IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2017

CORAM:

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

Writ Petition No.11185 of 2017
W.M.P.Nos.12127 and 12128 of 2017

Stanes High School Association,
rep. by its Principal,
Glenn Croning ... petitioner

v.

1. The Authorized Officer,
   Allahabad Bank,
   Tirupur Branch,
   No.342, Palladam Road,
   Tirupur 641 604.

2. The Authorized Officer,
   Andhra Bank,
   Coimbatore Branch,
   No.17, Mill Road,
   Coimbatore 641 001.

3. M/s.Velan Hotels Ltd.,
   Rep., by its Executive Director,
   M.R.Gautham,
   No.41, Kangeyam Road,
   Tirupur 641 604.

4. M/s.Raytheon Asset Reconstruction Pvt. Ltd.,
No.203, Gala Argos, Beside Harikupa Tower,
Near Ellis Bridge, Gymkhana,
Gujarat College Road, Ellis Bridge,
Ahmedabad 380009. ... Respondents.
(Impleaded as per order, dated 26.07.2017,
in W.P.M.P.No.20228/2017)

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the 1st and 2nd respondents to execute sale deed, in favour of the petitioner, by accepting the balance sale consideration of Rs.9 Crores, with appropriate interest, as per the orders, passed in I.A.No.247 of 2017 in S.A.No.54 of 2015, dated 15.04.2016, on the file of the Debts Recovery Tribunal, Coimbatore.

For petitioner	:	Mr.J.Pothiraj
For 1st Respondent	:	Mr.R.Balakumar for M/s.M.V.S.Associates
For Respondents 2 & 4	:	Mr.Varun Srinivasan
For 3rd Respondent	:	Mr.Ravi Raja

ORDER

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

Stanes High School Association, represented by its Principal, Coonoor, Nilgiris District, has filed the instant writ petition, for a

Mandamus, directing the Authorized Officer, Allahabad Bank, Tirupur Branch, Tirupur 641 604 and the Authorized Officer, Andhra Bank, Coimbatore Branch, Coimbatore 641 001, respondents 1 and 2, to execute a sale deed, in their favour, by accepting the balance sale consideration of Rs.9 Crores, with appropriate interest, as per the orders, passed in I.A.No.247 of 2017 in S.A.No.54 of 2015, dated 15.04.2016, on the file of the Debts Recovery Tribunal, Coimbatore.

2. Facts leading to the writ petition are that Stanes Anglo Indian Higher Secondary School, Coonoor, Nilgiris District, is a minority educational institution registered, as an EVANGELICAL Christian School, under the Tamil Nadu Code of Regulation-Anglo Indian School Co-education. M/s.Velan Hotels Ltd., Tiruppur, 3rd respondent herein, has borrowed loan from Allahabad Bank, Tirupur Branch, Tirupur and Andhra Bank, Coimbatore Branch, Coimbatore, respondents 1 and 2 and for non-payment of the loan by the 3rd respondent, the property at Coonoor was brought to auction. Since there were no bidders, the petitioner entered into a private treaty under the SARFAESI Act, 2002, with the respondent banks, and as per the private treaty, the petitioner has advanced a sum

of Rs.5 Crores (Rupees five crores only) with the Andhra Bank, Coimbatore Branch, 2nd respondent herein, and has to pay a balance sum of Rs.9 crores, to the said bank.

3. When M/s.Velan Hotels Ltd., Tiruppur, 3rd respondent herein, challenged the actions of the respondents' banks, by way of a SARFAESI Application in S.A.No.54 of 2015, before the Debt Recovery Tribunal, Coimbatore. The petitioner has also filed an application in I.A.No.447 of 2015, before the said Tribunal, seeking for a direction, against the Banks, to sell the properties, listed as Item No.2, in the Schedule to the Sale Notice, dated 04.02.2015, by private treatment, under Rule 8(5)(d) of the Security Interest (Enforcement) Rules, 2002. By a common order, dated 18.03.2015, DRT, Coimbatore, accepted private treaty and permitted Andhra Bank to withdraw the advance amount, and to appropriate the same, towards the loan account of the 3rd respondent, on or before 31.03.2015 and further directed the parties to complete the sale, by private treaty, on or before 18.05.2015.

