BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.07.2016

CORAM :

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Petition (MD) No.12182 of 2016
and
W.M.P(MD)Nos.9278 and 9279 of 2016

Pavitra Saran ... Petitioner

Vs.

1.The District Collector,
Kanyakumari District @ Nagercoil,
Nagercoil.

2.The Special Tahsildar (Stamps I),
Nagercoil,
O/o.District Registrar Office,
Nagercoil.

3.The Authorized Officer,
State Bank of India,
Stressed Assets Management Branch,
No.32, Montieth Road,
Red Cross Buildings,
Egmore, Chennai 600 008.

4.The Tahsildar,
Agastheeswaram Taluk,
Nagercoil.

5.The Superintendent of Police,
O/o.the Superintendent of Police,
Nagercoil.

6.The Inspector of Police,
South Thamaraikulam Police Station,
South Thamaraikulam,
Kanyakumari District.

7.Anushya ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records pertaining to the impugned order in Roc No.C4/15221/2015 dated 21.06.2016 on the file of the Respondent No. 1 and quash the same as illegal.

For Petitioner : Mr.J.Pandidorai
For Respondents 1&2,4-6 : Mr.M.Alagadevan, Special Government Pleader.

ORDER

(Order of the Court was made by **NOOTY.RAMAMOHANA RAO,J**)

This writ petition is preferred by the daughter of principal borrower of State Bank of India challenging the sustainability of the order passed by the District Magistrate cum Collector, Kanniyakumari District at Nagercoil on 21.06.2016.

2.State Bank of India after classifying the loan account of the principal borrower as a non performing asset (NPA), has undertaken securitisation measures provided for under Section 13 of the SARFAESI Act, 2002. Demand notice raised under sub-section (2) of Section 13 pointed out that the principal borrower is due and liable to pay a sum of Rs.12,58,40,185.25 as on 19.03.2012 and demanded the principal borrower to liquidate the said liability. Since the demand notice has not produced the desired result, it is alleged, that the Bank has taken possession of the secured assets on 23.11.2012, 03.08.2013 and 16.07.2013 etc., Finding that the liability of the principal borrower has mounted to nearly 15.91 Crores as on 05.08.2014, the Bank has taken out a sale notification through e-Auction mode to be held on 18.09.2014 at 10.30 a.m to 11.30 a.m insofar as Item No.1 is concerned and Item No.2 on 19.09.2014 between 12.00 noon to 01.00 p.m and Item No.3 between 01.00 p.m to 02.00 p.m and Item No.4 between 02.00 p.m and 3.00 p.m on the same day. The petitioner herein is interested about Item No.2, a dwelling house. The upset price has been fixed for the said Item No.2 of the proposed auction sale was Rs.47 lakhs and the bid increment was at Rs.50,000/-. It appears that the offer made by the seventh respondent herein in a sum of Rs.47,50,000/- came to be accepted as the most responsive and the Bank has accepted the same. The Bank has therefore approached the District Magistrate cum Collector, Kanniyakumari District at Nagercoil for taking possession of the secured asset to the Bank. Entertaining the said petition, the Collector seems to have passed detailed order on 21.06.2016 which is now sought to be challenged in this writ petition.

3.We have heard the learned counsel for the petitioner.

4.It is urged before us that the impugned order passed by the District Collector does not clearly bring out that an affidavit has been filed by and on behalf of the Bank and thus the requirement of the amended provision of Section 14 of the Act has been followed in the breach. It is further urged that the auction sale is a collusive one and it was non transparent and as can be made out the property worth much more than Rs.47,50,000/-, the Bank has permitted the same to be sold literally for a song. It is, hence, urged that the whole auction smacks of arbitrariness and the interests of principal borrower are sacrificed to satisfy and fulfil the needs of someone else.

5.We do not find any merit in the above contentions made by the learned counsel for the petitioner.

