

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.Nos.9811 and 9812 of 2017
W.M.P.No.10805 of 2017

1. M/s.Sree Shanthosh Steels Pvt. Ltd.,
Rep., by Mr.P.K.Sivakumar,
Chennai.
2. P.K.Sivakumar
3. Shantha Sivakumar
4. P.K.P.Narayanamurthy
5. P.S.Sree Kumar
6. P.S.Sannthosh Kumar
7. Swapna Sree Kumar
8. Nalini Naryanamurthy
9. P.N.Navinkumar
- 10.P.N.Navneethakrishnan
- 11.M/s.Vadivambikai Tailer Industries,
Rep., by its Partner,
P.K.Sivakumar

... Petitioners in both WPs.,

versus

1. State Bank of India rep. by
The Assistant General Manager
and Authorised Officer,
SAMB, Redcross Building,
Montieth Road, Egmore,
Chennai 600 008. ... Respondent in W.P.No.9811/17
/2nd Respondent in WP.No.9812/17
2. The Debts Recovery Tribunal-2,
4th Floor, Dewa Tower,
770-A, Anna Salai,
Chennai 600 002. ... 1st Respondent in WP.No.9812/17

Prayer in W.P.No.9811 of 2017: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, directing the respondent-Bank to permit the petitioners to settle their NPA account, by sale of some of the secured properties, by private treaty, as set out in the letter, dated 03.01.2017, within a period of three months from the date

the Government of Tamil Nadu brings in a scheme regarding the use of agricultural lands for non-agricultural purposes and not to bring the secured assets for e-auction sale till the sale by private treaty is concluded and enable the petitioner firm to submit a proposal to the respondent-Bank for restructuring of the account, in terms of the guidelines of the Reserve Bank of India.

Prayer in W.P.No.9812 of 2017: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, directing the 1st respondent/Debts Recovery Tribunal-2, to entertain the objections of the petitioners against subsequent sale notices issued by the 2nd respondent bank, for adjudication in a pending Securitisation Application, under Section 17(1) of the Securitisation Act, 2002, by declaring that all the measures taken under Section 13(4) of the Act, are under scrutiny by the Tribunal, in the Application filed under Section 17(1) of the Act.

For Petitioners : Mr.P.Ulaganathan

Respondent in W.P.No.9811/17
/2nd Respondent in WP.No.9812/17 : Mr.M.L.Ganesh

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

In W.P.No.9811 of 2017, petitioners have sought for a Mandamus, directing the State Bank of India, represented by Assistant General Manager and Authorised Officer, Chennai, 1st respondent herein, to permit them, to settle their NPA account, by sale of some of the secured properties, by private treaty, as set out in the letter, dated 03.01.2017, within a period of three months from the date the Government of Tamil Nadu brings in a scheme regarding the use of agricultural lands for non-agricultural purposes and not to bring the secured assets for e-auction sale till the sale by private treaty is concluded and enable their firm to submit a proposal to the abovesaid Bank for restructuring of the account, in terms of the guidelines of the Reserve Bank of India.

2. In W.P.No.9812 of 2017, the petitioners have sought for a Mandamus, directing the Debts Recovery Tribunal-2, Chennai, 2nd respondent herein, to entertain their objections, against the subsequent sale notices, issued by the Assistant General Manager and Authorised Officer, Chennai, 1st respondent herein, for adjudication, pending in Securitisation Application, under Section 17(1) of the Securitisation Act, 2002 and by declaring that all the measures taken under Section 13(4) of the Act, are

under the scrutiny of the Tribunal, in the Application filed under Section 17(1) of the Act.

3. As both the writ petitions relate to recovery proceedings initiated by the 1st respondent-Bank, with common pleadings, they are taken up together and disposed of, by a common order.

4. M/s.Sree Shanthosh Steels Pvt. Ltd., Chennai, represented by Mr.P.K.Sivakumar, is a firm, dealing in iron & steel materials of various categories, produced by all the main steel producers in the country, viz., SAIL, Vizag Steel, Jindal Steel Work, (JSW), Jindal Steel & Power Ltd (JSPL), etc. They have acquired a reputation in the steel market in the steel segment. They deal in Channel, Joist, Angles, Rounds, EM8D/EN9 Round, Plates, HR, GP, GC, CR sheet, TMT, Rebar, Rails, Billets, etc.

