

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17/2/2017

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

WRIT PETITION NO.34116 OF 2016

Lakshmanan

...

Petitioner

Vs

1. The Authorised Officer
The State Bank of India
Erode Main Branch (0837)
Erode 638 001.

2. The Branch Manager
D 4 State Bank Road
Erode 638 001
Erode District.

...

Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records pertaining to the impugned sale notice dated 26/8/2016 with respect of the petitioner loan account A/c 30969043484 issued by the first respondent and quash the same and consequently direct the respondent not to proceed further with the matter.

For petitioner ... Mr.M.Kalaiarasan, for
Mr.M.Gnanasekar

— — — — —
O R D E R

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

Borrower, who availed a housing loan of Rs.25,50,000/-, in the year 2009, from State Bank of India, Erode, has committed

default. First respondent Bank has issued notice, dated 8/1/2016, under Section 13 (2) of the SARFAESI Act, calling upon the borrower to pay Rs.36,80,346/-. Bank had issued another notice, dated 17/3/2016, under Section 13 (4) of the said Act, directing him to pay a sum of Rs.36,09,334/-. Thereafter, sale notice, dated 16/7/2016, has been issued, fixing the sale, on 24/8/2016. On receipt of the sale notice, the writ petitioner has filed an application in S.A.No.148 of 2016, before the Hon'ble Debts Recovery Tribunal, Madurai.

2. On 28/9/2016, the Division Bench of this Court, has granted an order of interim injunction and the same is extracted hereunder:--

"Notice of motion, through Court and privately, returnable by 6/10/2016. As per the schedule of payment, writ petitioner has to pay a sum of Rs.2,00,000/- on or before 24/8/2016. According to him, he received the copy of the order in I.A.No.1688 of 2016 in S.A.No.148 of 2016, on 25/8/2016 and the said date, being a holiday, he made the first instalment of Rs.2,00,000/- on 26/8/2016, as per the instructions of one Mr.Balaji, Officer of State bank of India, Erode Main Branch. For non-payment of the first instalment within time, Sale Notice dated 26/8/2016 has been issued and subsequently, a communication dated 22/9/2016 has been issued to the writ petitioner stating that the re-auction date is fixed on 5/10/2016.

2. Respondent Bank is restrained from proceeding with re-auction fixed on 5/10/2016, on condition that the writ petitioner pays a sum of Rs.2,62,000/- (Rupees two lakhs sixty two thousand) on or before Monday, i.e., 3/10/2016. It is made clear that if the amount of Rs.2,62,000/- as ordered, is not paid within the said date, interim stay granted, shall stand automatically vacated, without further reference to the orders of this Court.

Post the matter on 5/10/2016."

3. The writ petitioner has received the copy on 25/8/2016. By that time, time to remit the first instalment, i.e., on or before 24/8/2016 has expired. On 26/8/2016, the first instalment has been deposited. Though the writ petitioner was ready, to pay the second instalment, on or before 20/9/2016, the respondent Bank has issued notice, dated 26/8/2016, calling upon the petitioner, to deposit a sum of Rs.38,17,206/-, with further interest, costs and charges within 30 days, from the date of receipt of the above said notice. As the Bank has forced the writ petitioner, to discharge the entire above said liability within a short duration of 30 days, left with no other alternative, borrower has filed the instant writ petition, to quash the impugned sale notice, dated 26/8/2016, issued by the first respondent and consequently, prayed for a direction to the respondent not to proceed further with the matter.

4. On 5/10/2016, when the matter came up for hearing, we passed further orders:-

"On 28/9/2016, this Court, restrained the respondent Bank, from proceeding with the e-auction fixed on 5/10/2016, on condition that the writ petitioner should pay a sum of Rs.2,62,000/-, on or before Monday, i.e., 3/10/2016. It was also made clear that, if the amount of Rs.2,62,000/- as ordered, is not paid within the said date, interim stay granted, would stand automatically vacated, without further reference to the orders of this Court. Registry has been directed to post the matter, on 5/10/2016, and thus, it is listed today.

2. Mr.Shyam Sundar, learned counsel for the petitioner submitted that the interim order has not been complied with.

3. Placing the aforesaid submission, interim stay dated 28/9/2016, stands vacated. The respondent Bank is at liberty to proceed in accordance with law."

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

6. Vide notice, dated 8/1/2016, State Bank of India, Erode, has demanded payment of Rs.36,80,346/- as on 8/1/2016, with future interest, at the contractual rate, on the aforesaid amount together with incidental expenses, cost, charges etc., to be paid within sixty days.

7. Subsequently, Bank has issued possession notice, dated 17/3/2016, under Section 13 (4) of the said Act r/w. Rule 8 of the Security Interest (Enforcement) Rules. Thereafter, Debts Recovery Tribunal, Madurai, has granted an interim order, on 20/8/2016, in S.A.No.148 of 2016 and S.A.No.148 of 2016 and the same reads thus:-

"I.A.No.1688 of 2016 (Amendment petition): This petition has been filed by the petitioner to amend the main S.A as detailed in the petition.

The original S.A has been filed to declare the Possession notice dated 17/3/2016 issued under Section 13 (4) of the SARFAESI Act as invalid and consequentially to set aside the same. Pending proceedings, the respondent Bank has issued the impugned auction sale notice dated 16/7/2016 and fixed the sale on 24/8/2016. It is this change of circumstance, which brought the petitioner/applicant to this Tribunal for challenging the same. The proposed amendment would not in any way change the character of the proceedings and without which a better adjudication cannot be done. Therefore, the proposed amendment is to be incorporated in the original S.A. Hence, this petition is allowed. No costs.