4. The petitioner has further submitted that at the time of entering into a private treaty, in principle, the Banks accepted to render a helping hand to them, for advancing the balance sale consideration of Rs.9 Crores, so as to enable completion of the sale transaction. But respondents 1 and 2 did not keep up their promise and therefore, there was a delay in completing the sale transaction. Therefore, the petitioner approached M/s.Karur Vysya Bank, who in turn, accepted to finance the balance sale consideration of Rs.9 crores.

5. The petitioner has further submitted that Andhra bank, Coimbatore, has failed to accept the payment and therefore, they approached the Debt Recovery Tribunal, Coimbatore, by filing I.A.No.247 of 2016, seeking to permission to deposit the balance sale consideration of Rs.9 crores and for a further direction to the respondents 1 and 2 herein, to receive and execute a sale deed, in their favour. M/s.Karur Vysya Bank had also agreed to lend financial assistance, by their letter, dated 23.12.2015. On 15.04.2016, the Debt Recovery Tribunal, Coimbatore accepted petitioner's proposal and directed them to pay the

said sum, with interest at the rate of 9%·from 24.12.2015 to 12.02.2016. However, payment could not be made, due to the pending litigation.

6. Thereafter, the petitioner has filed I.A.No.1201 of 2016, seeking for a direction to respondents 1 and 2, to execute the sale deed in their favour, on a date to be fixed by the Tribunal. M/s.Velan Hotels Ltd., Tiruppur, 3rd respondent herein, has also filed an application in R.A.No.1 of 2016, for a different relief. The Debt Recovery Tribunal, by order, dated 15.12.2016, made in I.A.No.1201 of 2016, ordered that "there is no time limit for the date of completion of sale" and further directed respondents 1 and 2 herein, to receive the balance sale consideration and to treat the said part amount as an upfront amount, towards the OTS scheme given to the borrower.

7. Thereafter, the abovesaid R.A.No.1 of 2016, filed for different relief, by M/s.Velan Hotels Ltd., Tiruppur, was also dismissed and the 3rd respondent herein, has filed an appeal in AIR(S.A.)No.34 of 2017, before the Hon'ble Debt Recovery Appellate Tribunal, Chennai. According to the petitioner, the orders passed by the Debts Recovery

Tribunal, Coimbatore, in I.A.No.247 of 2016 in S.A.No.54 of 2015, dated 15.04.2016 and I.A.No.1201 of 2016 in S.A.No.54 of 2015, dated 15.12.2016 respectively, have become final.

8. The petitioner has further contended that the school has been established in the year 1858 and not doing any commercial activity. The petitioner has bonafidely deposited Rs.5 crores, as early as, in the year 2015 and that the same has also been recorded by the Debt Recovery Tribunal, Coimbatore. The said amount is lying with the 2nd respondent bank. When the matter stood thus, respondents 1 and 2 are attempting to bring the property for auction and in the abovesaid circumstances, the present writ petition, has been filed, for a Mandamus, as stated supra.

9. On the above averments and inviting the attention of this Court to the proceedings, dated 15.04.2016, in I.A.No.247 of 2016, filed by the petitioner, seeking permission to deposit the balance sale consideration of Rs.9 Crores and for a further direction to respondents 1 and 2 herein, to execute the sale deed in their favour, in the SARFAESI

Application in S.A.No.54 of 2015, filed by M/s.Velan Hotels Ltd., Tiruppur, 3rd respondent herein, Mr.J.Pothiraj, learned counsel for the petitioner submitted that permission sought for, was granted and taking note of the delay of 51 days, both the Allahabad Bank, Tirupur Branch, Tirupur 641 604 and the Andhra Bank, Coimbatore Branch, Coimbatore 641 001, respondents 1 and 2 herein, were entitled to charge 9% simple interest, from 24.12.2015 to 12.02.2016. He further submitted that prayer to treat the said part amount as an upfront amount, towards the OTS scheme given to the borrower, was not granted.

