IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 2/2/2017

C O R A M

The Honourable Mr.Justice S.Manikumar

and

The Honourable Mr.Justice M.Govindaraj

Writ Petition No.2474 of 2017

M/s.AMD Housing Developers
rep. By its Managing Partner
Mr.H.Ansar Ali
No.89 Nageswaran South Street
Kumbakonam 612 001. ... Petitioner

Vs

1. The Authorised Officer
Indian Overseas Bank
Kumbakonam Main Branch (0044)
Kumbakonam
Tanjore District.

2. The Chief Manager
Indian Overseas bank
Kumbakonam Main Branch (0044)
Kumbakonam
Tanjore District.

3. M/s. Matex Net Provider Pvt Ltd
rep. By Mr.K.Sampath Kumar
No.4 Venkadaswamy Road East
R.S.Puram
Coimbatore.

4. The Presiding Officer
Debt Recovery Tribunal
No.3 Spencers Towers
5th Floor
Anna Salai
Chennai 600 002. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the fourth respondent to dispose of I.A.No.1662 of 2016 in S.A.No.578 of 2016, pending on the file of the fourth respondent as an early date by advancing the first hearing date namely 21/2/2017 or before the proposed date of public auction scheduled to be held on 17th February 2017 or to be held on any other subsequent date.

For petitioner ... Mr.R.Krishnamurthy
Senior Counsel
for Mr.B.S.Mohamed Rafi

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O R D E R

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

Instant writ petition has been filed, to direct the fourth respondent, to dispose of I.A.No.1662 of 2016 in S.A.No.578 of 2016, pending on the file of the fourth respondent, at an early date by advancing the first hearing date, namely, 21/2/2017 or before the proposed date of public auction scheduled to be held on 17th February 2017 or to be held on any other subsequent date.

2. In as much as the petitioner has sought for a direction for an early hearing and disposal of I.A.No.1662 of 2016 in S.A.No.578 of 2016, pending on the file of the Presiding Officer, Debts Recovery Tribunal No.3, Chennai, for the reasons stated in the latter paragraphs of this judgment, we are of the view that notice to the respondents 1 to 3 is not necessary. Moreso, depending upon the facts and circumstances of this case, it is the prerogative of the Courts, to advance the hearing of interim application, if urgency is pleaded and substantiated. For the reasons stated supra, waiving notice to the respondents 1 to 3, we are inclined to proceed further.

3. Material on record discloses that the borrower has defaulted in payment of loan availed and therefore, Indian Overseas Bank, Kumbakonam branch, Kumbakonam, Thanjavur District, has initiated proceedings, under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, by issuing a notice, dated 24th August 2016.

4. Being aggrieved the same, the borrower has filed SARFAESI Application under Section 17 (1) of the Act and that the same is stated to have been numbered in the first week of November 2016, as S.A.No.578 of 2016. Along with S.A.No.578 of 2016, the borrower has filed two applications viz., I.A.Nos.1661 and 1662 of 2016, for advance hearing and interim stay, respectively.

5. However, the Tribunal has posted the matter for hearing, on 21/2/2017. Pending disposal of the applications, the Authorised Officer, Indian Overseas Bank, Kumbakonam main

branch, Kumbakonam, Thanjavur District/first respondent has issued notice, under Sections 8 (6) and 9 (1) of the Security Interest (Enforcement) Rules, 2002 and notice, dated 11/1/2017, was issued, for sale of immovable secured assets, fixing the date of auction on 17/2/2017.

6. Referring to Section 17 (5) of the SARFAESI Act, 2002, which states that, any application made under sub-Section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days, from the date of such application, Mr.R.Krishnamurthy, learned Senior Counsel appearing for the petitioner submitted that though SARFAESI Application No.578 of 2016 has been filed in October' 2016 and numbered in the first week of November' 2016, the same has not been disposed of, within the above said specified time, and that therefore, there is a failure on the part of the Tribunal, in discharging the statutory obligations.

7. Learned Senior Counsel, further submitted that when the borrower has filed I.A.No.1661 of 2016, to advance the hearing and I.A.No.1662 of 2016, for interim stay, the Tribunal has not taken up even the advance hearing petition.

8. According to him, if the stay petition is not taken up, prior to the date scheduled, for public auction i.e., on 17/2/2017, the petitioner would be put to undue hardship and irreparable loss. In the above said circumstances, he prayed for an interim injunction, restraining the respondents 1 to 3 from conducting e-auction, pursuant to the notice, dated 11/1/2017, issued by the first respondent.

9. Mr.R.Krishnamurthy, learned Senior Counsel submitted that even if advance hearing petition in I.A.No.1661 of 2016, is taken up for early hearing, the Tribunal may grant adjournment to the respondents, for filing counter affidavit and if such course is adopted by the Tribunal, it would only delay the disposal of I.A.No.1662 of 2016. On the above submission, attention of this Court was also brought to the provisio to Section 17 (5) of the SARFAESI Act, 2002.

