IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2017

CORAM:

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

W.P.No.13912 of 2017
and
W.M.P.No.15097 of 2017

M/s.Jai Sakthi Cotton Mills Pvt. Ltd.,
Rep. by its Director,
C.Sivalingam ... Petitioner

Vs.

1.The District Magistrate and District Collector,
Tiruppur District,
Office of the Collector,
Tiruppur.

2.The Sub-Collector,
P.N.Road, Tiruppur.

3.The Chief Manager / The Authorised Officer,
Bank of India, SME Branch,
Tiruppur.

4.The Chief Manager / Authorised Officer,
Assets Recovery Department,
STAR House No.324, Oppanakara Street,
Coimbatore - 1.

5.The Superintendent of Police,
Tiruppur District,
Tiruppur. ... 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 of the first respondent in Ref.No.7227/2017C3 dated 09.05.2017 and to quash the same.

For Petitioner : Mr.V.C.Selvasekaran

For Respondents : Mr.P.V.Selvakumar
(for R1, R2 & R5)
Additional Government Pleader
Mrs.I.Paulin Jayarani
(for R3 & R4)
for Mr.F.B.Benjamin George

ORDER

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

Director of M/s.Jai Sakthi Cotton Mills Private Limited, Tirupur District, borrower has filed the instant writ petition for a certiorari to quash the order of the District Magistrate and District Collector, Tiruppur District dated 09.05.2017, on the grounds that the borrower was not given notice and that the upset reserve price fixed was less than the market price of the property.

2. Record of proceedings shows that in WMP No.15097 of 2017 in W.P.No.13912 of 2017, the petitioner has sought for stay of all further proceedings of the impugned order dated 09.05.2017 and a Hon'ble Division Bench of this Court on 28.06.2017, while directing the matter to be posted on 19.07.2017 for filing counter, granted an order of status quo. Though, counter affidavit has not been filed, going through the material on record, we find that on 31.03.2017, the Asset Recovery Department, Bank of India, has issued a notice of sale to the borrower and to the guarantors, under Rules 8 & 9 of the Security Interest (Enforcement) Rules, 2002 stating that as on 30.03.2017, a sum of Rs.368.06 lakhs plus interest at the rate of 14.60% per annum, was due. There is no material to indicate that the sale notice dated 31.03.2017 has been challenged.

3. Seeking assistance under Section 14 of the SARFAESI Act, 2002, the authorised officer M/s.Bank of India, Tiruppur has filed an application before the District Magistrate and District Collector, Tiruppur District. Going through the averments, the District Magistrate and District Collector, Tiruppur District, vide order dated 09.05.2017 has authorised the Sub Collector, Tiruppur to take possession of the schedule mentioned properties to the application filed under Section 14 of the SARFAESI Act, 2002 and handover the assets to the authorised officer of Bank of India, SME Branch, Tiruppur, under proper acknowledgment in accordance with law.

4. On this day, when the instant writ petition, came up for further hearing, Mr.V.C.Selvasekaran, learned counsel for the petitioner submitted that after the filing of the writ petition, a sum of Rs.14 Lakhs has been filed. Submission is placed on record.

5. Outstanding amount as per the sale notice dated 31.03.2017 is Rs.368.06 Lakhs with interest at the rate of 14.60% per annum. As per Section 17(1) of the SARFAESI Act, 2002.

> "17. Right to appeal: (1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the

secured creditor or his authorised officer under this Chapter, may make an application alongwith such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:

PROVIDED that different fees may be prescribed for making the application by the borrower and the person other than the borrower."

6. Borrower has got a right of remedy by filing SARFAESI Application under Section 17(1) of the Act against any of the measures taken by the secured creditor. Seeking assistance, under Section 14 of the SARFAESI Act, to get possession of the secured asset is one of the measures available to the secured creditor and therefore, if any order is passed, by the District Magistrate and District Collector, Tiruppur District, granting assistance, the same can be assailed under Section 17 (1) of the SARFAESI Act, 2002. After considering a catena of decisions, a Hon'ble Division Bench of this Court in M/s. Deccan Chronicle Holdings Limited Vs. Canara Bank, reported in 2015 (3) LW 401, held as follows:

"11. On careful perusal of the aforestated judicial pronouncements rendered by the Supreme Court, it is manifest that an appeal under Section 17 of the SARFAESI Act is maintainable by any person, including borrower against any of the measure referred to in sub-section (4) of Section 13 of the SARFAESI Act. It was clearly held that passing of the order under Section 14 of the SARFAESI Act is in continuation of the measure taken under Section 13(4). Thus, an appeal against the order for obtaining possession under Section 14 of the SARFAESI Act is maintainable before the Tribunal.