10. Attention of this Court was invited to the averments made in I.A.No.1201 of 2016 in S.A.No.54 of 2015, on the file of the Debts Recovery Tribunal, Coimbatore, to show that there was an attemt to review the order made in I.A.No.247 of 2016, dated 15.04.2016, by respondents 3 to 5 therein, and the learned counsel for the petitioner submitted that delay in making the balance payment of Rs.9 Crores, cannot be solely attributed to the writ petitioner and that Andhra Bank, Coimbatore, 2nd respondent herein, declined financial assistance, contrary to the promise made.

11. Further, drawing the attention of this Court to the counter affidavit, filed by Allahabad Bank, Tirupur Branch, Tirupur 641 604 and Andhra Bank, Coimbatore Branch, Coimbatore 641 001, before the Debts Recovery Tribunal, Coimbatore, in S.A.No.54 of 2015, learned counsel for the petitioner submitted that though the abovesaid respondents denied the averments made in support of I.A.No.1201 of 2016, without prejudice to the same, they have prayed that a sum of Rs.9 Crores, be paid, within a week, from the date of passing of the order of the Tribunal. However, they demanded 18% interest on the abovesaid sum, from 18.05.2015 till the date of payment.

12. Inviting the attention of this Court to the order, dated 15.12.2016, made in I.A.No.1201 of 2016, learned counsel for the petitioner submitted that the Debts Recovery Tribunal, Coimbatore, has also categorically observed that there is no time limit fixed for execution of the sale deed and also drew the attention of this Court that review application filed by the 3rd respondent therein, to review the order in I.A.No.247 of 2016, dated 15.04.2016, has been dismissed. In the abovesaid circumstances, he submitted that when the orders made in

I.A.No.247 of 2016, dated 15.04.2016 and I.A.No.1201 of 2016, dated 15.12.2016, have become final, Allahabad Bank, Tirupur Branch, Tirupur 641 604 and Andhra Bank, Coimbatore Branch, Coimbatore 641 001, respondents 1 and 2 herein, are bound to execute the sale deed and thus, prayed for issuance of a Writ of Mandamus.

13. Vide order, dated 26.07.2017, in W.P.M.P.No.20228/2017 in W.P.No.11185 of 2017, M/s.Raytheon Asset Reconstruction Pvt. Ltd., Ahmedabad, has been impleaded as 4th respondent. Mr.Varun Srinivasan, learned counsel appearing for 4th respondent submitted that respondents 1 and 2 have assigned loan account to the 4th respondent and for the default in payment of the loan amount by the 3rd respondent, their account was classified as Non-performing Assets (NPA) in the books of respondents 1 and 2. When auction sale notice, dated 04.02.2015, was issued, the 3rd respondent-borrower has filed S.A.No.54 of 2015 before the DRT, Coimbatore, along with I.A.No.446 of 2015 and I.A.No.447 of 2015, the latter for stay of auction.

14. According to learned counsel, during arguments on the abovesaid Interlocutory Applications, the 3rd respondent-borrower identified the petitioner, as a prospective purchaser of Item No.2 property described, in the auction sale notice. The property is situated at Coonoor, Nilgris District. The petitioner has offered Rs.14 Crores, to purchase the said property. Both the respondents' Banks agreed for the proposal, hoping that by selling at least one of the secured assets, they would be able to recover Rs.14 Crores, towards partial satisfaction of their dues. In the abovesaid circumstances, the Presiding Officer, DRT, Coimbatore, passed orders in I.A.No.447 of 2015 in S.A. No.54 of 2015, on 18.03.2015 with the following directions:

