IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.27109 of 2017

and WMP No.28948 of 2017

M/s.Sri Venkateswara Modern Rice Mill,
Rep. by its Partner Mrs.V.Valli, ... Petitioner

vs.

1. Karnataka Bank Ltd.,
Rep. by its Branch Manager,
Tambaram Branch,
No.11/19, Elumalai Street,
West Tambaram, Chennai - 600 045.

2. Chief Manager / Authorized Officer,
Karnataka Bank Ltd.
Assets Recovery Management Branch,
No.105, III Floor, "Mohan Mansion",
Kasturba Road, Bangaluru 560 001.

3. Mr.T.Dhanasekaran ... 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 of the 2nd respondent herein and to quash the impugned Sale Notice under Sub Rule (6) of Rule (8) of Security Interest (Enforcement) Rules, 2002 dated 23.08.2017 received by the petitioner on 27.09.2017 as without jurisdiction.

For Petitioner : Mr.M.Balasubramanian

ORDER

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

At the outset, learned counsel for the petitioner submitted that he is not disputing the liability due and payable to the bank.

2. Petitioner claims to be the absolute owner of land measuring 90 cents comprised in S.No.192/4A, 192/4B2 and 192/5 situated at Sathanur Village, Vikravandi Panchayat

Union, Villupuram Taluk and District. He has constructed a Modern Rice Mill under the name and style of "Sri Venkateswara Modern Rice Mill" on an extent of 44 cents and remaining 46 cents continued to be agricultural lands. He has borrowed a sum of Rs.22 Lakhs from Lakshmi Vilas Bank. He could not repay the said amount. Mr.T.Dhanasekaran, 3rd respondent, approached the petitioner in the month of August 2013, and cleared the abovesaid loan of Rs.22 Lakhs. Petitioner has contended that a sum of Rs.28 Lakhs towards running capital, has been paid by the 3rd respondent and on 20.08.2013, the 3rd respondent joined, as partner.

3. Contending inter alia that dues were not paid to Karnataka Bank, Chennai, notices under Section 13(2) and 13 (4), respectively of the SARFAESI Act, 2002, were issued to the petitioner and thereafter, a notice dated 23.08.2017, has been issued under Sub Rule (6) of Rule (8) of Security Interest (Enforcement) Rules, 2002, bringing the property for auction on 26.10.2017. Being aggrieved by the same, instant writ petition has been filed for a writ of certiorari, calling for the records of the 2nd respondent herein and to quash the impugned Sale Notice under Sub Rule (6) of Rule (8) of Security Interest (Enforcement) Rules, 2002 dated 23.08.2017 received by the petitioner on 27.09.2017 as without jurisdiction.

4. Supporting the prayer sought for and inviting the attention of this Court to the description of the immovable property in the impugned sale notice dated 23.08.2017, Mr.M.Balasubramanian, learned counsel for the writ petitioner submitted that out of 90 cents, rice mill is constructed in 44 cents and that when the remaining extent of 46 cents, continued as agricultural lands, action of the bank to bring the agricultural property for auction, is in violation of Section 31(i) of the SARFAESI Act, 2002, which states that the provisions of SARFAESI Act, 2002, shall not apply to any security interest created on the agricultural lands.

5. Again inviting the attention of this Court, to the impugned auction notice, learned counsel for the petitioner submitted that reserve price fixed is less, and it is without a valuation report from an approved valuer. He submitted that value of the land itself would be Rs.80 Lakhs and therefore reserve price fixed is less. Learned counsel for the petitioner submitted that when the action of the bank in brining the property for auction, is against the statutory provisions, this Court may issue notice to the respondents.

6. Heard the learned counsel for the petitioner and perused the materials available on record.

7. Description of the properties brought for auction, by impugned auction notice dated 23.08.2017, reads thus.

"All that part and parcel of land measuring 90 cents with Rice Mill building constructed thereon, comprised in S.No.192/4A & 192/4B2(27 cents), 182/4B2 (19 cents) and 192/5 (44 cents) of Sathanur Village, Vikravandi Panchayat Union, Villupuram Taluk and District along with Hypothecated Machineries belonging to Mrs.V.Valli & Mr.T.Dhanasekaran and Bounded on:

EAST by : Vacant Land;
WEST by : Porambokku Land and Road;
NORTH by : Vacant Land;
SOUTH by : Vacant Land.

8. Auction has been fixed on 26.10.2017. Sale notice has been issued on 23.08.2017. Repeatedly, the Hon'ble Supreme Court has held that when there is an efficacious and alternate remedy, under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act or Securitisation And Reconstructions of Financial Assets Act, 2002, as the case may be, writ petition is not maintainable.

9. Question as to whether bank can bring the remaining extent of agricultural property for auction, whether there was any approved valuation report and all other legal issues, can always be raised before the Debts Recovery Tribunal, which the Hon'ble Supreme Court has observed that it is competent and efficacious. Reference can be made to few decisions of the Hon'ble Supreme Court and this Court.

(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:—

"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 (SC), the Hon'ble Apex Court at paragraph Nos.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) In Saraspathy Sundararaj v. Authorised Officer and Assistant General Manager, State Bank of India, reported in (2010) 5 LW 560, the Court held as follows:

"The petitioner has filed this writ petition praying for a Writ of Certiorarified Mandamus calling for the records relating to the possession notice dated 16.09.2004 issued by the respondent under the SARFAESI Act and consequently direct the respondent to effect the settlement in accordance with the SBI OTS-SME 2010 Scheme as contained in its letter dated 18.03.2010 and unconditionally restore physical possession of the six rooms taken physical possession by it at No. 29, Sarojini Street, T. Nagar, Chennai - 17 with such damages.

... When a specific forum has been created which enables the borrower to challenge the action of the financial institution by filing necessary petition under Section 17, the petitioner is not entitled to invoke the writ jurisdiction of this Court. What could not be achieved by the petitioner by filing a petition before the appropriate Forum, which is at present barred by period of limitation, could not be permitted to be achieved by extending the jurisdiction conferred to this Court under Article 226 of The Constitution of India. Above all, since the petitioner has violated the terms and conditions of the loan by transferring the property in favour of her son, this Court is not inclined to entertain the petition...."

iv) Even issuance of sale certificate can be questioned. 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. ....”

10. In the light of the above discussion and decisions, we are not inclined to entertain the writ petition and hence the writ petition is dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

ars

sd/
ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

To

1. The Branch Manager,
Karnataka Bank Ltd.,
Tambaram Branch,
No.11/19, Elumalai Street,
West Tambaram, Chennai - 600 045.

2. Chief Manager / Authorized Officer,
Karnataka Bank Ltd.
Assets Recovery Management Branch,
No.105, III Floor, "Mohan Mansion",
Kasturba Road, Bangaluru 560 001.

+1CC to MR.M.BALASUBRAMANIAN Advocate SR.NO.74466

W.P.No.27109 of 2017
and WMP No.28948 of 2017

RK[CO]
MK:22/11/2017