12. In Standard Chartered Bank (supra), the Supreme Court, while considering as to whether it is mandatory for the secured creditor to make an attempt to obtain possession on his own before approaching the Magistrate under Section 14, held that it is not mandatory. In that context, it was held that even after possession of the secured asset is handed over to the secured creditor under the order passed by the CMM or District Magistrate, as the case may be, in exercise of power under Section 14 of the SARFAESI Act, an appeal under Section 17 is preferable. Under such circumstance, it cannot be presumed that if the possession has not been handed over even after passing of the order under Section 14, an appeal under Section 17 is not maintainable. If the aforestated contention of the respondent Bank to the extent that without handing over the possession of the secured asset pursuant to the order passed under Section 14 of the SARFAESI Act, an appeal under Section 17 is not

maintainable, is accepted, the statutory right conferred on the borrower to prefer an appeal under Section 17 of the SARFAESI Act against the measure taken under Section 13(4) of the SARFAESI Act would become redundant.

13. Section 13(4) stipulates taking over symbolic possession of the secured assets. Section 14 contemplates taking physical possession of the secured assets with the assistance of the order of the CMM or District Magistrate, as the case may be. Both actions come within the definition of measure / action under sub-section (4) of Section 13, and as such, the appeal under Section 17 SARFAESI Act against the order passed under Section 14 of the SARFAESI Act is maintainable. The handing over of possession by the borrower or taking over possession of the secured asset by the secured creditor pursuant to the order passed under Section 14 is not mandatory or precondition for the purpose of preferring an appeal under Section 17 of the SARFAESI Act.

14. The ratio deducible from the case of Harshad Govardhan Sondagar (supra) is that no remedy of appeal under Section 17 of the SARFAESI Act is available to the lessee / tenant, who is in lawful possession, to the Debts Recovery Tribunal against the decision of the CMM or the District Magistrate for the reason that the Tribunal is not competent and has no power to restore the possession of the said property to any other person, including lessees, except borrower. However, an appeal at the instance of the borrower or guarantor against the order passed under Section 14 of the SARFAESI Act by the CMM or District Magistrate is maintainable under Section 17 of the SARFAESI Act. In the instant case, an appeal under Section 17 of the SARFAESI Act against the order passed under Section 14 is maintainable. The learned Presiding Officer, Debts Recovery Tribunal erred in coming to the conclusion that no appeal against the order passed by the CMM under Section 14 of the SARFAESI Act is maintainable. "

7. Following the decision stated supra and in the light of the discussion, we are of the view that when an effective and alternate remedy is available, instant writ petition does not deserve to be entertained. Hence, Writ petition is dismissed. No costs. Consequently, the order of status quo granted on 28.06.2017 is vacated and WMP No.15097 of 2017 is dismissed.

8. Registry is directed to return the original order dated 09.05.2017 to the writ petitioner after getting an attested copy from the learned counsel for the petitioner.

Writ petition has been filed on 01.06.2017. Time consumed in litigating may be explained to the tribunal. if any application under Section 17(1) is filed. Registry of the tribunal is directed to consider the same and process the application.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The District Magistrate and District Collector,
Tiruppur District,
Office of the Collector,
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2.The Sub-Collector,
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3.The Chief Manager / The Authorised Officer,
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Assets Recovery Department,
STAR House No.324, Oppanakara Street,
Coimbatore - 1.

5.The Superintendent of Police,
Tiruppur District,
Tiruppur.

+2cc's to Mr.V.C.Selvasekaran, Advocate, S.R.No.50468
+1cc to Mr.F.B.Benjamin George, Advocate, S.R.No.50492
+1cc to the Government Pleader, S.R.No.52001

W.P.No.13912 of 2017
and
W.M.P.No.15097 of 2017

VGI(CO)
CA(07/08/2017)