> "Rs.5,00,00,000/- (Rupees Five Crores only) should be remitted on or before 31.03.2015 and the balance sale consideration of Rs.9,00,00,000/- (Rupees Nine Crores only) should be deposited by the Petitioner on or before 18.05.2015. However, in the event of failure to deposit the amount as directed above on or before 31.03.2015, the permission granted shall stand cancelled automatically. Thereafter, it was open to the Respondent Banks to approach the Tribunal to vacate the Stay granted in respect of Item No.1, listed in the Sale Notice so as to enable the Banks to initiate fresh proceedings to sell item No.1 and 2 of

the Sale Notice. It is pertinent to mention here that the 3rd Respondent have submitted that they had no objection to proceed with the proposed auction in respect of Item No.3-5 mentioned in the Auction Sale Notice."

15. Learned counsel appearing for the 4th respondent further submitted that the petitioner has paid Rs.5 Crores, but failed to pay the balance amount of Rs.9 Crores. Before the DRT, Coimbatore, the petitioner has filed an Interlocutory Application to implead M/s.Raytheon Asset Reconstruction Pvt. Ltd., Ahmedabad, as the 4th Respondent in S.A.No.54 of 2015 and that the same was allowed. I.A.No.1459 of2015 was filed by M/s.Velan Hotels Ltd., 3rd respondent herein, for extension of time and at that stage, the Tribunal extended the time for payment of balance sale consideration of Rs.9 Crores, on or before 06.11.2015. But the petitioner has failed to make the payment.

16. Learned counsel for the 4th respondent further submitted that thereafter, I.A.No.247 of 2016 was filed by the petitioner in S.A.No.54 of 2015, stating that they were making all efforts to avail the

loan and Karur Vysya Bank had given in principle sanction and therefore, they would pay the balance amount of Rs.9 Crores. The Banks have filed their counter affidavits. DRT, Coimbatore, has passed orders on 15.12.2016, in the abovesaid I.A., stating that there is no time frame, fixed by the Tribunal, for execution of the sale deed.

17. Learned counsel for the 4th respondent further submitted that the petitioner has filed the copy of the sanction letter, dated 23.12.2015, issued by Karur Vysya Bank, which shows that the said Bank would release only Rs.8,40,00,000/-and the margin amount of Rs.60 Lakhs, should be brought in, by the petitioner. He further submitted that bringing margin money is a condition precedent, for the release of Rs.8,40,00,000/-, by Karur Vysya Bank and on that basis, the petitioner has obtained a favourable orders from the Tribunal.

18. Learned counsel for the 4th respondent further contended that if the petitioner is still interested in the property, they should give an undertaking by Karur Vysya Bank, stating that the sanction, dated 23.12.2015, is still in force and not cancelled. Since respondents' Banks

have stated in their counter for I.A.No.247 of 2016 in S.A.No.54 of 2015 that they were willing to accept balance sale consideration of Rs.9 Crores, with a rider that interest @ 18% per annum should be paid from 18.05.2015, till the date of actual payment, according to him, the petitioner can be allowed to make payment, on the above conditions.

19. Learned counsel for the 4th respondent further submitted that as there is no time frame fixed by the Tribunal, this Court may fix a time, preferably within 60 days, within which, the petitioner should be directed to make the payment, along with interest from 18.05.2015 till the date of actual payment and if the payment is not forthcoming within the time frame that may be fixed by this Court, the 4th respondent, as assignee and successor of interest of respondents 1 & 2, be given liberty to bring the property for sale in anyone or more methods, as permitted under the SARF AESI Act, 2002.

20. Learned counsel for the 4th respondent further submitted that if the petitioner fails to pay balance sale consideration of Rs.9 Crores, together with interest @ 18% per annum, from 18.05.2015, till

the date of actual payment, within the time that may be specified by this Court, the respondents' banks would forfeit the amount of Rs.5 Crores, deposited by them with the 2nd respondent-Bank, in the month of March' 2015, the deposit made, as per the directions of DRT, Coimbatore in I.A.No.447 of 2015.

