IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.9935 of 2017
and WMP No.10928 of 2017

Mr.Mohamed Ibrahim Azees ... Petitioner

vs.

1. State Bank of India,
Stressed Assets Recovery Centre Wing,
Retail Assets Central Processing Centre,
(RAPCO), OMR Chennai,
New No.4/952 & 4/952A, III Floor,
Rajiv Gandhi Salai, Perungudi,
Chennai - 600 096.

2. B.Jeevitha ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari, calling for the records relating to the impugned proceedings pertaining to the sale notice and E-auction conducted by the respondents on 10.02.2017 to the property of land and building to the extent of 1800 sq.ft. of house, Ground and premises bearing Plot No.73 in the layout named as Parasakthi Nagar Part - C comprised in Old Survey No.170/1, Patta No.6978 as per Patta Survey No.170/88 situated at No.83, Sangundram Village, Chengalpet Taluk, Kanchipuram District and quash the same as illegal.

For Petitioner : No appearance.

For Respondents: Mr.K.Chandrasekaran (For R1)
Mr.M.Muthappan (for R2)

ORDER

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

Borrower, has sought for a writ of certiorarified mandamus, to quash the sale cum e-auction, conducted by the respondents on 10.02.2017, in respect of immovable property viz., land and building to an extent of 1800 sq.ft. of house, Ground and premises bearing Plot No.73 in the layout named as Parasakthi Nagar Part - C comprised in Old Survey No.170/1, Patta No.6978 as per Patta Survey No.170/88 situated at No.83, Sangundram Village, Chengalpet Taluk, Kanchipuram District.

2. Record of proceedings shows that on 24.04.2017, a Hon'ble Division Bench of this Court, has ordered notice through Court and privately.

3. Sale notice dated 07.01.2017, is extracted hereunder.

SALE NOTICE

Dear Sir,

Sub: Notice for Sale under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 & Security Interest (Enforcement) Rules, 2002

Whereas, the Authorised officer had taken possession of the below mentioned properties on 18.11.2016, as per Sec 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter called the Act) which has been offered as security by you towards your / borrower's liabilities amounting to Rs.53,24,103/- (Rupees Fifty Three Lakhs Twenty Four Thousand One hundred and three only) as on 17.11.2016 and further interest from 18.11.2016 together with incidental expenses, costs, charges, etc.

Whereas you have failed to satisfy your / borrower's liabilities to the bank even after receipt of notice under Section 13(2) and Section 13 (4) of the Act. Therefore the Bank in exercise of its rights granted under the Act and Rules, issues this notice under Rule 8(6) (immovable) of the Security Interest (Enforcement) Rules, 2002, calling upon you to discharge in full liabilities amounting to Rs.54,34,894/- (Rupees Fifty Four Lakhs Thirty Four Thousand Eight Hundred and Ninety Four only) as on 06.01.2017 and further interest from 07.01.2017 together with incidental expenses, cost, charges, etc within 30 days from the date of this notice, failing which, the bank shall proceed under the Act with the sale of the secured properties to realize the above stated out standings, with interest and costs.

SCHEDULE OF IMMOVABLE PROPERTIES

Schedule "A" Property

House, Ground and Premises, bearing Plot No.73 in the lay-out named as "Parashakthi Nagar Part-C" comprised in Old Survey NO.170/1, Patta No.6928, as per Patta Survey NO.170/88, situated at NO.83,

Sengundram Village, Chengalpet Taluk, Kanchipuram District, measuring....
East to West on the Northern Side : 60 feet,
East to West on the Southern Side : 60 feet,
North to South on the Eastern Side : 30 feet,
North to South on the Western Side: 30 feet,

In all admeasuring an extent of 1800 sq.ft., together with Bombay Terraced Residential House, Electricity Connection, Water Connection, Drainage Connection thereon, and being bounded on the ....
North by : Plot No.74,
South by : Plot No.72,
East by : Plot No.84,
West by : 30 feet wide Road,
And lying within the Registration District of Chengalpet and Registration Sub-District of Chengalpet Joint-II

