

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR  
and  
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.27494 of 2017  
and  
WMP Nos.29386 and 29387 of 2017

Mr.K.Sekar

.. Petitioner

Vs.

The Authorised Officer  
Bank of Baroda  
No.15, R.R. Complex  
Polur Road  
Tiruvannamalai - 606 601

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, call for the records relating to E-Auction Sale Notice dated 05.10.2017 issued by the respondent bank through paper publication 5/10/17 pertaining to the said Sale Notice dated 5/10/2017 and quash the same.

For Petitioner : Mr.T.V.Suresh Kumar  
for M/s.Genicon and Associates

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ORDER  
(made by S.MANIKUMAR, J.)

E-Auction Sale Notice dated 05.10.2017 is extracted hereunder:

Bank of Baroda  
Tiruvannamalai Branch  
15, R.R. Complex, Polur Road  
Tiruvannamalai 606 601.

E-AUCTION SALE NOTICE  
Sale of Assets under the Securitisation &  
Reconstruction of Financial Assets & Enforcement of  
Security Interest Act, 2002

Pursuant to the notice issued U/S 13(2) of the above Act, the possession of the below mentioned properties were taken on behalf of the Bank of Baroda, by the Authorised Officer of the Bank.

Whereas the Authorised Officer of the bank has decided to sell the properties described herein below on "AS IS WHERE IS BASIS" and "AS IS WHAT IS BASIS" under the said Act, through public auction for recovery of dues as mentioned below:

Sl.No.1: Borrower: M/s.Thiruvannamalai Pothys, 57A, Car Street, Tiruvannamalai 606 601, Guarantors Mr.K.Sekar S/o Kannu, 166, Gandhi Salai, Vettavalam, Tiruvannamalai 606754; Mr.K.Annamalai S/o.Kannu and Mr.K.Thavamani S/o.Kannu, Both at: Mettu Street, Pothuvai, Gingee Tk, Villupuram - 604 152.

Date of demand notice: 01.07.2014, Possession Taken Date : 14.03.2016, Amount outstanding: Rs.2,29,87,966/- plus interest and charges thereon from 23.08.2017.

DESCRIPTION & FULL PARTICULARS OF THE PROPERTY TO BE  
SOLD

Item 1: Survey No.26/1C2, 26/2B, 26/5B, 33/4A1 and 26/1A and 27/1 of 41,638 sq.ft. of vacant site in Thiruvannamalai District, Tiruvannamalai Rd, Tiruvannamalai Joint Sub-District-II, Tiruvannamalai Taluk in Pallikondapattu Village.

Reserve Price : Rs.56,21,400/- EMD : Rs.5,63,000/-

Item 2: New Survey No.227/248, Old Survey No.227/2B of 5700 sq.ft. of vacant site with 150 sq.ft. roofed house built in Thiruvannamalai District, Tiruvannamalai Road, Vettavalam Sub District, Tiruvannamalai Taluk in Vettavalam Village in Grama Natham.

Reserve Price : Rs.76,95,000/- EMD : Rs.7,70,000/-

Sl.No.2: Borrower : M/s.New Saravana Textiles & Readymade and Guarantor Mr.K.Sekar S/o Kannu Gounder, Both at : 166, Gandhi Salai, Vettavalam, Tiruvannamalai 606754

Date of Demand Notice: 01.07.2014, Possession taken date : 14.03.2016, Amount outstanding : Rs.1,79,98,542/- plus interest and charges thereon from 23.08.2017.

DESCRIPTION & FULL PARTICULARS OF THE PROPERTY TO BE SOLD  
Plot Nos.3 & 9, 4th Ward, 6th Block, Vettavalam Road, Tiruvannamalai comprised in Sy. No.233/9G in the name of Mr.Sekar admeasuring 2305 sq.fts.

Reserve Price : Rs.72,61,000/- EMD: Rs.7,27,000/-

E-Auction Date & Time : 26.10.2017 from 11.00 a.m to 12.00 Noon

Last Date of submission of online bid: 25.10.2017

TERMS & CONDITIONS

.....  
.....

Place: Thiruvannamalai AUTHORISED OFFICER  
Date : 05.10.2017 Bank of Baroda"

2. Though Mr.T.V.Suresh Kumar, learned counsel for the petitioner, assailed the correctness of the E-Auction Notice on the grounds inter alia, that when bank had already obtained an order in O.A. No.379/2015 dated 01.09.2017, on the file of Debts Recovery Tribunal - III, Chennai, and that Recovery Certificate has also been directed to be issued, bank cannot resort to sale or auction of the property mortgaged, we are not inclined to accept the said contention for the reason that bank can resort to any measures provided under Section 13(4) of the SARFAESI Act, 2002, in addition to filing of an application, seeking for recovery of the amount.

3. Further contention of the learned counsel for the petitioner that in respect of the very same subject property, a suit in C.S. No.444/2017 has been filed by M/s.Tiruvannamalai Pothys, represented by its Proprietor, for a judgment and decree for Rs.6,82,49,000/- with future interest thereon at 24% per annum and that bank can seek for payment from the insurance company towards discharge of the debt, also cannot be countenanced for the reason that the lis for payment of compensation is between M/s.Tiruvannamalai Pothys and United India Insurance Co. Ltd., Chennai and bank cannot be directed to take recourse for recovery as submitted by the borrower.

4. It is not for a borrower to suggest as to how the debt has to be recovered. When statute empowers the secured creditor

to take any of the measures towards realisation of debt which includes sale of the property mortgaged, contention of the petitioner, cannot be accepted.

5. Further contention has been made that Sale Notice has not been served in person and therefore, a writ petition can be entertained, this court is not inclined to accept the said contention also for the reason that the above said plea can be urged before the Tribunal.

6. 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, a writ petition is not maintainable. We deem it fit to consider the following 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:

"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:

"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) Following Satyawati Tondon's case in *Saraspathy Sundararaj v. Authorised Officer and Assistant General Manager, State Bank of India*, reported in (2010) 5 LW 560, this court held that before availing remedy under Article 226 of the Constitution of India, a person must exhaust the remedies available under the relevant statute. It was further held that "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.

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. Though sale notice has been issued on 05.10.2016, petitioner has approached this Court at the eleventh hour, when the auction sale is scheduled on 26.10.2017 and in such circumstances though a fervent request is made by the learned counsel to defer the auction, no directions can be issued.

8. In the light of the decisions and discussion, we are of the view that the instant writ petition, is not maintainable and accordingly, the same is dismissed. No Costs. Consequently, connected, Writ Miscellaneous Petitions are closed.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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+1 cc to M/s.Genicon and Associates sr 75901

W.P.No.27494 of 2017

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