

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/8/2017

C O R A M

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

Writ Petition No.21611 of 2017

V. Alex Mansingh

...

Petitioner

Vs

1. The Authorised officer
State Bank of India
Retail Asset Central Processing Centre
No.16 Whannels Road
Egmore
Chennai 600 008.

2. Ganesh Kasilingam

...

Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of a Writ of Certiorari, calling for the records
relating to the impugned e-auction notice dated 24/7/2017 fixing e-
auction on 11/8/2017 issued by the first respondent Bank and to quash
the same as illegal as the auction sale itself is being conducted in gross
violation of law i.e., the order of stay granted by the learned DRT - I,
dated 19/6/2017 and 4/7/2017.

For Petitioner ... Mr.R.Manickavel

For respondent ... Mr.N.Chandraraj

ORDER

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

On 10th August 2017, we passed the following order.

“Mr.Ganesh, borrower, has filed S.A.No.44 of 2017, under Section 17 (1) of the SARFAESI Act, 2002, to set aside, the e-auction notice, dated 2/6/2017, in respect of the property, owned by the borrower. In I.A.No.447 of 2017, he has sought for stay of all further proceedings, pursuant to the sale notice, dated 2/6/2017.

2. Material on record further discloses that on 19/6/2017, Debts Recovery Tribunal - I, Chennai, after hearing the learned counsel for the borrower, as well as the Bank, has granted interim stay of all further proceedings, pursuant to the impugned sale notice, dated 2/6/2017, subject to the conditions that

(i). the petitioner therein shall pay 10% of Rs.16,95,555/- being the

amount demanded in the impugned sale notice, before 11.00 a.m., on 20/6/2017, by depositing with the respondent Bank;

(ii). The petitioner shall deposit Rs.50,000/- on or before 30/6/2017, with the respondent Bank,

(iii). Remaining amount shall be deposited by way of four equal monthly instalments on or before 15th of every month, commencing from the month of July 2017 and

(iv). In case of default of any of the above conditions, the interim stay shall stand vacated.

3. Mr.R.Manickavel, learned counsel for the writ petitioner submitted that condition Nos.1 and 2 have been complied with. For compliance of the third condition, 15th of every month is the last date, which according to the learned counsel, falls on 15/8/2017.

4. Material on record discloses that when S.A.No.44 of 2017 was listed before the Debts Recovery Tribunal - I, Chennai, there was no representation for the Bank. On the representation of the learned counsel for the applicant therein

that conditional orders have been complied with, Debts Recovery Tribunal - I, Chennai, has posted the matter, as last chance, for filing counter on 11/8/2017. Interim orders already granted have been extended, until further orders.

5. When the matter stood thus, the Authorised Officer, State Bank of India, Retail Asset Central Processing Centre/first respondent, has issued a fresh sale notice, dated 24/7/2017, fixing e-auction on 11/8/2017, for bringing the mortgaged property for auction.

6. Contending inter alia that when the borrower has already complied with the conditions in I.A.No.447 of 2017, in S.A.No.44 of 2017 and that when interim orders passed in O.A., have been directed to be extended, until further orders, the Authorised Officer, State Bank of India, Retail Asset Central Processing Centre/first respondent, has no authority, to bring the property for auction, two applications, in I.A.SR.No.5081 of 2017, for advancing the hearing of S.A.No.44 of 2017 from

11/8/2017 and I.A.SR.No.5082 of 2017, to stay all further proceedings, pursuant to the sale notice, dated 26/7/2017, though stated to have been filed, no orders have been passed.

7. Mr.R.Manickavel, learned counsel for the petitioner submitted that the above two I.A.SRs have been directed to be posted, on 11/8/2017, along with S.A.No.44 of 2017.

8. Contending inter alia that the writ petitioner is residing in the mortgaged property and that he will be put to serious loss, the learned counsel for the petitioner has prayed for interim orders of stay, on the grounds that he has no other alternative and efficacious remedy.

