BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.04.2017

Date of Reserving the Order	*Date of Pronouncing the Order*
23.03.2017	**13.04.2017**

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.(MD) Nos.1052, 24535 of 2016 & 14521, 15657 of 2015
and
W.M.P.(MD) Nos.870, 871, 17512, 17692, 17693 of 2016 & 2, 3 & 1 of 2015 in respective W.Ps.

1.M/s.Muthu Fisheries Private Ltd.,
rep.by its Managing Director
M.Sahul Hameed
No.151-152, Kamaraj Road
Kumbakonam ... Petitioner in W.P.(MD) No.1052 of 2016

2.M/s.Muthu Fisheries Private Ltd.,
rep.by its Managing Director
No.151-152, Kamaraj Road
Kumbakonam.
... Petitioner in W.P.(MD) No.24535 of 2016,
1st Petitioner in W.P.(MD) No.14521 of 2015 &
Petitioner in W.P.(MD) No.15657 of 2015

3.M/s.Muthu Marine Products Pvt. Ltd.
Rep.by its Managing Director
No.151-152, Kamaraj Road
Kumbakonam ... 2nd Petitioner in W.P.(MD) No.14521 of 2015

-vs-

1.The Central Bank of India
rep.by its Authorized Officer /
Deputy Regional Manager
Regional Office, Rajah Muthiah Mandram
1st Floor, Dr.Ambedkar Road
Madurai-625 020.
... 1st Respondent in W.P.(MD) No.1052 of 2016,
2nd Respondent in W.P.(MD) No.14521 of 2015 &
2nd Respondent in W.P.(MD) No.15657 of 2015

2.The Central Bank of India
Asset Recovery Branch
rep.by its Asset General Manager
No.49, Montieth Road
Chennai-600 008 ... 1st Respondent in W.P.(MD) No.24535 of 2016,
1st Respondent in W.P.(MD) No.14521 of 2015 &
1st Respondent in W.P.(MD) No.15657 of 2015

3.The Authorized Officer,
The Central Bank of India
Regional Office
Raja Muthiah Mandram
1st floor, Dr.Ambedkar Road
Madurai-625 020 ... 2nd Respondent in W.P.(MD) No.24535 of 2016

4.M.Selvamani ... 3rd Respondent in W.P.(MD) No.14521 of 2015

5.The Authorized Officer
Central Bank of India
Regional Office
1C, Ranga Complex
Karur Road, West Chinthamani
Trichy-620 002

6.R.R.Govindarajan ... 3rd & 4th Respondents in W.P.(MD) No.15657 of 2015

7.Haji Ishaq Sait ... 2nd Respondent in W.P.(MD) No.1052 of 2016
(R7 is impleaded vide order dated 23.03.2017 in W.M.P.(MD) No.17512 of 2016)

PRAYER (in W.P.(MD) No.1052 of 2016): Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records relating the impugned final notice issued by the respondent bank in R.O/MDU/RECV(LEGAL)/2015-16/851, dated 07.12.2015 and R.O/MDU/RECV (LEGAL)/2015-16/871, dated 15.12.2015, for the movable and immovable assets under Section 8(6) of the SARFAESI Act, 2002 in Property 1 property in the name of Mr.Shahul Hameed, which is Muthu Fisheries Pvt., Ltd., dry fish powder for poultry feed unit situated in Kumbakonam RD, Papanasam SRD, Eri Vellor Revenue Village, Valangaiman Taluk, Tahanjavur District., 3 Acre 06 Cents in S.F.No.235/3, 07 Cents in S.F.No.238/2, totally 3 Acre 13 Cents boundaries : North by “Vaaikkal” Agri Lands, South & East by : Property belongs to Shahul Hameed, Noornisha Begum & Rosalina Begum, West by Vellangudi Road, Property 2):- A) Property in the name of Muthu Fisheries Pvt., Ltd., at R.S.No.620/3, about 5 km from Samugarangapuram and lies in Radhapuram Road. It is located opposite to High Tech Polytechnic College. In Tirunelveli R.D.Radhapuram SRD, Radhapuram Panchayat Union, Samugarengapuram Panchayat and Village. In R.S.No.620(3) out of 15 acres 90 cents (hec.6.43.5) on the western and northern side out of 12 acres 20 cents on the Northern side 5 Acres, entirely. B) Property in name of Mr.M.Shahul Hameed at R.S.No.620/3 about 5 km from

Samugarangapuram and lies in Radhapuram Road. It is located opposite to High Tech Polytechnic College. In Tirunelveli R.D.Radhapuram SRD, Radhapuram Panchayat Union, Samugarengapuram Panchayat and Village and for movable properties comprised in RS.No.620/3 and R.S.No.596, comprised in 17.81 acres with factory building & other connected buildings thereon. It is located about 5 km from Samugarangapuram and lies in Radhapuram Road, opposite to High Tech Polytechnic College.

