BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.14098 of 2017
and
WMP(MD)No.11034 of 2017

G.Anusuya
Proprietrix of M/s.MVK Nursing Home,
No.2721, South Rampart,
Opp. to Thilahar Thidal,
Thanjavur,
Pin Code 613 001. : Petitioner

Vs.

1.The Authorised Officer,
Indian Bank,
Thanjavur Junction Branch,
Ground Floor,
1087, Mission Street,
Thanjavur-613 007.

2.Elangovan,
Chairman of M/s,Abi & Abi,
No.80, Abi & Abi Towers,
Thanjavur-613 004.

3.The Registrar,
Debts Recovery Tribunal-III,
Chennai.

4.The District Collector,
Thanjavur District. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to call for the records of the 3rd respondent with respect to the order, dated 18.07.2017 passed in R.A.Sr.No.5192 of 2017 in S.A.No.90 of 2017 confirmity with section 17(2) of the SARFAESI Act and consequently direct the DRT-III, Chennai to adjudicate on the measures including that of under-valuation and the flouting of the interim order by the Bank to conduct the bank.

For Petitioner : Mrs.Ananda Gomathy

For 1st Respondent : Mr.P.V.Murlidhar

For 2nd Respondent : Mr.Isaac Mohanlal
Senior counsel
for M/s.Isaac Chambers

For 3rd Respondent : No appearance

For 4th Respondent : Mr.A.Muthukaruppan
Additional Government Pleader

O R D E R

(Order of the Court was made by K.KALYANASUNDARAM,J)

The petitioner has come up with the present writ petition challenging the order passed by the Debts Recovery Tribunal-III, Chennai, in R.A.Sr.No.5192 of 2017 in S.A.No.90 of 2017, dated 18.07.2017.

2.The undisputed facts of this case are that the petitioner availed financial assistance from the first respondent bank and due to the irregularities in repaying the loan amount, a notice under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in short 'SARFAESI Act'] was issued on 19.06.2015 demanding the petitioner to pay Rs.7,41,39,148/-. The petitioner sent a reply, dated 17.07.2015 undertaking to clear the over dues within a period of three months. Since, the promise was not honoured, a notice under section 13(4) of the SARFAESI Act was issued on 06.05.2016 taking symbolic possession of the mortgaged property. Thereafter, on 10.02.2017, sale notice was issued under the provisions of SARFAESI Act. Challenging the sale notice, S.A.No.90 of 2017 was preferred by the petitioner before the Debts Recovery Tribunal-III at Chennai under section 17 of the SARFAESI Act. On 14.03.2017, the Tribunal granted interim order on condition that the petitioner shall pay Rs.50,00,000/- to the Bank on the same day and another sum of Rs.1 Crore, by 28.03.2017.

3.According to the petitioner, the conditional order of the tribunal was communicated to her only after the closure of the bank hours and the attempt made by her to comply with the order on 15.03.2017 was not accepted and on the other hand, as per schedule, the property was sold to the 2nd respondent.

4.It is to be noted that when the matter came up before the DRT-III on 10.04.2017, interim order was not extended. The petitioner challenged the order in CRP(NPD)No.1670 of 2017 before the Principal Bench and an order of status quo was granted by the High Court, dated 04.05.2017. On 22.05.2017, the DRT-III dismissed the SA No.90 of 2017. Pursuant to the dismissal of S.A.No.90 of

2017, CRP(NPD)No.1670 of 2017 came to be dismissed on 08.06.2017. Subsequently, the petitioner approached the tribunal by filing a review petition. The tribunal dismissed the review petition on the ground that there is no merit in the review petition. Hence, the writ petition.

5.We have heard Mrs.Ananda Gomathy, learned counsel for the petitioner, Mr.P.V.Murlidhar, learned counsel for the 1st respondent, Mr.Isaac Mohanlal, learned Senior counsel for the 2nd respondent, and Mr.A.Muthukaruppan, learned Additional Government Pleader for the 4th respondent and perused the materials available on record.

6.The main grievance of the petitioner is that the first respondent bank failed to receive the amount of Rs.50,00,000/- paid by the petitioner on 15.03.2017 and conducted auction in violation of the order of the tribunal, dated 14.03.2017.

7.In CDJ 2017 MHC 3533 *(Mekala Raj vs. The Presiding Officer, Debt Recovery Tribunal, Madurai & others)*, the Division Bench of this court has held that the writ petition filed against the order of the DRT passed in S.A.No.304 of 2012 is not maintainable.

8.Another Division Bench of this court in *Indiankannon/153640862/(M.S.Saravanan Vs. The Revenue Divisional Officer, Tenkasi and another)*, dismissed the writ petition filed challenging the orders issued under sections 13(2) and 13(4) of the SARFAESI Act, by following the judgment of the Hon'ble Apex Court reported in 2013(6) CTC 683 *(Standard Chartered Bank vs. V.Noble Kumar)*.

9.A perusal of the impugned order would reveal that the petitioner made an unsuccessful attempt to reopen S.A.No.90 of 2017, as a final and last opportunity to exercise the right of redemption.

10.As referred supra, notice under section 13(2) of the SARFAESI Act came to be issued on 19.06.2015 and in reply, dated 17.07.2015, the petitioner sought three months time to repay the loan amount.

11.It is to be noted that in para 10 of the affidavit filed in support of the writ petition, the petitioner admits that the tribunal, while hearing the review petition on 04.07.2017 granted time to pay the entire balance amount by 18.07.2017 and only due to the inability to pay the amount, the review petition was dismissed. It is to be further seen that when the matter was taken up for hearing on 06.11.2017, this court in order to afford one more opportunity granted time to pay the amount till 10.11.2017, but it could not be honoured by the petitioner.

12.In view of the above facts and the orders passed in the decisions referred above, we find no merit in the writ petition and it deserves to be dismissed.

13.In the result, the writ petition fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub-Assistant Registrar

To,

1.The District Collector,
Thanjavur District.

2.The Registrar,
Debts Recovery Tribunal-III,
Chennai.

3.The Authorised Officer,
Indian Bank,
Thanjavur Junction Branch,
Ground Floor,
1087, Mission Street,
Thanjavur-613 007.

+3ccs to Mr.Prabhu, Advocate, SR.No.86396

+One cc to M/s.Isaac Chambers, Advocate, SR.No.86638

+One cc to M/s.Ananda Gomathy, Advocate, SR.No.86604

er
RL/9C/4P/RSK/SAR1/11/12/2017

W.P(MD)No.14098 of 2017

10.11.2017