21. The petitioner has filed a rejoinder, dated 18th September, 2017 and reiterating the averments made therein, learned counsel for the petitioner submitted that on account of the borrower filing W.P.No.14984 of 2015, this Court permitting the borrower to file a Review Petition before the Tribunal and thus, the process was delayed.

22. He further submitted that a sum of Rs.5 Crores, has been paid, as early as in the year 2015 and it is lying with the 2nd respondent-Bank, due to which, the petitioner is losing interest. A sum of Rs.80 Lakhs, paid to the borrower in the year 2015, is also retained by them. The petitioner is not engaged in any commercial activity and there had been a delay in getting the sale deed executed in their favour, on receipt of the balance sale consideration of Rs.9 Crores.

23. M/s.Velan Hotels Ltd., Tirupur, 3rd respondent herein, has filed a counter. Mr.Ravi Raja, learned counsel for the 3rd respondent submitted that as there is a failure to comply with the order of the Tribunal, the relief sought for, in this writ petition, is not maintainable. Without prejudice to the same, he submitted that the petitioner may have to accept the terms, which the 4th respondent is insisting upon, to have the sale deed executed, in its favour or it may have to face the forfeiture clause, which is in built, in all sale agreement, whether by private negotiation or through court auction.

24. Learned counsel for the 3rd respondent further submitted that in the subject property, students of SAARC Nations are undergoing training programmes, conducted by an organisation, with whom, the 3rd respondent has entered into an agreement and the said agreement is valid, till 31.03.2018.

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

25. When the matter came up for hearing on 12.09.2017, Mr.Ravi Raja, learned counsel appearing for the 3rd respondent submitted that name of the 4th respondent has been changed and therefore, suitable substitution is required and therefore, we directed Mr.Varun Srinivasan, learned counsel appearing for the 4th respondent to ascertain the same and if so, file a memo to that effect. On 21.09.2017, a memo has been filed to the effect that the name of the 4th respondent Company has been changed from Raytheon Asset Reconstruction Pvt. Ltd., to Rare Asset Reconstruction Pvt. Ltd. A certificate to the said effect has also been produced, along with the memo. Accepting the same, on 21.09.2017, we directed the Registry to carry out necessary amendments in the cause title and proceeded to hear the matter, on merits.

26. Private treaty is admitted. Earlier on 18.03.2015, in I.A.No.447 of 2015 in S.A.No.54 of 2015, filed by the 3rd respondent, the Debts Recovery Tribunal, Coimbatore, has passed the following orders,

> "IA 447/15: In view of the observations made supra, this petition is allowed. It is open to the parties to enter into a private treaty for sale and appropriate the sale proceeds towards the loan account in question. However, in view of

the permission being granted on the basis of the Affidavit and consent given by the parties to enter into a private treaty and sell the 2nd Item of the property, the advance amount of Rs.5 crores already deposited before M/s. Andhra Bank shall be withdrawn and be appropriated towards the loan account on or before 31.3.2015 as a token of proving the bona fides of the parties herein. The parties are directed to complete the sale by private treaty on or before 18.5.2015. However, in the event of failure to deposit the amount as directed above, on or before 31.3.2015, the permission granted today, shall stand cancelled automatically."

27. Subsequently, when the petitioner has been impleaded, as per the order, dated 05.08.2015, in I.A.No.987 of 2015 in S.A.No.54 of 2015, the petitioner has filed I.A.No.247 of 2016, seeking permission to deposit the balance sale consideration of Rs.9 crores, and prayed for a further direction to the respondents 1 and 2 herein, to receive the same and execute the sale deed, in their favour. Respondents 1 and 2 herein, though denied the averments, without prejudice to the same, have submitted as follows:

"...still if the petitioner/4th respondent is interest in the property, they may be allowed as a last chance to purchase the property with the following conditions,

(a) Rs.9,00,00,000/- (Rupees Nine Crores Only) should be paid within a week of the order of this Hon'ble Tribunal.