PRAYER (in W.P.(MD) No.24535 of 2016): Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records comprised in the E-Auction Sale Notice, dated 18.11.2016, on the file of the second respondent and quash the same.

PRAYER (in W.P.(MD) No.14521 of 2015): Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records relating to the proceedings viz., the letter dated 23.07.2015 in Ref.No.RO/MDU/RECV (LEGAL)/2015-16/387 of the second respondent herein and the Sale Certificate dated 27.07.2015, registered as Document No.928 of 2015, on the file of the Sub Registrar, Perungalur, Pudukottai District, executed in favour of the 3rd respondent herein by the 2nd respondent and quash the same and direct the respondents 1 and 2 herein to receive the sum of Rs.409.21 lakhs with interest at 12% p.a., from 16.07.2015 from the petitioners in full and final settlement of the loan accounts and release all the security interests created by the petitioners in favour of the respondents 1 and 2.

PRAYER (in W.P.(MD) No.15657 of 2015): Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records relating to the proceedings, dated 22.01.2014, in RO/TRY/RECV/2013-14/2010 and the Sale Certificate, dated 22.01.2014, bearing Document No.2110 of 2014, in the office of the Sub Registrar, Kumbakonam, executed by the 3rd respondent in favour of the 4th respondent herein in respect of the property of an extent of 4,851 sq.ft., of land comprised in Survey No.28/2B and 29/3 Thiruvidaimarudur Road, Municipal Ward No.1, Kumbakonam and quash the same.

For Petitioner : Mr.AR.L.Sundaresan
(in all W.Ps) Senior Counsel
for Mr.F.Deepak in W.P.(MD) No.1052 of 2016
Mr.A.Selvendran in W.P.(MD) No.24535 of 2016
Mrs.AL.Gandhimathi in W.P.(MD) Nos.14521 & 15657 of 2015

For Respondent : Mr.F.B.Benjamin George
in W.P.(MD) Nos.1052 of 2016
& for R2 in W.P.(MD)
Nos.14521 & 15657 of 2015
& R3 in W.P.(MD) No.
15657 of 2015

For 3rd Respondent : Mr.C.Nagamuthu
in W.P.(MD) No.14521 of 2015

For 4th Respondent : Mr.M.V.Santharaman
in W.P.(MD) No.15657 of 2015

For 1st Respondent : No appearance
in W.P.(MD) Nos.14521 &
15657 of 2015

C O M M O N O R D E R

T.S.SIVAGNANAM, J.,

Since all these writ petitions arise out of the proceedings and the consequential actions initiated against the petitioners under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (hereinafter, it may be referred to as "SARFAESI Act), they were clubbed together, heard and are being disposed of by this common order.

2. The first petitioner in W.P.(MD) No.14521 of 2015 is M/s.Muthu Fisheries Private Limited and they are the petitioner in the other three writ petitions, namely, W.P.(MD) Nos.15657 of 2015, 24535 of 2016 and 1052 of 2016.

3. In W.P.(MD) No.14521 of 2015, the second petitioner is M/s.Muthu Marine Products Private Limited, which is stated to be a sister concern of M/s.Muthu Fisheries Private Limited / first petitioner in W.P.(MD) No.14521 of 2015.

4. All these four writ petitions can be categorized into two categories, namely, W.P.(MD) No.14521 of 2015 and 15657 of 2015, which have been filed challenging the Sale Certificate issued by the respondent-Bank in favour of the third and fourth respondents / Purchasers.

5. In W.P.(MD) Nos.1052 of 2016 and 24535 of 2016, the challenges is to an Auction Sale Notice issued by the respondent - Bank.

