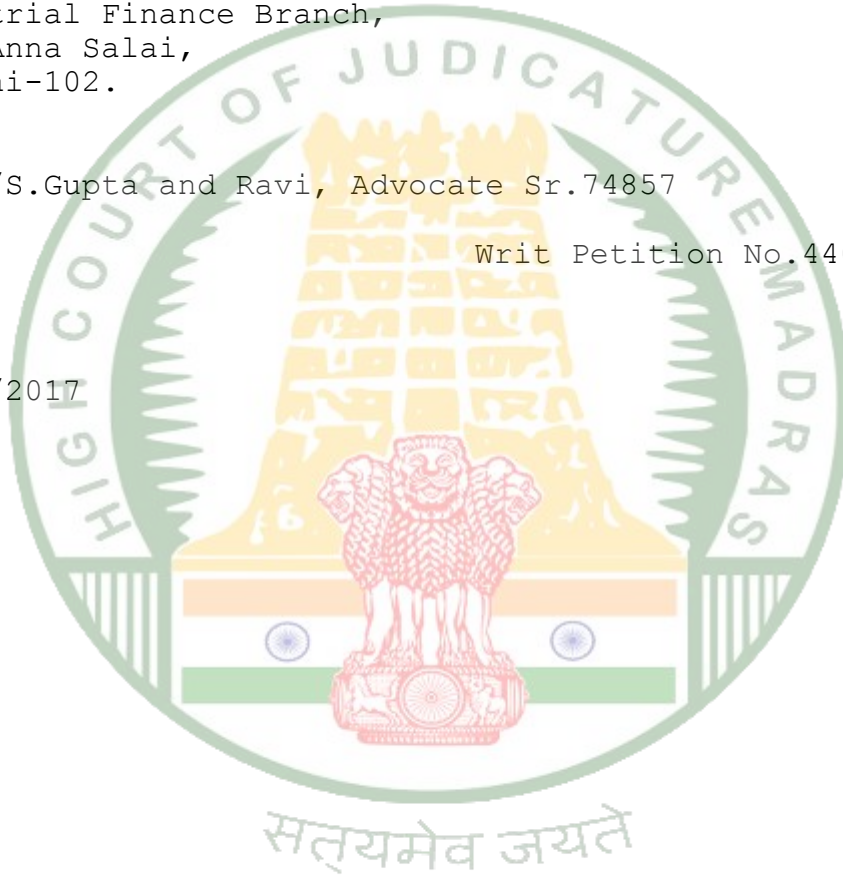
To

1. The Authorised Officer & Chief Manager,
State Bank of India,
Stressed Assets Management Branch,
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32, Montieth Road,
Egmore, Chennai-8.
2. The Chief Manager & Relationship Manager,
State Bank of India,
Industrial Finance Branch,
155, Anna Salai,
Chennai-102.

+1cc to M/S.Gupta and Ravi, Advocate Sr.74857

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