IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.4081 of 2017

V.Anbu .... Petitioner

vs.

1. The Authorised Officer,
State Bank of Mysore,
Chennai Main Branch,
231, NSC Bose Road,
Chennai 600 001.

2. Smt.R.Vidya,
W/o.Gopal Narasimhan,
G1, Ground Floor,
Ananthis Sri Visalakshi,
Chennai 600 061.

3. Sri.Gopal Narasimhan,
S/o.C.G.Ponnurangam,
G1, Ground Floor,
Ananthis Sri Visalakshi,
Chennai 600 061.

(Respondents 2 and 3 are impleaded as per the orders, dated 04.10.2017, in W.M.P.No.24149 of 2017)

4. The Assistant General Manager,
State Bank of India,
(Erstwhile State Bank of Mysore),
RACPC, Anna Nagar Branch,
Chennai.

5. The Chief Manager,
State Bank of India,
(Erstwhile State Bank of Mysore),
RACPC, Anna Nagar Branch,
Chennai.

6. The Deputy General Manager,
State Bank of India,
RACPC, Alwarpet, Chennai. .... Respondents

(Respondents 4 to 6 are suo-moto impleaded, as per the order, dated 08.11.2017 in W.P.No.4081/2017)

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent to pay a sum of Rs.25,81,910/- with 24% interest from 04.06.2013 and pay a further sum of Rs.5,00,000/- as damages.

For Petitioner : Ms.S.Manimekalai for Mr.V.Selvaraj

For 1st Respondent : Mr.Senthil Kumar for Mr.S.Sethuraman

For Respondents 2 & 3 : Mr.G.Ethirajulu Mr.R.Dhanram

ORDER

[Order of the Court was made by S.MANIKUMAR, J]

Auction purchaser has sought for a Mandamus, directing the Authorised Officer, State Bank of Mysore, Chennai Main Branch, Chennai, 1st respondent herein, to pay a sum of Rs.25,81,910/- with 24% interest from 04.06.2013 and pay a further sum of Rs.5,00,000/- as damages.

2. Record of proceedings shows that on 17.08.2017, this Court, after hearing Mr.V.Selvaraj, counsel appearing for the auction purchaser/petitioner and Mr.S.Sethuraman, learned counsel for the respondents-Bank, has passed the following orders,

> "Pursuant to an order, made in S.A.No.162 of 2013, dated 15/4/2014, on the file of the Debts Recovery Tribunal - III, Chennai, setting aside the sale notice, dated 26/4/2013, on the grounds inter alia that the procedure to be followed, for effecting sale, have not been complied with, Authorised Officer, State Bank of Mysore, Chennai/respondent herein is stated to have been filed RA (SA) No.179 of 2014 and the same is stated to be listed, for hearing, on 31/8/2017.
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> 2. On the basis of the order, made in S.A.No.162 of 2013, dated 15/4/2014, auction purchaser/writ petitioner herein, who has remitted a sum of Rs.25,81,910/-, has sought for a mandamus, directing

the respondent, to pay a sum of Rs.25,81,910/-, with 24% interest, from 4/6/2013 and to pay a further sum of Rs.5,00,000/-, as damages.

3. Mr.Sethuraman, learned counsel for the Bank submitted that before the Debts Recovery Tribunal - III, Chennai, Smt.R.Vidhya, respondent, in R.A.(SA) No.179 of 2014 has made submissions that she would settle the dues to the Bank and on that pretext, sought for an adjournment.

4. Though Mr.V.Selvaraj, learned counsel for the auction purchaser made submissions that without taking physical possession, auction ought not to have been held, this Court is not inclined to advert to the above said submission, for the reason that appeal in R.A.SA.No.179 of 2014, is pending on the file of the Debts Recovery Tribunal - III, Chennai, and therefore, it would not be appropriate to delve into the said aspect, at this stage. Auction purchaser is interested in seeking for return of a sum of Rs.25,81,910/-, with penalty interest and damages. According to the version of the Bank, borrower has made submissions to settle the dues. When that be the case, to give a quietus to the issue, we only indicate that borrower and the guarantor, be impleaded as a party respondents, to the lis, before us.

5. Mr.V.Selvaraj, learned counsel for the petitioner submitted that he would take necessary steps to implead the borrower and guarantor, respectively.