I.A.No.1689 of 2016 (Stay Petition): This petition has been filed to stay all further proceedings in pursuance of the auction sale notice dated 16/7/2016 and the sale which is fixed on 24/8/2016. The Ld. Counsel for the petitioner submitted that the R/bank without considering the procedure

contemplated under Section 13 (2), 13 (4) of the SARFAESI Act and Rule 8 (6) and Rule 9 of the Security Interest (Enforcement) Rules 2002 has issued the impugned auction sale notice, which if proceeded with would be detrimental to the interest of the petitioner/applicant.

The Ld Counsel for the R/bank strongly objected to the prayer of the petitioner.

However, taking into consideration of the rival contentions and the materials placed on record, this Tribunal is of the view that without going into the merits of the matter, as an interim measure, and to prove the bona fides of the petitioner/applicant, if a limited conditional order is passed, it would meet the interest of justice and natural Justice. Accordingly, Ad-interim injunction is granted against the respondent Bank, not to confirm the sale till 21/10/2016, subject to payment of Rs.2,00,000/- directly before the respondent Bank on or before 24/8/2016 as 1st instalment, another sum of Rs.2,62,500/- directly before the respondent Bank on or before 20/9/2016, as second instalment and another sum of Rs.4,62,500/- directly before the respondent Bank on or before 20/10/2016, as third instalment. However, in the event of failure to pay even a single payment as ordered above, the Ad Interim Injunction granted against the respondent Bank not to confirm the sale till 21/10/2016, shall stand vacated automatically and thereafter, the respondent Bank will be at liberty to proceed against secured assets as per law. It is also made specifically clear that the respondent Bank is at liberty to proceed with the proposed sale, subject to the above conditions. Further, if the conditional

order is complied without any deviation as ordered above, the ad-interim injunction granted today not to confirm the sale shall be extended automatically till IA No.1689 of 2016 is disposed of on merits."

8. First respondent Bank has issued a sale notice on 26/8/2016 and the same reads as follows:-

"The Authorised Officer had taken possession of the below mentioned properties on 17/3/2016, as per Section 13 (4) of the SARFAESI Act (hereinafter called the ACT) which has been offered as security by you towards your/borrower's/liabilities amounting to being Rs.36,09,334/- (Rupees Thirty Six lacs Nine thousand Three hundred and thirty four only) as on 17/3/2016 with further interest and cost thereon.

Whereas you have failed to satisfy your borrower's liabilities to the bank even after receipt of notice under Section 13 (2) and Section 13 (4) of the Act. Therefore, the Bank in exercise of its rights granted under the Act and Rules, issues this notice under Rule 6 (2) (movables) and Rule 8 (6) (immovable) of the Security Interest (Enforcement) Rules, 2002, calling upon you to discharge in full liabilities amounting to Rs.38,17,206/- (Rupees Thirty Eight lakhs Seventeen thousand two hundred and six only) as on 26/8/2016 with further interest, costs and charges within 30 days from the date of this notice, failing which, the bank shall proceed under the Act with the sale of the secured properties either obtaining the quotations or inviting tenders or by holding public auction or by private treaty with out any further notice to realise the above stated outstanding, with interest and costs.

This is without prejudice to any other rights available to the bank under subject Act or any other law in force.

Reserve price: Rs.35,50,500/-

Description of immovable property

Document No.4865/2009

The property belongs to Shri.N.Lakshmanan,
S/o. Shri. Natesan.

Erode Registration District, Avalpoondurai
Sub-Registration District, Near
Chinniampalayam Road, 46 - Pudur Village,
Erode Taluk, R.S.No.288/1, 4 & 289/8, site
No.6, in total 2145 sq.ft (or) 199.35
sq.metre, within the following
boundaries:-

East of 23 feet wide north - south road
West of site Nos.13 & 14

North of lands lies in R.S.No.288/1 and
South of Site No.7

Admeasuring:-

East - West on both sides 40 feet

North - South on the East 55.3 feet

North - South on the West 52 feet."

9. Considering the representation of the writ petitioner, dated 19/9/2016, Bank, vide reply, dated 22/9/2016, has directed the writ petitioner, as hereunder:-

"Pursuant to the Presiding Court's proceeding dated 20/8/2016, the Bank has directed the writ petitioner to pay the first instalment of Rs.2 lakhs on or before 24/8/2016, second instalment of Rs.2.62 laks, on or before 20/9/2016 and third instalment of Rs.4.62 lakhs on or before 20/10/2016. If any one of the conditions fail, the bank will proceed with the re-auction process starting 5/10/2016. If the account is regularised or closed on or before the re-auction date 5/10/2016, the re-auction will be cancelled."

10. Borrower has failed to remit the payment in time and taking note of the submission of the writ petitioner that there was a delay in communication, we granted time for payment of the amounts, in instalments. Despite the same, the petitioner has not made any payment. Therefore, on 5/10/2016, this Court has vacated the interim order. Mr.M.Kalaiarasan for Mr.M.Gnanasekar, learned counsel on record submitted that as on today, no payment has been made. There is no bona fide on the part of the writ petitioner. What is impugned in the instant writ petition is a sale notice. There are no merits in the said writ petition.

11. Accordingly, this writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

-Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1. The Authorised Officer
The State Bank of India
Erode Main Branch (0837)
Erode 638 001.

2. The Branch Manager
D 4 State Bank Road
Erode 638 001
Erode District.

Writ Petition No.34116 of 2016

KJI (CO)

RRI 27/03/2017

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