6.Firstly, after Section 14 of the SARFAESI Act, 2002 has been amended with effect from 15.01.2013, it has now become absolute necessity on the part of the secured creditor to file an affidavit duly affirmed by the authorised officer of the secured creditor declaring:-

(i)the details of the aggregate amount of financial assistance granted and the total outstanding liability of the secured creditor as on the date of presentation of the petition;

(ii)the details of the security interest created by the borrower over the properties in question and that the Bank or the Financial Institution is holding a valid and subsisting security interest over such properties and that the claim of the Bank is well within the period of limitation;

(iii)the details of the properties over which the borrower has created security interest have to be furnished;

(iv)an assertion that the borrower has defaulted in repayment of the financial assistance availed;

(v)that consequent to the default committed, the loan account has been declared as a non performing asset (NPA);

(vi)that the demand notice providing sixty days time for the borrower to liquidate the outstanding liability under sub-section (2) of Section 13, demanding payment of the defaulted financial assistance has been delivered;

(vii)the objection or representation if any in response to such notice filed by the borrower has been dealt with and

(viii)an assertion that the borrower has not made any payment of the financial assistance availed by him and therefore, the Bank or secured creditor is entitled to take possession of the secured asset under the provisions of sub-section (4) of Section 13 read with Section 14 of the principal Act; and lastly

(ix)a general assertion that all the provisions contained in the amended Act and the Rules made thereunder have been complied with by the secured creditor.

Therefore, it is not liable to be inferred by us, particularly, in the absence of any material which can lend support to the claim of the petitioner, that the Authorised Officer of the SBI has failed to comply with this statutory requirement. The petitioner has not obtained any information under the Right to Information Act, 2005 either from the Office of the District Collector or from the office of the Authorised Officer or from the secured creditor as to whether the affidavit is filed or not. But, however, the petitioner would assert that the application presented by the authorised officer of the secured creditor has not been accompanied by any such affidavit.

7.In the given facts and circumstances of the case, we are not inclined to infer that the Authorised Officer of the State Bank of India has completely misread the provisions of Section 14 of the SARFAESI Act, 2002 or infer that he has followed the same in the breach. We are conscious that the District Collector is only lending certain assistance to the secured creditor and he is not therefore, discharging any judicial or quasi judicial functions while dealing with the request made on behalf of the secured creditor. Sub-section (1) of Section 14 lends support in this regard, wherein it is spelt out that for the purpose of taking possession or control of any secured asset, the secured creditor may request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset may be situated, to take possession thereof. Therefore, the District Magistrate is only lending certain assistance to the secured creditor in the matter of taking possession or control of the secured asset and hence, he is not exercising any adjudicatory power or role. The District Magistrate (Collector) therefore, does not have any right to pronounce upon the legality or sustainability of the action undertaken by or on behalf of the secured creditor. The proviso incorporated in clause (b) of sub-section (1) of Section 14 of the Act brings out clearly that the District Magistrate, shall after satisfying about the contents of the affidavit filed before him, pass suitable orders for the purpose of taking possession of the secured asset.

8.In this context, it is appropriate to notice the legal principle spelt out by the Supreme Court in ***Standard Chartered Bank Vs.V.Nobel Kumar, (2013) 9 SCC 620*** wherein in paragraph 25, it has been held as under:-

> *"25.The satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily requires the Magistrate to examine the factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction the Magistrate can pass appropriate orders regarding taking*

of possession of the secured asset."

9.The Supreme Court further held that it is not mandatory for the secured creditor to make attempt to obtain possession on his own before approaching the Magistrate under Section 14. In paragraph 36 of the same judgment, the Supreme Court dealt with various modes which can normally be resorted to for taking possession of the secured asset under the provision of Section 13 read with Section 14 of the SARFAESI Act, 2002.

10.In view of the legal principle spelt out in ***Standard Chartered Bank*** *(supra)* by the Supreme Court, we are of the opinion that the contentions urged on behalf of the petitioner lack any merit.