(b) As the petitioner/4th respondent dragged the matter for nearly a year, they should be directed to pay interest on this Rs.9,00,00,000/- (Rupees Nine Crores Only) @ 18% p.a., from 18.05.2015 till date of payment.

(c) If the amount with interest is not paid within the stipulated period, the Respondent will proceed under SARFAESI Act, 2002."

28. After considering the rival submissions in I.A.No.247 of 2016 in S.A.No.54 of 2015, dated 15.04.2016, the Debts Recovery Tribunal, Coimbatore, has passed the following orders,

"....The 1st & 2nd Respondent reiterated that they got every right to bring the property for auction sale. However, in para 8 of the counter of R1 & R2, it is stated that if the petitioner / 4th Respondent is interested in the property, they may be allowed to purchase the property as a last chance subject to the conditions that it shall pay Rs.9.00 cores within a week from the date of the order of this

Tribunal and to pay interest @ 18% p.a from 18.05.15 till the date of payment.

The 3rd, 4th & 5th Respondents, in their counters stated that the payment of Rs.5.00 crores was effected in pursuance of the OTS proposal entered into between the parties in a joint meeting which held on 20.01.16, while so, the petitioner had filed the instant petition to deposit the balance sale consideration of Rs.9 cores with a direction to 1st and 2nd Respondent to receive the amount and to execute the sale deed in favour of the petitioner. R3 to 5 expressed no objection for such a course without prejudice to their rights to agitate the main contentions that the matter has to necessarily be adjudicated before a civil forum and not before this tribunal.

Therefore, taking to consideration of the indulgence shown by R1 to 5, this Tribunal is in view that the permission sought by this petition can be granted in favour of the petitioner. But only one question remains to be decided in this petition is that whether the 1st & 2nd Respondents are entitled to claim interest from 6.11.15 as prayed by them. This Tribunal in its IA 1459/15 had granted time to the petitioner to remit the balance sale consideration of Rs.9 crores on or before 6.11.15. The case of the petitioner is that the 1st and 2nd Respondents initially had agreed to sanction a loan for Rs.9.00 cores but later on, it had turned down the request made by the petitioner at later point of time and it was at the instance of the 1st and 2nd respondents, the delay was caused and no interest could be charged from 6.11.15. The material placed on record suggest that the petitioner had approached this tribunal based upon the assurance given by the 1st and 2nd Respondent to sanction the loan, but later it had been negated by them. Thereafter, the petitioner had approached M/s.Karur Vysya Bank for sanction of the loan Rs.9 cores which accordingly was sanctioned on 23.12.15 and the present petition has been filed on 12.2.16. Therefore, the petitioner had approached this Tribunal with this present petition after the lapse of 51 days. Hence, the 1st and 2nd Respondents are entitled to charge 9% simple interest from 24.12.15 to 12.2.16."

29. Subsequently, when the petitioner could not make the payment within the prescribed time, ie., 06.11.2015, contending inter that Andhra Bank, Coimbatore, 2nd respondent herein, had declined to extend the financial assistance and that the petitioner was constrained to request M/s.Karur Vysa Bank, which accorded assistance, by way of sanction letter, dated 23.12.2015 and further contending that there was an attempt to review the orders made in I.A.No.247 of 2016 and due to

the above, there was delay in making the balance payment, the petitioner has filed the present writ petition for a direction to the respondents' Banks to execute the sale deed, in their favour, by accepting the balance sale consideration of Rs.9 Crores, with appropriate interest.

30. Perusal of the supporting affidavit shows that the petitioner has made a specific averments, as to why, they could not remit the balance amount, in time. Here again, respondents 1 and 2 - Banks have maintained the same position that permission be granted to the petitioner to purchase the property, as per the same conditions, extracted supra.

