



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.17374 of 2016
and
W.M.P. (MD) No.12596 of 2016

C.Rajamani

... Petitioner

-vs-

The Authorized Officer
Canara Bank
Regional Office
Tuticorin District

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the impugned possession notice, dated 21.07.2016 and consequential proceedings of notice under Section 13(4) of SARFAESI Act 2002 r/w 8(6) of the SARFAESI (Enforcement) Rules, 2002, dated 12.08.2016 and E-auction notice, dated 12.08.2016, issued by the respondent and quashing the all.

For Petitioner : Mr.R.Murugappan

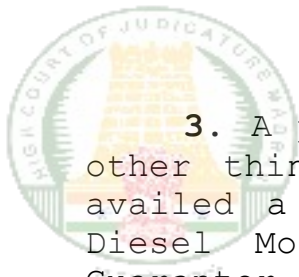
For Respondent : Mr.N.Dilip Kumar

O R D E R

[Order of the Court was made by M.SATHYANARAYANAN, J.]

Mr.N.Dilip Kumar, learned counsel, takes notice on behalf of the respondent and with the consent of both sides, this writ petition is taken up for final hearing.

2. The petitioner, challenging the legality of the impugned possession notice, dated 21.07.2016, consequential notice, dated 12.08.2016, issued under Section 13(4) of SARFAESI Act 2002 r/w 8 (6) of the SARFAESI (Enforcement) Rules, 2002 as well as the E-auction notice, dated 12.08.2016, issued by the respondent Bank, has filed this writ petition.



3. A perusal of the typed set of papers would disclose among other things that the petitioner's sister, namely, Rajammal had availed a loan from the respondent Bank for the purchase of a Diesel Motor Vehicle, for which, the petitioner stood as a Guarantor and deposited his title deeds and subsequently the borrower, namely, Rajammal committed default in payment of dues and therefore the respondent Bank initiated recovery proceedings and in the interregnum the borrower Rajammal died and therefore the Bank filed a suit in O.S.No.193 of 2003, before the Sub Court, Tuticorin, against the petitioner herein and his brother Durairaj, praying for a preliminary decree for a sum of Rs.3,86,291/- with interest and costs. The petitioner / first defendant filed a written statement, wherein he did not aver anything either admitting or denying creation of the equitable mortgage. Subsequently, the suit came to be decreed *ex parte* and a preliminary decree was passed on 03.08.2010. Thereafter, the respondent Bank thought it fit to initiate auction proceedings under SARFAESI Act and therefore issued the impugned possession notice to the petitioner indicating that a sum of Rs.12,63,200/- is due and payable in respect of the loan availed by his sister Rajammal and it was followed by another notice under Section 13 (4) of SARFAESI Act r/w Rule 8(6) of the Security Interest (Enforcement) Rules, 2002.

4. The learned counsel appearing for the petitioner would submit that the petitioner has filed an interlocutory application before the Trial Court to set aside the *ex parte* preliminary decree along with delay condonation application and the said interlocutory applications are pending and in the interregnum the respondent Bank has also filed an interlocutory application for return of title deeds and it was rejected by the Trial Court, on 07.09.2016, on the ground that the petitioner has raised objection and the applications filed by him to set aside the *ex parte* preliminary decree and to condone the delay in filing application to set aside the *ex parte* preliminary decree are pending.

5. Further, the learned counsel for the petitioner would submit that though the respondent Bank had obtained an *ex parte* preliminary decree, the respondent Bank did not proceed with execution proceedings, instead it initiated auction proceeding under SARFAESI Act and the same is bad in law and the impugned recovery proceedings are also hit by Section 36 of the SARFAESI Act and therefore prays for interference of this Court.

6. Per contra, Mr.N.Dilip Kumar, learned counsel appearing for the respondent would contend that the petitioner did not create any equitable mortgage and he is having an effective appeal remedy under Section 17 of the SARFAESI Act and despite the fact that the respondent Bank had obtained an *ex parte* preliminary decree, it is not a bar for the Bank to proceed with recovery



proceedings under the provisions of SARFAESI Act and the points urged by the learned counsel for the petitioner revolve on adjudication of factual dispute and hence this Court, under Article 226 of the Constitution of India, may not adjudicate the same and therefore prays for dismissal of the writ petition.

7. This Court has carefully considered the rival submissions and perused the materials produced.

8. The issue as to whether the petitioner has created equitable mortgage or not? cannot be adjudicated under writ jurisdiction as it revolves on adjudication of factual dispute. Insofar as the interlocutory application filed by the petitioner for condonation of delay in filing application to set aside the ex parte preliminary decree is concerned, it is for the petitioner to approach the appropriate forum to work out his appeal remedy and this Court is not inclined to express any opinion in that regard. Be that as it may, the petitioner is having an effective appeal remedy under Section 17 of SARFAESI Act and in the light of the same, this Court is not inclined to invoke its extraordinary jurisdiction under Article 226 of the Constitution of India and therefore, the writ petition deserves for dismissal.

9. In the result, the writ petition fails and it is dismissed leaving it open to the petitioner to avail the appeal remedy under Section 17 of the SARFAESI Act, if he is so advised. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

/True copy/

Sub Assistant Registrar

To
The Section Officer,
V.R. Section, Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.N.DILIP KUMAR, Advocate, SR No.52607

+1 CC to Mr.R.MURUGAPPAN, Advocate, SR No.53068

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