BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.08.2016
CORAM:

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

W.P(MD)No.15081 of 2016
and
W.M.P(MD)No.11114 of 2016

Dr.R.Sokkaiyan ... Petitioner

Vs.

1.The Authorized Officer,
State Bank of India,
Nehruji Nagar Branch,
100-101, Municipal Colony,
Nehruji Nagar, Dindigul - 624 001.

2.State Bank of India,
represented by its
Branch Manager,
Nehruji Nagar Branch,
100-101, Municipal Colony,
Nehruji Nagar, Dindigul - 624 001.

3.P.K.Priya

4.The Registrar,
Debts Recovery Appellate Tribunal,
4th Floor, India Bank Circle Office,
55, Ethiraj Salai,
Chennai - 600 008.

5.The Registrar,
Debts Recovery Tribunal,
III & IV Floor, Kalyani Towers,
4/162, Madurai - Melur Road,
(Near Meenakshi Mission Hospital),
Uthangudi Post,
Madurai - 625 107. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the second respondent bank to discharge the mortgage created by the petitioner to and in favour of the second respondent bank and to return excess amount which is lying in the petitioner's loan account after adjusting the amount due to the respondents 1 and 2 bank recording the fact that the proceedings initiated by the petitioner on the file of the respondents 4 and 5 has become infructuous.

For Petitioner : Mr.Veerapandian, for M/s.Vastlaw Associates

For Respondents : Mr.S.Sethuraman for R.1 & R.2
Mr.S.Suresh for R.3

ORDER

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

Out of so many cases which keep arising under the Securitization and Reconstruction of Financial Assets Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act'), a very few cases have reached a stage of happy ending. The present one is one such exceptional case.

2. The writ petitioner sought for a writ of Mandamus directing the second respondent bank to discharge the mortgage created by the petitioner and return the excess amount which was lying in the petitioner's loan account, after appropriating the amount due and payable to the respondents 1 and 2.

3. In view of the order proposed to be passed by us, it may not be really necessary for us to traverse in extenso the factual matrix.

4. The writ petitioner has proposed to avail certain financial assistance to the tune of Rs.65,00,000/- (Rupees Sixty Five Lakhs only) from State Bank of India - the second respondent herein, at its Nehruji Nagar Branch, Dindigul, Tamil Nadu, for Development of Commercial Horticulture Farm through Production and Post-Harvest Management system. The bank has sanctioned Rs.34,82,000/- (Rupees Thirty Four Lakhs and Eighty Two Thousand only), while the National Horticulture Board released the subsidy of Rs.5,14,000/- (Rupees Five Lakhs and Fourteen Thousand only). Default was committed in recycling the debt and the reason cited is the unfavourable draught conditions prevailing year after year in these parts of the State.

5. Ultimately, the first respondent - Authorised Officer and the second respondent bank initiated the proceedings under the SARFAESI Act for realisation of their secured debt. The writ petitioner filed an appeal under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal, Madurai, by instituting S.A.No.204 of 2013, calling in question the sale notice dated 08.08.2013, issued under Section 13(4) of the SARFAESI Act. Though an interim order of stay was granted by the Debts Recovery Tribunal, subject to payment of Rs.28,00,000/- (Rupees Twenty Eight Lakhs only) in two installments, the petitioner has committed default. He sought for extension of time. His application seeking extension of time for depositing the money as directed by the Debts Recovery Tribunal, is pending, during which time, the first

respondent issued a fresh sale notice on 27.09.2013. The petitioner, then, moved two interlocutory applications for amendment of the prayer as well as stay of fresh sale notice dated 27.09.2013. However, the Debts Recovery Tribunal dismissed both the applications. Then, the matter was carried in appeal before the Debts Recovery Appellate Tribunal.

6. In the meantime, the sale by auction was conducted by the bank and the third respondent became the purchaser at that auction sale. However, the writ petitioner has paid the auction purchaser a sum of Rs.92,00,000/- (Rupees Ninety Two Lakhs only) on 25.06.2016 and thus, saved the secured asset from being transferred to the third party auction purchaser. The writ petitioner has also paid Rs.34.19 Lakhs to the loan account on 25.02.2014, 26.02.204 and 27.02.2014.

7. In this view of the matter, now, the respondents 1 and 2 have, in principle, agreed to return the secured asset to the writ petitioner afer verifying their books of accounts that the entire loan stands discharged completely. Since the third party auction purchaser has already been paid a sum of Rs.92,00,000/- (Rupees Ninety Two Lakhs only), the auction purchaser has no objection either in law or in fact, for the bank to return the title deeds deposited by the writ petitioner, thus, acknowledging the redemption of mortgage created by him.

8. We hope and trust that the books of accounts of the loan account of the writ petitioner would be thoroughly verified and any money lying in excess thereof, shall be refunded to the writ petitioner and the documents in the form of title deeds, be returned to the writ petitioner, apart from closing the loan account, by issuing 'No Dues Certificate' to the writ petitioner. Let this exercise be completed within a period of thirty days from the date of receipt of a copy of this order.

9. Accordingly, this writ petition stands disposed of as above. No costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/
Assistant Registrar(CS-II)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Authorized Officer,
State Bank of India,
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100-101, Municipal Colony,
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2.The Branch Manager,
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Nehruji Nagar Branch,
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(Near Meenakshi Mission Hospital),
Uthangudi Post,
Madurai – 625 107.

+1cc to M/S.Vast Law Associates, Advocate in SR.No.47302
+1cc to M/S.S.Sethuraman, Advocate in SR.No.47346

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and
W.M.P(MD)No.11114 of 2016
24.08.2016

rsb
PA/SK-SKN/SAR III/31.08.2016/4P/7C