10. We have heard Mr.R.Krishnamurthy, learned Senior Counsel for the petitioner and perused the material available on record.

11. Possession notice, dated 24/8/2016, issued under Section 13 (4) of the SARFAESI Act, has been challenged. Admittedly, after nearly two months, SARFAESI Application, under Section 17(1) of the Act, has been filed, on 10/10/2016. Even as per the version of the borrower, there were some defects and after compliance, SARFAESI Application has been numbered, in the first week of November 2016.

12. As per Section 17 (5) of the SARFAESI Act, 2002, "Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

13. Proviso to the said Section states that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-Section (1).

14. As per sub-Section (6) of Section 17 of the said Act, if the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-Section (5) any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

15. As per sub-Section 7 of 17 of the said Act, save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application, in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.

16. Though sub-Section 5 of Section 17 of the Act, prescribes a period for disposal of the application filed under Section 17 (1) of the Act, proviso to said sub-Section makes it clear that the Debts Recovery Tribunal, may, from time to time, extend the said period for reasons to be recorded in writing and that the time shall not exceed four months from the date of making of such application made under sub-Section 1 of Section 17 of the Act.

17. Section 17 (6) of the Act, makes it clear that if application filed under Section 17 (1) is not disposed of, any party to the application can make an application to the Debts Recovery Appellate Tribunal, seeking for a direction to the Debts Recovery Tribunal for expeditious disposal. When action is taken by the secured creditors, any person aggrieved, can file an application under Section 17 (1) of the Act, before the Tribunal. In each SARFAESI Application, there could be an interim application. Needless to state that sufficient opportunity has to be given to the respondents in the interim application/main application, to file their response/counter.

18. Even if the said application has been filed under sub-Section 17 (1) of the Act, as expeditiously as possible, within a period provided thereafter, under Section 17 (5) of the Act, writ petitioner/borrower is not remedy less. Section 17 (6) of the Act provides, remedy therefor.

19. In the light of the statutory provisions, we are not inclined to accept the submission of the learned Senior Counsel for the petitioner that the Tribunal has failed to discharge its statutory duties in terms of Section 17 (5) of the Act.

20. Material on record discloses that I.A.Nos.1661 and 1662 of 2016 in S.A.No.578 of 2016 have been filed for early hearing and for grant of interim stay and the Tribunal has posted the matter, for hearing on 21/2/2017. In the meanwhile, the Authorised Officer of the Indian Overseas Bank has issued a sale notice, dated 11/1/2017, fixing the auction on 17/2/2017. To advance the hearing of I.A.Nos.1661 and 1662 of 2016, instant writ petition has been filed, for the relief stated supra. Pending disposal of the writ petition, borrower has filed W.M.P.No.2466 of 2017 in W.P.No.2474 of 2017, praying for an interim injunction restraining the respondents 1 to 3 from conducting e-auction.

21. Though the contention of the learned Senior Counsel for the petitioner that if interim application Nos.1661 and 1662 of 2016 in S.A.No.578 of 2016 are not taken up before the auction date i.e., 17/2/2016, prejudice would be caused to the borrower/writ petitioner may be acceptable, but at the same time, when the Tribunal is seized off the matter and empowered to decide, as to whether the writ petitioner/borrower is entitled to any interim order, as prayed for I.A.No.1662 of 2010 in S.A.No.578 of 2016, this Court is not inclined to grant any interim order, we are not inclined to usurp the jurisdiction of Tribunal.

22. Material on record discloses that pending disposal of S.A.No.578 of 2016, sale notice dated 11/1/2017 has been issued. It is our view that the writ petitioner/borrower could have taken out an Interim Application, to stay the auction notice, dated 11/1/2017, pending disposal of the SARFAESI Application No.578 of 2016, but the borrower/writ petitioner has chosen to do so.

23. But at the same time, inclined to direct the Debts Recovery Tribunal No.3, Chennai, to take up I.A.No.167 of 2017, filed to advance the hearing of I.A.No.1661 of 2016 and I.A.No.1662 of 2016 in S.A.No.578 of 2016 and the Tribunal is directed to decide the matter on merits, as to whether the borrower/writ petitioner is entitled to any interim order, as sought for in I.A.No.1662 of 2016. It is made clear that the

said exercise has to be done on or before 14/2/2017.

24. With the above observation and directions, this writ petition is disposed of. No costs. Consequently, the connected Miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

mvs.

To

1. The Authorised Officer
Indian Overseas Bank
Kumbakonam Main Branch (0044)
Kumbakonam
Tanjore District.

2. The Chief Manager
Indian Overseas bank
Kumbakonam Main Branch (0044)
Kumbakonam
Tanjore District.

3.The Debts Recovery Tribunal, No.3,Chennai.

+1cc to Mr.HS.Mohamed rafi, Advocate sr.6600

Writ Petition No.2474 of 2017

ss(6/2/2017)