IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2017

C O R A M

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

Writ Petition No.15469 of 2017
W.M.P.No.16758 and 16759 of 2017

G.Vasanthi ... Petitioner

v.

1. M/s.Indian Bank,
Asset Recovery Management Branch-II,
Rep., by its Chief Manager/Authorized Officer,
No.55, Ethiraj Salai, Chennai 600 008.

2. M/s.Aachi Spices & Foods (P) Ltd.,
Represented by its Director,
Mr.A.D.Padmasingh,
No.1174-G, Ross Residency,
15th Street, Belly Area,
Anna Nagar, Chennai-40. ... Respondents

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records of the respondent-Bank, relating to the impugned auction sale notice, dated 27.04.2017, in ref.S.Gunasekaran Group Acs/2016-2017, issued under Rule 6(2) and 8(6) of the Security Interest (Enforcement) Rules, 2002, under the SARFAESI Act, 2002, insofar as relating to 1st item of property, morefully described in the schedule to the writ petition, by fixing the date of auction on 15.05.2017 and set aside the sale confirmed in favour of the 2nd respondent and followed the sale certificate, in pursuance thereof, as illegal, void, arbitrary, fraudulent and without jurisdiction.

For Petitioner : Mr.R.Veeramani

For 1st Respondent : Mr.T.Sundarrajan

For 2nd Respondent : Mr.K.V.Sundararajan

O R D E R
(Order of the Court was made by S. MANIKUMAR, J.)

Writ Petition is filed to quash the impugned auction sale notice, dated 27.04.2017, in ref.S.Gunasekaran Group Acs/2016-2017, issued under Rule 6(2) and 8(6) of the Security Interest (Enforcement) Rules, 2002, under the SARFAESI Act, 2002, insofar as relating to 1st item of property, morefully described in the schedule, fixing the auction on 15.05.2017 and confirmed in favour of the 2nd respondent, and followed with the issuance of sale certificate, in pursuance thereof, as illegal, void, arbitrary, fraudulent and without jurisdiction.

2. The petitioner/guarantor has offered her property as security for the credit facility, availed by her husband, Proprietor of M/s.Veeshun Exim, from Indian Bank, Chennai. There was default. Loan account was classified as NPA, during the 3rd quarter of 2012-13. The Bank has agreed for sale of the mortgaged property, by identifying a purchaser, of the writ petitioner's choice, subject to the condition that the property should not be sold for the value, not less than Rs.13 Crores and the sale consideration should be deposited with the Bank in "no lien" account. Pursuant to the permission granted by the Bank, the writ petitioner/guarantor entered into an agreement of sale with the 2nd respondent, for a sum of Rs.13 Crores. Advance of Rs.1 Crore received from the 2nd respondent therein, was also deposited with the Bank on 16.04.2013.

3. The petitioner has contended that the 1st respondent-Bank choose to frustrate the negotiation, by issuing possession notice, which lead to filing of SARFAESI application, details of which, are not submitted in the typed set of papers. According to the petitioner, though the Bank has valued the property, as Rs.21 Crores and agreed to release the same, for the value of the amount, not less than Rs.13 Crores, allowed the 2nd respondent to participate in the bid and confirmed the auction for Rs.11 Crores, which is less than the agreed amount.

4. The petitioner/guarantor has further submitted that the 1st respondent-Bank has failed to provide 30 days' clear working notice, prior to auction. On the abovesaid grounds, sale notice, dated 24.04.2017, issued under Rules 6(2) and 8(6) of the SARFAESI Rules, 2002, under the SARFAESI Act, 2002, has been challenged, insofar as relating to 1st item of property, described in the schedule to the writ petition.

5. On this day, when the matter came up for hearing, Mr.R.Veeramani, learned counsel appearing for the petitioner submitted that after conformation of sale, sale certificate has

been issued to the auction purchaser. Though he has urged the abovesaid grounds and further contended that the petitioner can seek for indulgence of this Court, under Article 226 of the Constitution of India, for the prayer sought for, we are not inclined to accept the said contention.

6. Violation of the statutory provisions, regarding notice and under-valuation of the property sold, can always be urged before the Tribunal and the petitioner has an effective and alternative remedy. Time and again, the Hon'ble Courts have consistently held that when there is an effective and alternative remedy, provided under the statute, writ should not be entertained. Reference can be made to the few 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: —
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> > "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, at Paragraphs 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) The above judgment has been followed in Saraspathy Sundararaj v. Authorised Officer and Assistant General Manager, State Bank of India, reported in (2010) 5 LW 560.

(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 discussion and decisions, we are not inclined to entertain the instant writ petition. However, sale has been confirmed and sale certificate is stated to have been issued on 02.06.2017. It is open to the writ petitioner to challenge the same, if so advised.

8. For the abovesaid reasons, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To:

The Chief Manager/Authorized Officer
Indian Bank,
Asset Recovery Management Branch-II,
No.55, Ethiraj Salai, Chennai 600 008.

+ 1 cc to M/s.R.Veeramani, Advocate,SR.50430

+ 1 cc to M/s.K.V.Sundarajan, Advocate,SR.51113

+ 1 cc to M/s.T.Sundar rajan, Advocate,SR.50487

W.P.No.15469 of 2017

RJ(CO)
NR 16/08/2017