5. The petitioner-Company has availed credit facilities, like Cash Credit, Working Capital Demand Loan, Corporate Loans, etc., on various dates. According to them, they have been repaying the loans, without any default, until one of their clients, M/s Techpro Systems, customer of the respondent bank, defaulted in payment of a sum of about Rs.36 Crores, towards their Company's supply dues. Petitioners have contended that the measures taken by the bank, has a cascading effect, in their finance, leading to default, in payment of dues to the respondent bank. The petitioners have been negotiating with the bank and assured the Bank that repayment would be made, by selling some of the assets, by private treaty and accordingly, vide letter, dated 03.01.2017, the Bank has accepted the same, on the following conditions, viz.,

(a) The borrower has to arrange for selling at least two of the mortgaged properties at the earliest and ensure depositing a minimum sum of 15% of the total dues before 31st January, 2017.

(b) The borrower has to periodically update the bank, the progress of sale of properties and also the status of sourcing funds from other sources/financiers to meet the repayment obligations.

6. According to the petitioners, even before the expiry of the said date, 31st January, 2017, the Bank has issued E-Auction notice of seven items of the secured properties, to be held on 30.01.2017. Being aggrieved by the same, the petitioners have filed S.A.No.10 of 2017, before the Debts Recovery Tribunal-II, Chennai, under Section 17(1) of the SARFAESI Act, 2002. According to the petitioners, due to the prolonged leave of the Presiding Officer, the said application was listed only on 27.02.2017, much after the date, fixed for auction. Further, as there was no bidder, E-Auction was not held.

7. The petitioners have further submitted that the respondent-Bank issued another E-Auction sale notice, dated 04.02.2017, fixing E-Auction on 28.02.2017. When the petitioners have filed an Interlocutory Application, in the pending S.A.No.10 of 2017, challenging the second E-Auction notice, Registry of the Tribunal, insisted for filing another SARFAESI application, under Section 17(1) of the SARFAESI Act, 2002. Therefore, the petitioners had no other alternative, except, withdrawing S.A.No.10 of 2017 and filed a fresh application, which came to be numbered as S.A.No.26 of 2017.

8. The petitioners have further submitted that on 27.02.2017, one day before the date of auction, ie., on 28.02.2017, the Tribunal was pleased to pass an order, permitting the Bank to proceed with the sale, but not to confirm the same. The Tribunal gave time for the respondent-Bank to file counter, till 27.03.2017. On 27.03.2017, the respondent-Bank filed the counter affidavit. For enquiry, the matter was adjourned to 26.04.2017. In the meanwhile, the respondent-bank issued the third sale notice, dated 08.03.2017, fixing E-Auction on 31.03.2017.

9. Mr.P.Ulaganathan, learned counsel for the petitioners submitted that though Rule 9(1) states that no sale was to be held without giving 30 days' notice to the borrower, and as per the amendment notification, dated 03.11.2016, if the sale fails, then the sale is required to be conducted again, after giving 15 day's notice to the borrower. The bank did not follow the procedure, as contemplated in the rules and issued the 2nd and 3rd sale notices, dated 04.02.2017 and 08.03.2017 respectively.

10. Learned counsel for the petitioners further submitted that when the petitioners have filed an Interim Application in S.A.No.26 of 2017, seeking for a direction from the Tribunal, to extend the interim order, already passed on 27.02.2017 in S.A.No.26 of 2017 and not to confirm the sale, in respect of the further sale proposed to be held by the Bank on 31.03.2017, Registry of the Tribunal has returned the interim application, as not maintainable and that the petitioners were advised to file an application under Section 17(1) of the SARFAESI Act, 2002, challenging the 3rd sale notice, dated 08.03.2017.

11. Learned counsel for the petitioners further submitted that when the petitioners, at the time of filing two separate SARFAESI applications, challenging the repeated sale notices, paid Rs.1 Lakh each, towards court fees, they are not in a position to pay further court fee, challenging the third sale notice afresh, which the appellate Tribunal has failed to take note of.

12. Placing reliance on a decision of the Hon'ble Supreme Court in Indian Overseas Bank v. Ashok Saw Mill reported in AIR 2009 SC 2420, learned counsel for the petitioners submitted that when the Hon'ble Supreme Court, in the above reported case, held that sufficient safeguards have been provided in SARFAESI Act, 2002, for rectification of any error or renewal or wrongful use of such powers, by vesting the DRT, with authority, and the DRT has jurisdiction to interfere with the action taken by the secured creditor, the stage contemplated under Section 13(4) of the Act, the Debts Recovery Tribunal-II, Chennai, cannot dismiss the securitisation applications filed against the sale notices, as infructuous, merely because, the sale did not take place.