DETAILS OF SALE

Date & time of E-auction	10.02.2017, Friday, between 11.00 a.m. to 12.00 p.m. * * with auto time extension of five minutes each till sale is completed
Reserve Price	Rs.39,16,000/- (Rupees Thirty nine Lakhs sixteen thousand only)
Earnest Money Deposit	Rs.3,91,600/- (Rupees Three lakhs ninety one thousand six hundred only)
EMP Remittances	Deposit through EFT / NEFT/RTGS Transfer of "SBI RACPC OMR, Chennai EMD Remittance Account" to the credit of Branch Office A/c.No.32728803095, State Bank of India, IFSC Code: SBIN0016547
Bid Multiplier (for all properties)	10,000/- (Rupees ten thousand only) and above
Inspection of properties	30/01/2017 from a.m. to 3.00 p.m.
Submission of online bid application with EMD	12/01/2017 from 11.00 a.m., onwards

Date & time of E-auction	10.02.2017, Friday, between 11.00 a.m. to 12.00 p.m. * * with auto time extension of five minutes each till sale is completed
Last date of submission of online bid application with EMD	09/02/2017 upto 4.00 pm

4. On this day, when the matter came up for further hearing, Mr.K.Chandrasekaran, learned counsel for the State Bank of India, 1st respondent submitted that pursuant to the sale conducted on 10.02.2017, sale certificate has been issued to 2nd respondent the auction purchaser, which is extracted hereunder.

SALE CERTIFICATE

Whereas,

The undersigned Shri S.Dhakshinamoorthy S/o. Shri.P.Subramanian, aged 56 years being the Authorised Officer of the State Bank of India, RETAIL ASSETS CENTRAL PROCESSING CENTRE, OMR, No.4/952 & 4/952A, 3rd Floor, Rajiv Gandhi Salai, Perungudi, Chennai - 600 096, under Securitisation and Reconv of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) and in exercise of the powers conferred under Section 13 read with Rule 8 and 9 of the Security Interest (Enforcement) Rules, 2002 sold on behalf of the State Bank of India.

IN FAVOUR OF

Smt.B.Jeevitha (PAN No.AQFPJ9660E) W/o. Shri D.Harikrishnan, aged 29 years, and Shri D.Harikrishnan (PAN No.ADMPH3525N) S/o. Shri D.Damodaran, aged 30 years, G1, Mountain View Apartments, 39, Thiruvengadam Street, Tambaram West, Chennai - 600 045, the immovable property shown in the schedule below secured in favour of the State Bank of India by Shri. Mohamed Ibrahim, towards the financial facility (Housing Term Loan) offered by State Bank of India. The undersigned acknowledges the receipt of Rs.39,26,000/- (Rupees Thirty NIne Lakhs twenty six thousand only) being the sale price (Highest) bid amount held in the auction on 10.02.2017) in full and handed over the delivery and possession of the scheduled property.

The purchaser shall be entitled to have the name transferred in respect of the scheduled mentioned property favouring himself / herself in all the applicable records of Govt. Departments, Revenue, Electricity Board, Metro Water, Corporation /

Municipal records and all other records wherever applicable as its absolute owner, without any further reference to the undersigned.

Description of the Immovable Property

House, Ground and Premises, bearing Plot No.73 in the lay-out named as "Parashakthi Nagar Part-C" comprised in Old Survey NO.170/1, Patta No.6928, as per Patta Survey NO.170/88, situated at NO.83, Sengundram Village, Chengalpet Taluk, Kanchipuram District, measuring....

East to West on the Northern Side : 60 feet,
East to West on the Southern Side : 60 feet,
North to South on the Eastern Side : 30 feet,
North to South on the Western Side: 30 feet,

In all admeasuring an extent of 1800 sq.ft., together with Bombay Terraced Residential House, Electricity Connection, Water Connection, Drainage Connection thereon, and being bounded on the ....

North by : Plot No.74,
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West by : 30 feet wide Road,

And lying within the Registration District of Chengalpet and Registration Sub-District of Chengalpet Joint-II

5. Sale has taken place. Learned counsel appearing for both parties submitted that borrower has not challenged, the issuance of sale certificate.

6. Repeatedly, the Hon'ble Supreme Court has held that when there is an efficacious and alternate remedy, under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act or Securitisation And Reconstructions of Financial Assets Act, 2002, as the case may be, writ petition is not maintainable. We deem it fit to consider the following decisions.