31. Having regard to the averments made in the counter affidavit of respondents 1 and 2, filed before the Tribunal and the submission of the learned counsel appearing for the 4th respondent, assignee of respondents' Banks that the 4th respondent has no objection for the writ petitioner to purchase the subject property and so also, the submission of M/s.Velan Hotels Pvt. Ltd., 3rd respondent herein, for

whom, the petitioner had helped, when the property was brought for public auction, by making an offer to purchase the same, for the value of Rs.14 Crores and in that process, the petitioner has also deposited a sum of Rs.9 Crores, with the 2nd respondent-Bank, the Tribunal has passed orders in I.A.No.1201 of 2016, dated 15.12.2016.

32. From the pleadings and submissions of all the parties, it could be deduced that there is no objection for the petitioner to purchase the property, but the question remains to be considered, is what should be the rate of interest, payable on the remaining Rs.9 Crores, of sale consideration? from which date, interest should be fastened? the outer time limit for payment of balance sale consideration, with appropriate interest and lastly, if such directions are issued, permitting purchase by the petitioner, and if there is a failure to make payment, as per the direction of this Court, what further orders, to be issued?

33. On the facts and circumstances of the case, privity of contract is not disputed. Remittance of Rs.5 Crores, in the year 2015, is

also not disputed. Taking note of the fact that M/s.Karur Vysa Bank, had come forward to sanction a sum of Rs.9 Crores on 23.12.2015 and taking note of the date on which, I.A.No.247 of 2016, was filed, ie., on 12.02.2016, the Debts Recovery Tribunal, Coimbatore, vide order, dated 15.04.2016, held that respondents 1 and 2 therein are entitled to charge only 9% simple interest, from 24.12.2015 to 12.02.2016.

34. Order made in I.A.No.247 of 2016 in S.A.No.54 of 2015, dated 15.04.2016, declining to accept the contentions of respondents 1 and 2, to pay interest, at the rate of 18% per annum, till the date of balance payment, has not been challenged. Direction to pay 9% simple interest, on the balance amount of Rs.9 Crores, has not been challenged, either by the respondents 1 and 2 - Banks or the 4th respondent herein. Even though the Banks in I.A.No.1201 of 2016, have insisted for 18% interest, on the balance amount of Rs.9 Crores, there is no order to this effect. But the DRT, Coimbatore, in I.A.No.1201 of 2016, dated 15.12.2016, has categorically stated that there is no time frame fixed for sale. Thus, the Tribunal has not issued any specific direction, in this regard. When respondents 1, 2 and 4 have not challenged the rate of

interest, by filing any appeal, it is not open to them to seek for higher rate of interest, in the writ petition, by the petitioner. That would amount to upsetting an order, without any appeal.

35. Perusal of the order made in I.A.No.1201 of 2016 in S.A.No.54 of 2015, dated 15.12.2016, shows that the Debts Recovery Tribunal, Coimbatore has also passed orders in Review Application No.1 of 2016 in I.A.No.247 of 2016 and that the same is extracted hereunder:

> "Review Petition. This application has been filed by the Petitioner/R-3 in I.A. No.247/16/ Applicants in SA, to review the order dated 15.4.2016 passed in I.A. No.247/16 to the extent that the sum of Rs.9 crores to be paid by R-3 (Stanes High School Association) may be treated as part of Upfront amount towards the OTS offer of the petitioner dated 20.01.2016.
>
> The Ld. Counsel for the Applicant submitted that the observations made by the Hon'ble High Court in W.P. No.14984/2016, warranted review of the order passed by this Tribunal in I.A. No.247/2016 dated 15.4.2016. This Tribunal had directed R-1 to R-5 to work out their OTS proposal on their own and observed that it was up to them to exercise their prerogative to enter into an OTS proposal to be submitted by R-3 to R-5 in due course and this Tribunal could

not direct R-1 and R-2 to treat the payment of the balance sale consideration as an Upfront amount for the OTS proposal to be filed by R3 to R5. It is reiterated that it is still up to the parties to work out the OTS on their own. This Tribunal, an adjudicating authority, cannot sit over the consensus of the parties and thrust a contract upon them. Hence, this Review Petition is dismissed. No costs."