6. Post on 24/8/2017."

3. Subsequently, on 04.10.2017, in W.M.P.No.24149 of 2017, the borrower and guarantor have been impleaded as respondents 2 and 3 in the writ petition. Thereafter, on 11.10.2017, after hearing Mr.V.Selvaraj, learned counsel appearing for the auction purchaser/petitioner, Mr.Senthil Kumar, learned counsel for the respondents-Bank and Mr.R.Dhanaram, learned counsel for the co-borrowers/respondents 2 and 3, this Court passed the following orders,

"Material on record discloses that respondents 2 and 3, who are co-borrowers, impleaded as per the order of this Court in WMP No.24149 of 2017 in W.P.No.4081 of 2017 dated 04.10.2017, failed to repay, the loan, availed from State Bank of Mysore, Chennai.

2. Towards realisation of the debt, State Bank of Mysore, Chennai, issued an advertisement dated 26.04.2013, calling for tenders, for sale of a flat with plinth area of 735 sq.ft. in Plot No.97, Door No.12, 18th Street, Nanganallur, Chennai -61 comprised in Survey No.99(1), Ulagaram Village, Tambaram Taluk,

Kancheepuram District, mortgaged with the Bank, as secured asset. Petitioner has participated in the tender-cum-auction and paid a sum of Rs.24,13,000/- on 04.06.2013. Sale certificate has been issued on 09.06.2013. Said document has been registered as Document No.2362 of 2013 on the file of Sub Registrar, Alandur on 24.06.2013. According to the auction purchaser / writ petitioner, a sum of Rs.1,68,910/- was paid towards registration charges. Total amount expended was Rs.25,81,910/-.

3. It is the case of the petitioner that though, entire amount has been paid and the sale certificate was also registered, physical possession was not given by the bank, despite the request. Writ petitioner also came to know that vide order dated 15.04.2014, Debts Recovery Tribunal-III, Chennai, set aside the sale on the grounds of non compliance of the procedure contemplated under the Security Interest (Enforcement) Rules, 2002. Pursuant to the abovesaid order, petitioner has sent a letter dated 28.01.2017 to State Bank of Mysore, Chennai, 1st respondent to refund Rs.25,81,910/- with penal interest and damages. As the said request was not responded, left with no other alternative, auction purchaser, has filed instant writ petition for a mandamus directing the bank to pay a sum of Rs.25,81,910/-, with 24% interest from 04.06.2013 and to pay a further sum of Rs.5,00,000/-, as damages.

4. On 17.08.2015, when the matter came up for hearing, in order to give a quietus to the issue, we indicated that the borrower and the guarantor, be impleaded as party respondents in this writ petition. Accordingly, vide order dated 04.10.2017, in WMP No.24149 of 2017 in WP.No.4081 of 2017, co-borrowers have been impleaded as respondents 2 and 3.

5. Respondents 2 and 3 in the counter affidavit dated 07.10.2017, have no objection for passing appropriate orders, on the prayer sought for by the writ petitioner / auction purchaser, without prejudice to their rights.

6. However, Mr.Senthil Kumar, learned counsel for the Bank submitted that being aggrieved by the order in SA No.162 of 2013 dated 15.04.2014 of the Debts Recovery Tribunal-III, Chennai, setting aside the sale dated 26.04.2013, RASA No.179 of 2014 has been filed by the bank and that the same is pending before the Debts Recovery Appellate Tribunal, Chennai.

7. In addition to the no objection, for the prayer of the writ petitioner being granted, Mr.R.Dhanaram, learned counsel for the co-

borrowers/respondents 2 and 3, further submitted that if eight weeks time is granted from the date of submission of the statement of the accounts by the Bank, the entire loan amount would be discharged.

8. Though, during the course of arguments, Mr.R.Dhanaram, learned counsel for the co-borrowers/respondents 2 and 3, disputed the rate of interest computed, he fairly submitted that when a demand notice under Section 13(2) of the SARFAESI Act, 2002, was issued, there was no further representation from the co-borrowers under Section 13-A of the said Act. Even the possession notice challenged in S.A.No.12 of 2013 and sale notice challenged in S.A.No.162 of 2013, were set aside, solely on the ground, regarding service of notice and not on the grounds of any dispute over interest.

9. In the light of the above submission of the learned counsel that there was no specific challenge to the debt claimed and interest thereon, prima facie, we are of the view that at this juncture, it is not permissible to raise a new plea.