(i) In Precision Fastenings v. State Bank of Mysore, reported in 2010(2) LW 86, this Court held as follows:

> "This Court has repeatedly held in a number of decisions right from the decision in Division Electronics Ltd. v. Indian Bank (DB) Markandey Katju, C.J., (2005 (3) C.T.C., 513), that the remedy of the aggrieved party as against the notice issued under Section 13 (4) of SARFAESI Act is to approach the appropriate Tribunal and the writ petition is not maintainable. The same position has been succinctly stated by the Hon'ble the Supreme Court in Transcore v. Union Of India (2006 (5) C.T.C. 753) in paragraph No. 26 wherein the Supreme Court has held as under:— "The

Tribunal under the DRT Act is also the Tribunal under the NPA Act. Under Section 19 of the DRT Act read with Rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993 (1993 Rules), the applicant bank or FI has to pay fees for filing such application to DRT under the DRT Act and, similarly, a borrower, aggrieved by an action under Section 13(4) of NPA Act was entitled to prefer an Application to the DRT under Section 17 of NPA." (Emphasis added) "

(ii) In Union Bank of India v. Satyawati Tondon, reported in 2010 (5) LW 193 (SC), the Hon'ble Apex Court at paragraph Nos.16 to 18 and 27 to 29, held as follows:

"16. The facts of the present case show that even after receipt of notices under Section 13(2) and (4) and order passed under Section 14 of the SARFAESI Act, respondent Nos. 1 and 2 did not bother to pay the outstanding dues. Only a paltry amount of Rs. 50,000/- was paid by respondent No. 1 on 29.10.2007. She did give an undertaking to pay the balance amount in installments but did not honour her commitment. Therefore, the action taken by the appellant for recovery of its dues by issuing notices under Section 13(2) and 13(4) and by filing an application under Section 14 cannot be faulted on any legally permissible ground and, in our view, the Division Bench of the High Court committed serious error by entertaining the writ petition of respondent No. 1.

17. There is another reason why the impugned order should be set aside. If respondent No. 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression 'any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court

overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for re-dressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of

taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad AIR 1969 SC 556, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1=1999-2-L.W. 200 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order.

27. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.

28. Insofar as this case is concerned, we are convinced that the High Court was not at all justified in injuncting the appellant from taking action in furtherance of notice issued under Section 13(4) of the Act.

29. In the result, the appeal is allowed and the impugned order is set aside. Since the respondent has not appeared to contest the appeal, the costs are made easy."

(iii) In Saraspathy Sundararaj v. Authorised Officer and Assistant General Manager, State Bank of India, reported in (2010) 5 LW 560, the Court held as follows:

"The petitioner has filed this writ

petition praying for a Writ of Certiorarified Mandamus calling for the records relating to the possession notice dated 16.09.2004 issued by the respondent under the SARFAESI Act and consequently direct the respondent to effect the settlement in accordance with the SBI OTS-SME 2010 Scheme as contained in its letter dated 18.03.2010 and unconditionally restore physical possession of the six rooms taken physical possession by it at No. 29, Sarojini Street, T. Nagar, Chennai - 17 with such damages.

... When a specific forum has been created which enables the borrower to challenge the action of the financial institution by filing necessary petition under Section 17, the petitioner is not entitled to invoke the writ jurisdiction of this Court. What could not be achieved by the petitioner by filing a petition before the appropriate Forum, which is at present barred by period of limitation, could not be permitted to be achieved by extending the jurisdiction conferred to this Court under Article 226 of The Constitution of India. Above all, since the petitioner has violated the terms and conditions of the loan by transferring the property in favour of her son, this Court is not inclined to entertain the petition.

........"

iv) In Simon's Foot Wear Pvt. Ltd. v. Indian Bank, reported in (2015) 2 MLJ 166, a Hon'ble Division Bench of this court held as follows:

"9.As against the confirmation of sale and issuance of the sale certificate, the writ petitioners did have their remedy of filing an appeal under Section 18 of the SARFAESI Act before the Debts Recovery Appellate Tribunal. The appeal remedy is an effective and efficacious remedy. When such an effective and efficacious remedy is available, this court will decline exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. ....

10.So far as the challenge made to the order dated 24.06.2013 is concerned, since an appeal remedy is available the writ petitioners ought to have exhausted the appeal remedy before approaching this Court with this writ petition. ...."

7. In the light of the above decisions, this Court is not inclined to entertain the writ petition. Hence, the writ petition is dismissed. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

+1cc to Mr.K.Chandrasekaran, Advocate sr.68006

+1cc to Mr.M.Muthappan, Advocate sr.67926

+1cc to Mr.Vimal B.Crimson, Advocate sr.68328

W.P.No.9935 of 2017
and WMP No.10928 of 2017

ss(12/10/2017)