BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.04.2016
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE S.S.SUNDAR

W.P.(MD)No.20479 of 2015
and
M.P.(MD)Nos.1 & 2 of 2015

P.Soundarajan .. Petitioner

Vs.

The Authorized Officer,
Indian Bank,
Tiruverumbur Branch,
Trichy District. .. Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorari calling for the records of the e-auction Sale notice, dated 09.10.2015 issued to the petitioner and published in the Thina Thanthi News Paper, dated 11.10.2015, by the respondent bank intended sale scheduled on 20.11.2015 between 10.00 a.m. and 12.00 Noon for the properties comprised in Survey No.56A/1A1, New Survey No.178/21C, situate at South Street, Uyankondan Thirumalai Village, Trichy District with building constructed in an extent of 204 sq.ft and another property comprised in Survey no.56/1A1, New Survey No.178/19, situate at South street, Uyankondan Thirumalai Village, Trichy District with building constructed in an extent of 204 Sq. ft. and another property comprised in Survey No.56/1A1, New Survey No.178/19, situate at South Street, Uyankondan Thirumalai Village, Trichy District and quash the same as illegal.

For petitioner : Mr.R.R.Kannan

For Respondents : Mr.M.Senthil Kumar
Additional Government Pleader

O R D E R

(The order of the Court was made by S.S.SUNDAR, J.)

This writ petition is filed for issuance of writ of Certiorari calling for the records of the e-auction Sale notice, dated 09.10.2015 issued to the petitioner and published in the Thina Thanthi News Paper, dated 11.10.2015, by the respondent bank intended sale scheduled on 20.11.2015 between 10.00 a.m. and 12.00 Noon for the properties comprised in Survey No.56A/1A1, New

Survey No.178/21C, situate at South Street, Uyankondan Thirumalai Village, Trichy District with building constructed in an extent of 204 sq.ft and another property comprised in Survey no.56/1A1, New Survey No.178/19, situate at South street, Uyankondan Thirumalai Village, Trichy District with building constructed in an extent of 204 Sq. ft. and another property comprised in Survey No.56/1A1, New Survey No.178/19, situate at South Street, Uyankondan Thirumalai Village, Trichy District and quash the same as illegal.

2.Heard the learned counsel appearing on behalf of the petitioner, as well as the learned counsel appearing on behalf of the respondent bank.

3.The grounds on which the writ petition is filed are that procedure have not been followed and that reserve price fixed by the bank is very low compared to the market value. None of the grounds are substantiated by materials.

4.At the time of admitting this writ petition, there is a conditional order passed by this Court to pay a sum of Rs.10 lakhs before the end of December, 2015. It is also reported that the said order of this Court, dated 18.11.2015 has not been complied with.

5.Contentions made in this writ petition, can always be urged before the appellate authority under Section 17 of the said Act, which reads as hereunder:-

> “**17. Right to appeal**
>
> (1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application alongwith such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:
>
> PROVIDED that different fees may be prescribed for making the application by the borrower and the person other than the borrower.
>
> *Explanation* : For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the business to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditors as invalid and restore the possession of the secured assets to the borrower or restore the management of the business to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

PROVIDED that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the

application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the rules made thereunder."

6.The Hon'ble Supreme Court, in *United Bank of India Vs. Satyawati Tondon and others*, referring to with approval, various judicial pronouncements made in *Modern Industries Vs. Sail, Raj Kumar Shivhare Vs. Directorate of Enforcement, Industrial Investment Bank of India Ltd. Vs. Biswanath Jhunjhunwala, City and Industrial Development Corpn. Vs. Dosu Aardeshir Bhiwandiwala, CCT Vs. Indian Explosives Ltd., Mardia Chemicals Vs. Union of India, harbanslal Sahnia Vs. Indian Oil Corpn. Ltd., Punjab Nation Bank Vs. O.C.Krishnan, Whirlpool Corpn. Vs. Registrar of Trade Marks, SBI Vs. Indexport Registered, CCE Vs. Dunlop India Ltd., Titaghur Paper Mills Co. Ltd. Vs. State of Orissa, Baburam Prakash Chandra Maheshwari V. Antarim Zila Parishad, Bank of Bihar Ltd., Vs. Dr.Damodar Prasad, Thansingh Nathmal Vs. Supdt. of Taxes, Secy. Of State Vs. Mask & Co., Attorney-General of Trinidad and Tobago Vs. Gordon Grant & Co. Ltd. And Neville Vs. London Express Newspapers Ltd.,* observed as under:-

"*42.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.*

43.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.*

44.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.

45.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."

7.Deprecating the practice of entertaining writ petition in these matters, the Hon'ble Supreme Court has observed as hereunder :

"55. 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 the 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."

8.In view of the foregoing, the petitioner can take recourse to the alternative remedy. Invoking jurisdiction under Article 226 of the Constitution of India can be made only in extra-ordinary circumstances. The petitioner has failed to establish any extra-ordinary circumstances to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. Thus, we are not inclined to entertain this petition.

9.Resultantly, the writ petition stands dismissed. No costs. Connected Miscellaneous Petitions are closed. It is always open to the petitioner to make a request before the Debts Recovery Tribunal, if so advised.

Sd/-
Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar
Madurai Bench of Madras High Court,
Madurai.

rj2

To
The Authorized Officer,
Indian Bank,
Tiruverumbur Branch,
Trichy District.

+1 cc to Mr.M.Senthil Kumar,Advocate, SR No.21757

+1 cc to Mr.R.R.Kannan, Advocate, SR No.22158

RG.JGB-DP/ 05.05.2016 6P.4C

Order made in
W.P.(MD)No.20479 of 2015
18.04.2016