13. Learned counsel for the petitioners further submitted that as per the decision in Indian Overseas Bank's case (cited supra), the Debts Recovery Tribunal-II, Chennai, has to adjudicate all the issues raised in S.A.No.26 of 2017. According to him, as per Section 17(7) of the SARFAESI Act, 2002 r/w. Rule 5 of the Debt Recovery Tribunal (Procedure) Rules, 1993, the decision of the Tribunal, not to entertain interim application, on the prayer sought for, against the subsequent sale notice, in the pending S.A.No.26 of 2016, is not correct.

14. Inviting the attention of this Court to the letter, dated 3rd January' 2017, learned counsel appearing for the petitioners submitted that when the Bank has agreed for settlement of dues, by allowing the borrower to sell two items of mortgaged properties, through private treaty, frustrating the same, auction notices, dated 04.02.2017 and 08.03.2017, have been issued and thus, the proposed buyers were driven away. Though the proposed buyers have approached the borrowers, with a higher sale value, due to less reserved price, mentioned in the sale notices, proposed buyers have refrained from proceeding further. Thus, he submitted that the Bank has not allowed the petitioners to settle the loan amount. Attention of this Court was invited to Rule 8(5)(d) of the Security Interest (Enforcement) Rules, 2002, which provides sale, by private treaty.

15. Learned counsel for the petitioners further submitted that lands were originally purchased, as agricultural properties, but later on, agriculture could not be carried on. He further submitted that, in a public interest writ petition, this Court had passed interim orders, restraining buying and selling of unapproved lands, purchased for agricultural use and therefore, the petitioners have found it difficult to sell the abovesaid properties.

16. Inviting the attention of this Court to Section 31(1) of the SARFAESI Act, 2002, learned counsel for the petitioners contended that the Bank is precluded from proceeding against the mortgaged properties, under the provisions of the SARFAESI Act, 2002. Based on the submissions, stated supra, petitioners have filed writ petitions, for the reliefs, stated supra.

17. The Chief Manager, Stressed Assets Management Branch, Chennai, has filed two separate counter affidavits, in the above writ petitions and based on the same, Mr.M.L.Ganesh, learned counsel for the respondent-Bank submitted that both the writ petitions are not maintainable, on the grounds inter alia that the provisions of the SARFAESI Act, 2002, provide for an alternative and effective remedy, to challenge the sale notices.

18. Learned counsel for the respondent-Bank further submitted that the prayer for mandamus, directing the bank to permit the petitioners to settle NPA accounts, under OTS, as per the RBI guidelines, by selling of some of the secured properties, by private treaty, as set out in the letter, dated 03.01.2017, within a period of three months from the date the Government of Tamil Nadu, for use of agricultural lands for non-agricultural purposes, is not maintainable, under Article 226 of the Constitution of India.

19. Learned counsel for the respondent-Bank further submitted that S.A.No.10 of 2017, before DRT-II, Chennai, challenging the E-Auction Sale Notice, dated 17.12.2016 and S.A.No.26 of 2017, challenging the E-Auction Sale Notice, dated 04.02.2017, have been withdrawn, by the petitioners, on their own. Contention has also been made that the petitioners have filed S.A.No.98 of 2017, challenging the issuance of sale certificate, before the DRT-II, Chennai and that when the same is pending, the petitioners have moved this Court, for the reliefs, stated supra, and that it is nothing but, forum shopping. He denied the contention that the secured assets are agricultural properties.

20. Learned counsel for the respondent-Bank submitted that while availing the loan and at the time of availing and extending/renewing huge credit facilities, the petitioners, in unequivocal terms, have declared that the secured properties, as non-agricultural properties, by executing loan security documents. According to him, the petitioners have constructed a superstructure and in occupation of the same. The first petitioner is carrying on business operation, in one of the

secured properties and if the petitioners had genuine buyers, willing to purchase the secured assets for more than the reserved price, they could have very well participated in the E-auction or could have opted for private treaty with the bank before the auction date, which the petitioner has failed to do so.

21. Learned counsel for the respondent-Bank further submitted that the request of the petitioners to settle the loan amount, by a private treaty, in letter, dated 03.01.2017, was conditional, wherein, the bank had stated that they would continue the legal recovery measures, already initiated. He further submitted that as on 08.11.2016, the petitioners are liable to pay a sum of Rs.40,72,65,321.37. The Bank had recovered a sum of Rs.4.97 Crores and Rs.10.51 Crores, out of the sale proceedings held on 31.03.2017 and 26.07.2017 respectively and as on 29.08.2017, the petitioners are due and liable to pay a sum of Rs.29,59,26,806.28 to the bank.