9. Admittedly, when the Bank has issued auction notice, on 2/6/2017, the borrower has questioned the same by filing S.A.No.44 of 2017. In I.A.No.447 of 2017, dated 19/6/2017, stay has been granted on conditions, which the applicant therein, has complied with.

10. When the matter came up for hearing, on 4/7/2017, representation

has been made that conditional orders have been complied with and Debts Recovery Tribunal - I, Chennai, by posting S.A.No.44 of 2017 on 11/8/2017, has extended the interim orders already granted, until further orders. Stay is not restricted. When that be the case, Bank appears to have issued an other sale notice, dated 24/7/2017, for bringing the property for auction, on 11/8/2017. As per the decisions of the Hon'ble Apex Court as well as this Court, ordinarily, this Court will not entertain the writ petition as against a sale notice. But in the case on hand, though, before the Debts Recovery Tribunal - I, Chennai, applicant therein has sought to advance the hearing, and to get stay of the notice, dated 24/7/2017, the same has been posted along with the main S.A.No.44 of 2017. Property is sought to be sold by e-auction, between 12.00 p.m., and 1.00 p.m. Apprehension of the writ petitioner is well founded.

11. While ordering notice to the first respondent, through Court and privately, returnable by 24/8/2017, we grant interim stay of all further

**proceedings of e-auction notice, dated
24/7/2017.**

12. Post on 24/8/2017.”

2. On this day, when the matter came up for further hearing, Mr.R.Manickavel, learned counsel for the petitioner submitted that petitions in I.A.SR.Nos.5081 and 5082 of 2017, filed for advancing the hearing of S.A.No.44 of 2017 and to stay all further proceedings, pursuant to the sale notice, dated 24/7/2017, fixing e-auction, on 11/8/2017, were taken up on 11/8/2017 and observing that the prayer sought for in both the petitions have become infructuous, interim applications were dismissed.

3. On 10th August 2017, after considering the submissions of the learned counsel for the writ petitioner that I.A.SR.Nos.5081 and 5082 of 2017, though filed for the above said prayers, were not taken up and orders passed and further taking note of the fact that e-auction was fixed on 11/8/2017, and on the contention that there is no other alternative and efficacious remedy except to approach this Court, under Article 226 of the Constitution of India, we granted interim stay of e-auction fixed on 11/8/2017. Now that the learned counsel for the

petitioner submitted that both I.A.SR.Nos.5081 and 5082 of 2017 have been taken up and orders passed and taking note of the fact that there was no auction on 11/8/2017, no useful purpose would be served in retaining the instant writ petition.

4. Besides, Mr.R.Manickavel, learned counsel for the petitioner/tenant submitted that the matter is likely to be settled. In any event, as per Section 17 (4 - A) of the SARFAESI Act, 2002, provides for a remedy to the tenant, as well.

5. In the light of the above observation and taking note of the subsequent events, prayer sought for has become infructuous.

6. In the result, writ petition is dismissed as infructuous. No costs. Consequently, the connected Miscellaneous Petitions are closed.