6. For the purpose of disposal of these writ petitions, W.P.(MD) No.14521 of 2015 is taken as a lead case.

7. The case of the petitioners is that they availed financial assistance to the tune of Rs.11,38,32,000/-, during 2001-2002, from the respondent - Bank. The borrowers defaulted in repayment of the loan and the loan account was declared as Non-Performing Asset (NPA) during 2008. The second petitioner, in W.P.(MD) No.14521 of 2016, availed loan of Rs.76,18,345/- and as there was a default in repayment, the said loan account was also declared as NPA during 2008. The respondent - Bank initiated proceedings before the Debts Recovery Tribunal, Chennai, under the provisions of the Recovery of Debts Due to the Banks and Financial Institutions Act, 1993 for the recovery of the amounts due and payable.

8. The petitioners' case is that during 2011, they had proposed an one time settlement, which request was approved by the Central Office of the respondent - Bank by determining the total amount payable at Rs.850 Lakhs plus interest from the date of original sanction till the date of final payment towards full and final settlement. The said amount was payable in two installments at Rs.425 Lakhs each plus interest and on repayment, two properties were to be released.

9. In the light of the settlement arrived at, the Debts Recovery Tribunal closed the appeal proceedings pending before it as settled out of Court. It is admitted that the petitioners defaulted in payment of monies as per the compromise settlement. Once again, the petitioners approached the respondent - Bank in 2012 requesting to accept a sum of Rs.360 Lakhs and release properties, which request was considered favorably for release of individual properties. But, the higher authorities approved the request of the petitioners for partial release instead of block-wise, subject to the terms and conditions, namely, that the petitioners should remit the entire sum of Rs.360 Lakhs on or before 31.05.2015 and on such payment, the Bank will release five properties situated in Bilichi Village, Valangaiman Village, Srinagar Colony and Thepperumanallur Village. There was a default clause incorporated in the said proposal. The petitioners complied with the conditions and paid a Rs.360 Lakhs and the aforementioned five properties were leased by the respondent - Bank, vide letter dated 12.06.2012.

10. The petitioners' case is that in respect of the remaining properties, they were unable to identify the buyers and make payment. However, they had remitted a sum of Rs.20 Lakhs on 15.02.2013 and requested for extension of time for payment of the balance amount. The petitioners, vide letter dated 29.07.2013, sought for partial release of the properties on payment of pro-rata amount, which request was turned down by the respondent - Bank and the remaining immovable properties were brought for auction vide auction notice, dated 20.12.2013. This was put to challenge by the first petitioner / Muthu Fisheries Private Limited, before this Court vide W.P.(MD) No.20621 of 2013, wherein an order of interim injunction was granted subject to the condition that the first petitioner deposits total sum of Rs.60 Lakhs within a time frame. The first petitioner complied with the said condition on 05.11.2014 and the order of interim injunction was extended. Whileso, the respondent - Bank issued another auction notice, dated 04.02.2014, proposing to hold the auction on 07.03.2014.

11. Once again, the first petitioner approached this Court by filing W.P.(MD) No.3781 of 2014 challenging the said Auction Sale Notice, dated 04.02.2014. This Court, vide order dated 03.03.2014, directed the respondent - Bank to postpone the auction with a direction to the first petitioner to make payment of the first instalment on or before 27.03.2014 coupled with a further condition that the first petitioner should file an affidavit on 11.03.2014 indicating the schedule of payments as per the compromise proposal. This direction was without prejudice to the rights of the respondent - Bank. On 25.03.2014, the second petitioner M/s.Muthu Marine Products Private limited entered into an agreement with one M/s.S.M.Fish Meal and Oil Company, Bangalore, for the sale of the land and building comprised in S.F.No.138/1 and the agreed sale consideration was Rs.1 Crore. The purchaser paid Rs.1 Crore, which was deposited before the Court during the pendency of the writ petition in W.P.(MD) No.3781 of 2014. The said writ petition was finally disposed of by order, dated 04.07.2014, directing the respondent - Bank to intimate the petitioners in writing the actual amount payable by them either as per the original OTS proposal or as per the modified proposal and the petitioners should comply with the same so as to avail the opportunity for redemption of the mortgaged property.

