

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.30366 of 2016

and

W.M.P.No.26332 of 2016

Mr.K.V.Alagesan

.. Petitioner

versus

1. The Authorised Officer
Karur Vysya Bank
Divisional Office
269 A Bharathi Street
I Floor Swarnapurai
Alagapuram
Salem District 636 004.
2. M/s. Jai Santhosh Logistics (India) Pvt Ltd
rep. By its Managing Director
Mr.K.V.Ramakrishnan
Namakkal 637 001.
3. The Registrar
Debts Recovery Appellate Tribunal
4th Floor Indian Bank Circle Office
55 Ethiraj Salai, Chennai 600 008.
4. The Registrar
Debts Recovery Tribunal
III & IV Floor
Kalyani Towers
4/162 Madurai - Melur Road
Near Meenakshi Mission Hospital
Uthangudi Post
Madurai 625 107.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorarified mandamus to call for the records of the first respondent in Tender-cum-Auction Sale Notice dated 30/7/2016 and to quash the same and further direct the first respondent not to proceed with any precipitating action under SARFAESI Act, pending disposal of the Appeal in AIR No.687 of 2015 on the file of the third respondent, challenging the order dated 5/8/2015 in S.A.No.24 of 2014 on the file of the second respondent.

For petitioner	: Mr.E.Omprakash for M/s. Ramalingam & Associates
For respondents	: Mr.A.V.Radhakrishnan (for R1)

ORDER

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

Borrower has filed S.A.No.270/13, challenging the possession notice dated 28.10.2013, issued under Section 13(4) of SARFAESI Act, 2002. Guarantor/writ petitioner has also filed S.A.No.24 of 2014, challenging the sale notice dated 20.12.2013. After adjudication vide common order in S.A.No.270 of 2013 and S.A.No.24 of 2014, dated 05.08.2015, Debts Recovery Tribunal, Madurai, has dismissed both the above matters.

2. Being aggrieved, the guarantor has filed appeal under Section 18 of the SARFAESI Act, 2002 before the Debts Recovery Appellate Tribunal, Chennai. Pending disposal of the same, AIR No.687 of 2015, has been filed for waiver.

3. Pending disposal of AIR No.687 of 2015, Karur Vysya Bank, Salem District, has issued a fresh Tender cum auction sale notice dated 30.07.2016, to bring the property for sale.

4. Being aggrieved by the above said subsequent action, borrower has filed the instant writ petition for a writ of certiorarified mandamus, calling for the records of the first respondent in Tender-cum-Auction Sale Notice dated 30/7/2016 and to quash the same and further direct the first respondent not to proceed with any precipitating action under SARFAESI Act, pending disposal of the Appeal in AIR No.687 of 2015 on the file of the third respondent, challenging the order dated 5/8/2015 in S.A.No.24 of 2014 on the file of the second respondent.

5. Record of proceedings shows that on 31.08.2016, while ordering notice regarding admission, returnable in two weeks, a Hon'ble Division Bench of this Court has passed the following orders.

"Notice regarding admission returnable in two weeks.

2. The petitioner is before this Court challenging the Tender cum Auction Sale Notice dated 30.07.2016. The contention of the learned counsel for the petitioner is that the petitioner filed S.A.No.24 of 2014 on the file of the 4th respondent challenging the measures taken by the 1st respondent under Section 13(4) of SARFAESI Act and the DRT, passed the final order dated 05.08.2015 dismissing the said

S.A., and aggrieved by the said order, appeal has also been filed by the petitioner before the DRAT, Chennai, and the appeal is still pending consideration.

3. The learned counsel appearing for the petitioner submits that the 1st respondent is taking effective steps to sell the property in the auction sale and unless this court restrains the respondent from proceeding further with regard to the sale notice, hardship will be caused to the petitioner.

4. Taking into consideration the difficulties expressed by the petitioner and considering the averments made in the Writ Petition, there will be an order of interim stay for a period of 4 weeks, staying the impugned Tender cum Auction Sale Notice dated 30.07.2016, issued by the 1st respondent, pending disposal of the above writ petition. List after 4 weeks."

6. When the writ petition is listed for further hearing, Mr.A.V.Radhakrishnan, learned counsel for the 1st respondent Bank, submitted that as per auction notice dated 30.07.2016, auction was conducted, but then there were no bidders. He therefore, submitted that the prayer sought for in the instant writ petition has become infructuous.

7. Mr.E.Om Prakash, learned counsel for the guarantor submitted that before the appellate tribunal, oral submission was made in AIR No.687 of 2015 to permit the petitioner to deposit 25% of the amount claimed, but since the respondent bank had been taking time to file counter affidavit in the said AIR No.687 of 2015, appeal has not been numbered.

8. Mr.A.V.Radhakrishnan, learned counsel for the bank submitted that counter would be filed within one week from today. He further submitted that AIR No.687 of 2015, is posted on 13.03.2017.

9. Placing on record the abovesaid submission, prayer sought for to quash the tender cum sale auction notice dated 30.07.2016, has become infructuous. Further, as AIR No.687 of 2015 is pending for quite some time, and therefore, the Hon'ble Presiding Officer, Debts Recovery Appellate Tribunal, Chennai, is requested to pass orders in AIR No.687 of 2015, as expeditiously as possible.

10. With the above direction, the writ petition is disposed of. No costs. Consequently, the connected Miscellaneous petition is closed.

[S.M.K., J.] [M.G.R., J.]
08.02.2017

Index: Yes/No.
Internet: Yes
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S. MANIKUMAR, J.
AND
M.GOVINDARAJ, J.

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