11.Insofar as the contention that the secured creditor and or Authorised Officer acting on his behalf had acted non transparently and also allowed the secured asset (Item No.2 of the assets proposed to be e-auctioned by the SBI) to be sold for a song all we need to notice is that the secured creditor has chosen the e-auction mode which is one of the most transparent modes of conducting auctions. E-Auction mode would prevent any cartel from being formed by the proposed purchasers. Further, a hall ticket (entry pass) has to be generated in respect of each participant and the participant or his details remain confidential till the whole process is accomplished. Therefore, there is no way either the secured creditor or any one on his behalf is trying to confer any undue favour to one or the other bidders. Therefore, the contention canvassed in this respect also lacks any merit.

12.That takes us finally to the submission made by the learned counsel for the petitioner that the property which is worth much more has been allowed to be sold for a fraction of its true value, as can made out from the very fact that the seventh respondent has purchased the same for Rs.47.50 lakhs. All we need to observe is that the upset price has been fixed at Rs.47 lakhs for Item No.2 and four assets are proposed to be sold by e-auction method. There is no material that has been demonstrated before us to indicate that the value of the said item, as can be made out from any credible record, is much more than Rs.47 lakhs, the upset price fixed for the said property. This apart, the increment of the bid for this item of the asset is fixed as Rs.50,000/-. Therefore, each bidder is required to increase the bid by a slab of Rs.50,000/-. Accordingly, the seventh respondent may have raised and offered to purchase the same at Rs.47.50 lakhs and in the absence of any other bidder, the offer of the seventh respondent may have become the most responsive. That is purely a fortuous circumstance which the writ petitioner cannot seek to take advantage of. If at all the writ petitioner is truly anxious to save her ancestral property from going under the hammer, nothing prevented her from garnering support of other purchasers and make them effectively participate in the bidding process nor did it prevent the writ petitioner from coming forward with a bidder or attractive offer, matching or improving upon the offer of the seventh respondent so that the property in question could have been redeemed even at that stage. We are, therefore, of the opinion that after the sale is confirmed and the seventh respondent had also paid up the entire consideration amount and the sale certificate has also been executed in her favour, nothing remains for us to adjudicate upon any such issue.

13.Finally we must also necessarily advert to one other fact that the very same writ petitioner has approached this Court earlier and instituted W.P(MD)No.5529 of 2015 with the following prayer:-

> *"To issue a Writ of Mandamus or any other order or direction in the nature of Writ directing the Respondent to permit the petitioner to pay the auction price amount to redeem the petitioner's parent's property in Old Survey No.3234 in an extent of 26.13 cents with Revised Survey No.271/1A with an extent of 29.64 cents situated at Samithoppu, Thamaraikulam Village, Agasteeswaram Taluk, Kanyakumari District within the time period stipulated by this Hon'ble Court."*

14.That writ petition came to be decided by this Court on 31.07.2015 against her interest. Then the petitioner carried the matter to the Supreme Court by filing Special Leave to Appeal (C) No.29430 of 2015. That S.L.P was dismissed as withdrawn with liberty to file a review petition by an order passed on 26.10.2015 by the Supreme Court. It is stated that a review application has been moved thereafter and it is now pending before this Court. We are, therefore, of the opinion that the multiple attempts to stall the secured creditor from realising at least a part of its outstanding liability cannot be appreciated. The most appropriate course by the writ petitioner, should have been to pursue actively the review application said to have been preferred by her instead of instituting separate writ proceedings in this matter. We, therefore do not find any merit in this writ petition and accordingly this writ petition stands dismissed at the admission stage itself. No costs. Consequently, W.M.P(MD)Nos.9278 and 9279 of 2016 are closed.

Sd/
Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

To

1.The District Collector,
Kanyakumari District @ Nagercoil, Nagercoil.

2.The Special Tahsildar (Stamps I),
Nagercoil, O/o.District Registrar Office,
Nagercoil.

3.The Tahsildar,
Agastheeswaram Taluk, Nagercoil.

4.The Superintendent of Police,
O/o.the Superintendent of Police, Nagercoil.

5.The Inspector of Police,
South Thamaraikulam Police Station,
South Thamaraikulam, Kanyakumari District.

+1cc to Mr.T.Lajapathi Roy, Advocate in SR.No.36303
+1cc to Special Government Pleader in SR.No.36117

SDR/PEK/28.07.2016/7P/8C

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