10. Be that as it may, inasmuch as the borrowers have now come forward to discharge the entire liability within eight weeks from the date of receipt of the statement of accounts, recording the same, we direct the Authorized Officer, State Bank of Mysore, Chennai Main Branch, Chennai, the 1st respondent herein to submit a statement of accounts by 13.10.2017.

11. Post on 13.10.2017, immediately, after admission."

4. Again, when the matter came up on 08.11.2017, we passed the following orders,

"Earlier by producing a counterfoil dated 21.11.2012 submission has been made by the learned counsel for the borrower that sum of Rs.5 Lakhs remitted to State Bank of Mysore, now taken over by State Bank of India, has not been accounted for. Therefore, we directed State Bank of India, to ascertain the same and file an affidavit.

2. Affidavit filed by the Chief Manager, State Bank of India, Retail Assets Credit Processing Centre, Anna Nagar, Chennai, does not contain the details.

3. On this day, when the matter came up for further hearing, Mr.Senthil Kumar, learned counsel appearing for the bank submitted that the abovesaid remittance, stated to have been made and not taken note of by the then State Bank of Mysore, has been taken up with the Assistant General Manager and Chief

Manager of State Bank of India, (Erstwhile State Bank of Mysore), RACPC, Anna Nagar Branch, Chennai and the Deputy General Manager, State Bank of India, RACPC Branch, Alwarpet, Chennai, and instructions are yet to be furnished. Writ petition has been filed, as against the Authorised Officer, State Bank of Mysore, Chennai Main Branch, 231, NSC Bose Road, Chennai.

4.Taking note of the submission of the learned counsel for the bank that there was a merger, in exercise of powers under Article 226 of the Constitution of India, we direct the Registry to amend the cause title, substituting the Authorised Officer, State Bank of Mysore, Chennai Main Branch, 231, NSC Bose Road, Chennai with the Authorised Officer, State Bank of India, (Erstwhile State Bank of Mysore), RACPC, Anna Nagar Branch, Chennai.

5. In order to resolve the above issue, we also suo motu implead the following persons as respondents.

i) The Assistant General Manager,
State Bank of India,
(Erstwhile State Bank of Mysore),
RACPC,
Anna Nagar Branch, Chennai

ii) The Chief Manager,
State Bank of India,
(Erstwhile State Bank of Mysore),
RACPC,
Anna Nagar Branch, Chennai

and

iii) the Deputy General Manager,
State Bank of India,
RACPC Branch,
Alwarpet, Chennai,

6. Parties impleaded above are directed to produce the ledgers / registers, books of account of the writ petitioner. Respondents impleaded are further directed to produce the details of the registers/ledgers, books of account, received from State Bank of Mysore, Chennai Main Branch, Chennai, at the time of merger. The details should also contain the names of the borrower, whose loan account has been declared as Non-Performing Asset for which action under the SARFAESI Act, 2002 was taken. Details of the Non-Performing account closed in State Bank of Mysore, before merger also be produced.

7. Post on 13.11.2017."

5. On 13.11.2017, when the matter came up for further hearing, we recorded as hereunder:

> "Mr.V.Ayyamani, Chief Manager, State Bank of India, Parry's Cornor Branch, Chennai, appeared and based on the statements generated on 13.11.2017, submitted that a sum of Rs.5 Lakhs paid by the borrower, has been credited to the loan account No.54040653745, and after deducting the said sum, account has been classified as NPA and notice under Section 13(2) of the SARFAESI Act, 2002, has been issued, for the outstanding amount, due and payable by the borrower.
>
> Mr.Senthil Kumar, learned counsel appearing for the respondents-Bank seeks time to file appropriate affidavit, in respect of the oral submission made by the Chief Manager, present in the Court."

6. Today, the Chief Manager, State Bank of India, Parry's Corner, Chennai Branch, Chennai, has filed an affidavit, dated 14.11.2017, wherein, he has explained, as to how, payment of Rs.5 Lakhs by the borrower, did not reflect in the print, submitted to this Court, on the earlier occasion. According to him, payment of the said sum, has been credited to the loan account. For brevity, Paragraphs 3 and 4 of the affidavit, dated 14.11.2017, of the Chief Manager, State Bank of India, Parry's Corner, Chennai Branch, Chennai, are reproduced hereunder:

> "(3) I submit that a monthly statement of account for the period from 01.11.2012 to 30.11.2012 has been taken from the branch and the sum of Rs.5,00,000/- (Rupees Five Lakhs) deposited on 21.11.2012 has been given credit the said statement of account on the said date. I am producing the said statement of account duly certified under bankers book of evidence Act for perusal of this Honourable Court.
>
> (4) As far as the statement of account already produced for the period from 23.09.2003 to 12.10.2017, the said credit entry of Rs.5,00,000/- is not getting printed although it is appeared from the screen. However, credit of Rs.5,00,000/- is taken into account by the system and the balance amount payable and the interest is calculated by the system, as such the omission to reflect to credit in the hand copy is defect in the system and it does not affect to the subsequent transactions the statement submitted earlier reflect the correct balance."

