IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31/10/2017

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE R.SURESH KUMAR

Writ Petition No.27769 of 2017

Mrs.R.Porselvi ... Petitioner

Vs

The Authorised Officer(SARFAESI ACT 2002)
The Repatriates Co-operative Finance
& Development Bank Limited
(REPCO Bank)
A Government of India Enterprises
Ariyalur Branch
No.8 Thattara Street
Ariyalur 621 704. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records of the respondent and to quash the impugned tender/public auction sale notice dated 24/7/2017 and consequent alleged sale notice dated 27/9/2017.

For petitioner ... Mr.G.Ilamurugu

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O R D E R

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

Borrower, who has not repaid the entire loan amount, has been issued with a demand notice, dated 8/8/2016, under Section 13 (2) of the SARFAESI Act, 2002 and subsequently, with a possession notice, under Section 13 (4) of the SARFAESI Act, 2002, dated 4/11/2016, and suffered an auction sale on 4/9/2017 in respect of the property mortgaged "Door No.129/C9 and New No.50, New Market Street, Nethaji Nagar, Ariyalur 621 704, has filed the instant writ petition, for a writ of certiorari, to quash the auction notice, dated 24/7/2017, on the grounds inter alia that the above said property is worth more than Rs.50 lakhs, and pursuant to the notices issued by the Bank, payments made have not been taken note of.

2. As per the possession notice, dated 4/11/2016, Bank has directed the petitioner and three others, viz., 1. Sri.M.Rajaram, 2. Sri.R.Sambath and 3. Sri.P.Saravanakumar, borrowers/mortgagors/guarantors, to pay a sum of Rs.4,83,776/-, on 31/7/2016, with further interest thereon, within 60 days, from the date of the said notice. As per the sale notice, dated 24/7/2017, reserve price for the above stated property has been fixed as Rs.18,45,000/-. Sale has been fixed, on 4/9/2017. Sale as scheduled has been effected and vide letter, dated 27/9/2017, sent to Mr.M.Rajaram (applicant), Mrs.R.PorSelvi/writ petitioner/co-applicant-cum-Mortgagor, R.Sampath (Co-applicant) and Mr.R.Saravana Kumar (Guarantor), stating that a sum of Rs.20 lakhs has been received towards sale proceeds and after appropriating the loan amount, balance of Rs.14,55,976/- has been deposited. Bank in its letter, dated 27/9/2017, has requested the petitioner/co-applicant-cum-mortgagor, to receive the balance amount.

3. Mr.G.Ilamurugu, learned counsel for the petitioner/co-applicant-cum-mortgagor submitted that the above said sum has not been received so far. Though on the averments and grounds, made in the supporting affidavit to the instant writ petition, Mr.G.Ilamurugu, learned counsel for the petitioner, sought for issuance of a writ of certiorari, to quash the sale notice, dated 24/7/2017 and the subsequent letter, dated 27/9/2017 of the Bank, the same cannot be done in this writ petition, for the reason that an alternative remedy is available before the Tribunal.

(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 (SC), the Hon'ble Apex Court has 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.
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> 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, this Court held as follows:

... 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.

4. In the light of the above discussion and decisions, writ petition is dismissed, giving liberty to the petitioner to challenge the proceedings impugned before us, before the forum, in accordance with law. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1.The Authorised Officer(SARFAESI ACT 2002)
The Repatriates Co-operative Finance
& Development Bank Limited
(REPCO Bank)
A Government of India Enterprises
Ariyalur Branch
No.8 Thattara Street
Ariyalur 621 704.

2. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.G.Ilamurugu, Advocate in sr.no.76956

W.P.No.27769 of 2017

NR 07/11/2017