22. Learned counsel for the respondent-Bank further submitted that each sale notice issued, gives rise to a separate cause of action, for invoking the provisions of the SARFAESI Act, 2002 and hence, the same cannot be permitted to be challenged, by way of interim applications. More so, in the case on hand, for the reasons best known, the petitioners have withdrawn S.A.Nos.10 and 26 of 2017, challenging the E-Auction Sale Notice, dated 17.12.2016 and E-Auction Sale Notice, dated 04.02.2017, respectively. For the abovesaid reasons, the Bank has prayed for dismissal of both the writ petitions.

Heard the learned counsel appearing for the parties and perused the materials available on record.

23. The respondent-Bank has classified the loan account as NPA and on 21.09.2016, issued a notice, under Section 13(2) of the SARFAESI Act, 2002, calling upon the petitioners to pay a sum of Rs.39,88,97,599/-, as on 15.09.2016, within 60 days, from the date of notice. Bank has also informed the petitioners that they are liable to pay interest, at the contractual rate, on the abovesaid amount, together with incidental expenses, cost, charges, etc. In the said notice, the Bank has also mentioned the properties mortgaged.

24. Subsequently, on 22.11.2016, Bank has issued possession notice, under Section 13(4) of the SARFAESI Act, 2002. Thereafter, the Bank has issued E-Auction Sale Notice, dated 17.12.2016, bringing the mortgaged properties for auction on 30.01.2017. Pursuant to the deliberations, which took place on 29.12.2016, in the meeting with Chief General Manager and General Manager of the Bank, regarding non-registration of the

unapproved plots of land, demonetization of high value currency notes, political uncertainty in the State of Tamil Nadu, etc., the Deputy General Manager, State Bank of India, Chennai, has sent a letter, dated 03.01.2017, to the petitioners, about the action plan, chalked out to settle the dues of the company. Details are extracted hereunder:

"(a) The borrower has to arrange for selling atleast two of the mortgaged properties at the earliest and ensure depositing a minimum sum of 15% of the total dues before 31st January' 2017, while the balance dues to be paid before 31st March' 2017 without fail.

(b) The borrower has to periodically update us the progress of sale of properties and also the status of sourcing funds from other sources/financiers to meet the repayment obligations."

25. Perusal of the abovesaid letter, shows that permission granted by the Bank to sell atleast two of the mortgaged properties, was only upto 31st January' 2017. At the same time, the Bank has made it clear that they would continue with the legal recovery measures, already initiated. The Bank has reserved the rights to proceed, with the recovery measures.

26. Contention of the petitioners that by issuing a E-Auction Sale Notice, dated 17.12.2016, fixing the auction on 30.01.2017, the respondent-Bank has thwarted their attempt to sell two of the mortgaged properties, cannot be accepted, for the reason that E-Auction Sale Notice, dated 17.12.2016, had already been issued, fixing the auction on 30.01.2017 and had the petitioners made arrangements to sell two of the mortgaged properties, as agreed to, nothing prevented the petitioners to approach the Bank with the proposed buyers, before the date, fixed for auction. Even taking it for granted that auction was fixed on 30.01.2017, with a lesser upset price, the proposed buyers could have very well participated in the auction. Reduction of upset price was not challenged. Further, there is no objection by the petitioners to the condition imposed in the letter, dated 03.01.2017, wherein, the Bank has made it clear that they would continue with legal recovery measures, already initiated.

27. The petitioners have challenged the sale notice, dated 17.12.2016, in S.A.No.10 of 2017, on the file of the DRT-II, Chennai. Though, by letter, dated 03.01.2017, the Bank had permitted to sell, atleast two of the mortgaged properties, at the earliest and to ensure depositing the minimum sum of 15% of

the total dues, before 31.01.2017, the same has not been complied with by the petitioner. However, the sale fixed on 30.01.2017, did not take place.