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

24th August 2017

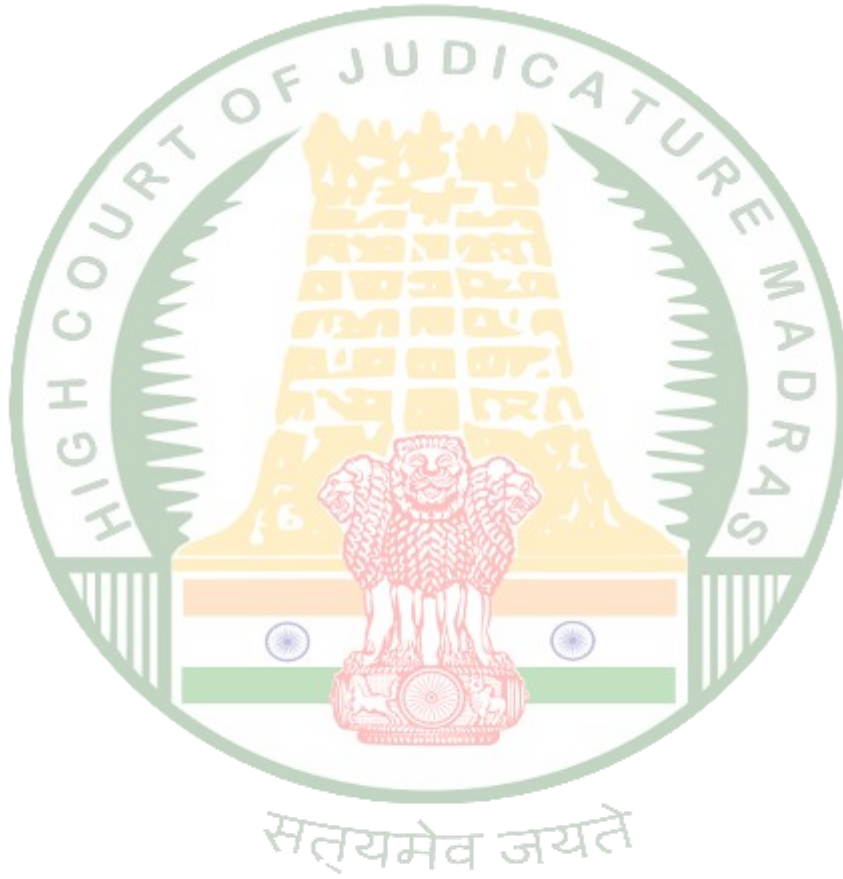
mvs.

Index : Yes/No

Internet : Yes/No

To

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No.16 Whannels Road
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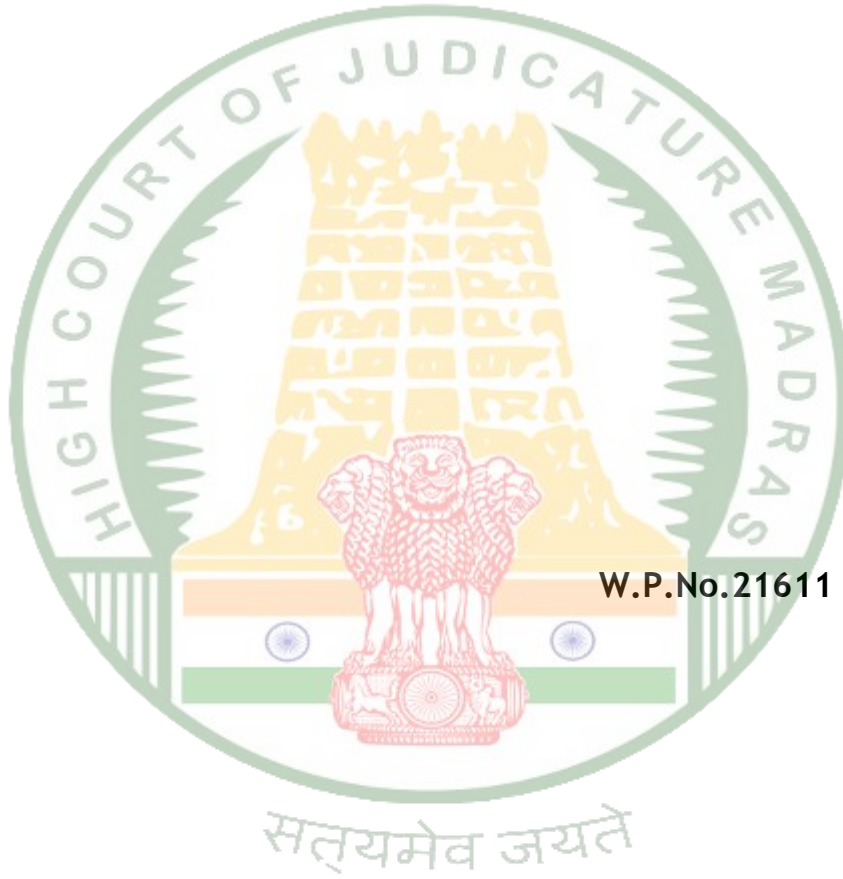
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