36. One of the contentions made before this Court is that students of SAARC Nations are being offered training in the subject property, based on an agreement entered into between the 3rd respondent and an organisation, valid upto 31.03.2018 and that therefore, in the event of this Court, granting any directions, permitting the petitioner to make the balance amount, with suitable interest and further directions, then handing over possession immediately, is not possible.

37. As observed earlier, the rate of interest has not been challenged by respondents 1 and 2 – Banks, who have assigned the loan account, in favour of the 4th respondent. The petitioner has paid a huge amount in the year 2015. Material on record discloses that they have

made necessary efforts to mobilise and also got an order of financial assistance from M/s.Karur Vysa Bank, on 23.12.2015.

38. Though respondents 1 and 2 have raised a doubt, as to whether, the informal sanction, dated 23.12.2015, issued by Karur Vysa Bank, is still in force or cancelled and insisted that the petitioner should obtain an undertaking by the said Bank, we are of the view that it is for the petitioner, to make necessary arrangements.

39. As rate of interest has not been challenged, the same remains unaltered. Having regard to the fact that the 3rd respondent is in possession of the subject property and loss of interest, which the petitioner claims from 2015, in the interest of justice, we deem it fit to fasten interest on the writ petitioner, calculated for a period of 10 months, on the balance sale consideration of Rs.9 Crores, at the rate of 9% Simple Interest, per annum, taking note of the fact that the Tribunal has passed orders, in December' 2016, ie., on 15.12.2016.

40. During the course of hearing of this writ petition, Mr.Varun Srinivasan, learned counsel appearing for the 4th respondent as well as Mr.Ravi Raja, learned counsel appearing for the 3rd respondent, have also consented to the above rate of interest, to be calculated, for a period of 10 months also. Mr.R.Balakumar, learned counsel for the 1st respondent-Bank, in principle, also agreed for the said consensus.

41. An affidavit, dated 22.09.2017, has been filed by the 3rd respondent. Learned counsel for the 4th respondent has objections to certain paragraphs. We do not want to delve into the same, and it is for the parties to work out, if any dispute.

42. Notwithstanding the same, in the light of the consensus and discussion, a Mandamus is issued with the following directions,

(i) directing the 4th respondent, assignee of respondents 1 and 2, to receive Rs.9 Crores, from the writ petitioner, with interest at the rate of 9% per annum, simple interest, on the said sum, calculated for a period of 10 months, to be paid within 60 days from the date of receipt of a copy of this order.

(ii) On payment of the said sum, on behalf of respondents 1 and 2, the 4th respondent shall executive the sale deed, in favour of the writ petitioner, within a period of 15 days thereafter.

(iii) The 3rd respondent-borrower is directed to render necessary assistance, for the execution of the sale deed, in favour of the writ petitioner.

(iv) Having regard to the submission that possession may have to be retained, on the execution of the sale deed by the 4th respondent, assignee of the respondents 1 and 2, the 3rd respondent, is directed to handover vacant possession of the subject property, to the writ petitioner, in the 1st week of February' 2018.

(v) In the event of failure of the writ petitioner, to make payment of the balance sale consideration of Rs.9 Crores, with interest at the rate of 9% per annum, simple interest, on the above, calculated for a period of 10 months, then the petitioner is fastened with interest, at the rate of 12% per annum, simple interest, after 60 days, as ordered above.

S. MANIKUMAR, J.
AND
V. BHAVANI SUBBAROYAN, J.

skm

43. With the above directions, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are also closed.

(S.M.K., J.) (V.B.S., J.)
22.09.2017

skm

To

The Debts Recovery Tribunal,
Coimbatore.

W.P.No.11185 of 2017