28. Reading of the subsequent letter, dated 03.02.2017, issued by the Deputy General Manager, State Bank of India, Chennai, to the petitioners, indicates that on 03.01.2017, the petitioners met the Bank and informed that there were proposed NRI buyers, with whom, they have been negotiating for sourcing finance/sale of mortgaged properties and that the proposed buyers preferred to wait for the outcome of the hearing of the case, relating to registration of unapproved/unauthorised plots, scheduled for hearing on 23.02.2017. The Bank, in letter, dated 03.02.2017, has also stated that during discussion, on 03.01.2017, the petitioners have stated that they were trying to convince the buyer and inform the outcome of the case. However, the petitioners have been advised to ensure the sale of two mortgaged properties and to ensure liquidation of the balance dues, not later than 31st March' 2017, as promised by the petitioners, in the meeting with Chief General Manager and General Manager, on 29.12.2016.

29. Thus, it is evident from the above that the prospective buyers have been awaiting the decision of the case, relating to registration of unapproved/unauthorised plots and it is not due to Bank's decision to auction the property, efforts of the petitioners were thwarted. Therefore, we are of the view that it cannot be contended that due to continuation of legal recovery measures, attempt of the petitioners was thwarted.

30. Bank has issued another E-Auction Sale Notice, dated 04.02.2017, to bring the properties for auction on 28.02.2017. This notice has been challenged in S.A.No.26 of 2017, on the file of the DRT-II, Chennai, praying to set aside the said notice. On 27.02.2017, when both S.A.Nos.10 and 26 of 2017 came up for hearing, the Debts Recovery Tribunal-II, Chennai, has passed separate orders, as follows:

S.A.No.10 of 2017:

Counsel for both side present. I.A.No.121 of 2017 is filed for advance hearing. I.A.No.121 of 2017 is allowed and hearing is advanced today. The respondent filed counter and type set of documents. The applicant made an endorsement to withdraw the S.A. Hence, S.A is dismissed as withdrawn. No costs.

S.A.No.26 of 2017:

Counsel for both side present. The counsel for applicant submitted that already the respondent bank has permitted the applicant to bring the private party for purchase of subject property. The respondent Bank issued the sale notice before the said time. Sale will be proceeded as per sale notice. But the confirmation of sale is stayed. Counter by 27.03.2017."

31. Sale did not take place. Therefore, the bank has issued another sale notice, dated 08.03.2017, fixing the E-Auction on 31.03.2017. The petitioners have filed two Interlocutory Applications, one for advance hearing of S.A.No.26 of 2017 and another, for a direction to extend the interim order, dated 27.02.2017, passed by the Tribunal, not to confirm the sale, proposed to be held on 31.03.2017. Thereafter, the petitioners have filed W.P.Nos.9811 and 9812 of 2017, for the reliefs, as stated supra.

32. Insofar as W.P.No.9811 of 2017, is concerned, the prayer cannot be granted, as much water has flown under the bridge and that the third sale notice, dated 08.03.2017, has also been issued.

33. Though placing reliance on the decision in Indian Overseas Bank v. Ashok Saw Mill reported in AIR 2009 SC 2420, learned counsel for the petitioners submitted that the Debts Recovery Tribunal, Chennai, has to consider and adjudicate, keeping in mind, status-quo ante and that there cannot be dismissal of S.A.Nos.10 and 26 of 2017, on the grounds that sale did not take place, this Court is not inclined to accept the same, for the reason that on the facts and circumstances of the case, it could be seen that the said SARFAESI Applications have been withdrawn, by the petitioners.

34. Further contention of the learned counsel for the petitioners that every time, when the Bank brings the property for auction, the petitioners have to remit the Court fee and therefore, the DRT-II, Chennai, ought to have entertained the objections of the petitioners, against the subsequent sale notices also, cannot be accepted for the reason that, each sale notice issued by the Bank, is a separate cause, though recovery proceedings are initiated, based on the notice, under Section 13 (2) of the Act and therefore, the DRT-II, Chennai, cannot be directed to entertain the objections of the petitioners. Hence,

the prayer sought for in W.P.No.9812 of 2017, also cannot be granted. Today, learned counsel for the Bank has submitted that subsequent S.A.No.98 of 2017, filed challenging the sale certificate, has also been dismissed.

35. For the reasons, stated supra, prayers sought for, in both the writ petitions, cannot be granted. Hence, Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

skm

To

The Debts Recovery Tribunal-2,
4th Floor, Dewa Tower,
770-A, Anna Salai,
Chennai 600 002.

+ 2 ccs to M/s. P. Ulaganathan, Advocate SR.70388, 70389
1 cc to Ms. M.L. Ganesh, Advocate Sr.69389

W.P.Nos.9811 and 9812 of 2017

RR(CO)
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