7. Earlier, on 30.10.2017, the Bank has filed a working sheet, unsigned, setting out the total dues, as on 24.02.2017, as Rs.9,47,891/-. When the above details were unsigned and when

we required authenticity, the Chief Manager, State Bank of India, Parry's Cornor, Chennai Main, Chennai, has filed an instant affidavit, dated 14.11.2017.

8. Though Mr.G.Ethirajulu, learned counsel appearing for respondents 2 and 3, submitted that the loan amount has been discharged and according to him, only Rs.1/- has to be paid, we are not inclined to accept the same, for the reason that on 11.10.2017, Mr.R.Dhanaram, learned counsel for respondents 2 and 3, candidly admitted that there was no dispute, over the quantum of debt, which means that there was no representation/objection, under Section 13(3A) of the SARFAESI Act, 2002, to the Bank.

9. As per the statement of accounts, now vouched by the Chief Manager, State Bank of India, Parry's Cornor, Chennai Main, Chennai, a sum of Rs.5 Lakhs has been credited to the loan account. When the matter came up for further hearing on 11.10.2017, we recorded the submission of Mr.R.Dhanaram, learned counsel for respondents 2 and 3, and at the risk of repetition, the same is extracted hereunder:

> "8. Though, during the course of arguments, Mr.R.Dhanaram, learned counsel for the co-borrowers/respondents 2 and 3, disputed the rate of interest computed, he fairly submitted that when a demand notice under Section 13(2) of the SARFAESI Act, 2002, was issued, there was no further representation from the co-borrowers under Section 13-A of the said Act. Even the possession notice challenged in S.A.No.12 of 2013 and sale notice challenged in S.A.No.162 of 2013, were set aside, solely on the ground, regarding service of notice and not on the grounds of any dispute over interest"

10. On 04.06.2013, auction purchaser has paid a sum of Rs.24,13,000/-. He has paid Rs.1,68,910/- towards registration charges. Total amount expended was Rs.25,81,910/-.

11. During the course of hearing, Mr.Senthil Kumar, learned counsel for the respondents-Bank submitted that after adjusting a sum of Rs.7,88,933/-, a sum of Rs.17,92,977/- has been deposited in a Fixed Deposit, at the rate of 6.5% per annum.

12. In the light of the above submissions and discussion, we are of the view that the auction purchaser is entitled to refund of the entire auction amount of Rs.24,13,000/-, with interest at the rate of 6.5% per annum. After calculating the interest, as on today, the respondents-Bank are directed to refund the amount of Rs.24,13,000/-, with interest at the rate of 6% per annum, from 04.06.2013 till date, within a period of one month, from the date of receipt of a copy of this order.

13. Respondents 2 and 3 are directed to pay a sum of Rs.1,68,910/-, towards expenses incurred for registration charges to the writ petitioner, within a period of one month, from the date of receipt of a copy of this order. They are also directed to pay a sum of Rs.9,47,891/-, outstanding loan amount, as on 24.02.2017, calculated upto 24.02.2017 and further interest at the contractual rate, from 25.02.2017, till payment, within two months, from the date of receipt of a copy of this order.

14. It is made clear that if the said loan amount is not paid, within the prescribed period, it is open to the respondents-Bank to bring the subject property, mortgaged by the Bank, for fresh auction sale, in the manner known to law.

15. With the above directions, writ petition is disposed of. It is open to the parties, to bring it to the notice of the Tribunal, the order of this Court passed in W.P.No.4081 of 2017, for appropriate decision, in the pending appeal. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

skm

To

+1cc to Mr.V.Selvaraj, Advocate, S.R.No.80788
+1cc to Mr.S.Sethuraman, Advocate, S.R.No.81048
+1cc to Mr.G.Ethirajulu, Advocate, S.R.No.80861

CS/24/11/17