12. The petitioners' case is that the respondent - Bank did not furnish any such statement. The agreement-holder, namely, M/s.S.M.Fish Meal and Oil Company obtained financial assistance from their Banker for purchase of the manufacturing unit of the first petitioner situated at Radhapuram in Kanyakumari District along with the land, building and machinery. They also made a representation to the respondent - Bank that they are willing to purchase the other properties of the petitioners. On such representation being made, the petitioners approached the respondent - Bank stating that the third party purchaser has shown interest in purchasing the property and if the proposal is accepted, the loan accounts can be fully and finally settled. In the meantime, the respondent - Bank issued an E-Auction Notice, dated 27.01.2015, mentioning the over due of Rs.3,602.15 Lakhs. Aggrieved over the same, the first petitioner filed a writ petition, in W.P.(MD) No.2900 of 2015, wherein an order of interim stay was granted by this Court subject to the condition that the first petitioner should deposit a sum of Rs.2.00 Crores within a time frame, failing which, the order of stay would stand vacated automatically. The first petitioner did not comply with the said conditional order, consequently the stay order stood vacated.

13. The petitioners would further state that the auction proposed to held on 05.03.2015 did not take place nor any fresh auction notification was issued by the respondent - Bank. After about two months, the second petitioner, vide letter dated 08.05.2015, sought for extension of time for complying with the one time settlement offer, which request was accepted subject to the condition of payment of Rs.400 Lakhs within one month from the date of sanction and subject to other conditions.

14. The petitioners' further case is that a sum of Rs.2.00 Crores was deposited by the third party purchaser in Basavangudi Branch of the respondent - Bank on 24.06.2015. Therefore, their case is that out of the one time settlement offer, Rs.2.00 Crores was lying in deposit with the respondent - Bank in their Branch at Bangalore, deposited by the third party purchaser and only a further sum of Rs.2.00 Crores with interest is required to be paid. Therefore, they gave a letter, dated 07.07.2015, to the respondent - Bank stating that if one of the properties at Kanyakumari is released on appropriation of Rs.2 Crores, the balance amount can be paid thereafter by the buyer and the entire loan can be settled. This request made by the petitioners was rejected by the respondent - Bank and directed the first petitioner to pay the entire amount as per the O.T.S. sanction by 15.07.2015. As the conditional order passed by this Court, in W.P.(MD) No.2900 of 2015, was not complied with, the said writ petition was dismissed, on 09.07.2015. Subsequently, the respondent - Bank directed the petitioners to pay the entire loan amount.

15. The petitioners' further case is that they were shocked to note that the second property situated at Pudukkottai was sold to the third respondent, namely, M.Selvamani on 20.07.2015, for a sum of Rs.68.25 Lakhs and a Sale Certificate, dated 27.07.2015, registered as document No.928 of 2015, was issued in his favour. The petitioners in W.P.(MD) No.14521 of 2015, challenged the communication given by the respondent - Bank, dated 23.07.2015, by which they were called upon to liquidate the entire dues and also challenged the Sale Certificate, dated 27.07.2015, issued in favour of the third respondent.

16. The case pleaded, in W.P.(MD) No.15657 of 2015 is also identical to that of the submissions made in W.P.(MD) No.14521 of 2015, and in W.P.(MD) No.15657 of 2015, the petitioner challenges the Sale Certificate, dated 22.01.2014, registered as document No.2110 of 2014, granted by the respondent - Bank in favour of the fourth respondent therein.

17. In W.P.(MD) No.1052 of 2016, the petitioner, after narrating the above mentioned facts, has challenged the Auction Notices, dated 07.12.2015 and 15.12.2015, issued by the respondent - Bank. The properties, which were brought for auction vide those notifications have been sold in favour of one Mr.Haji Ishaq Said, who is the newly impleaded second respondent in W.P.(MD) No.1052 of 2016, who has purchased the said property pursuant to the said auction notifications, dated 07.12.2015 and 15.12.2015. In W.P.(MD) No.24535 of 2016, the petitioner challenges the E-Auction Sale Notice, dated 18.11.2016, issued by the respondent - Bank. The facts leading to the challenge are identical to that of the facts as pleaded in W.P.(MD) No.14521 of 2015.

18. Thus, in all these writ petitions, the petitioners seek challenge the auction proceedings initiated by the respondent – Bank, under the provisions of SARFAESI Act for recovery of the loan, which was sanctioned to the petitioner/s.

19. The facts narrated above would show that upto a particular point of time, the respondent - Bank had acceded to the request made by the petitioners and had given an one time settlement offer to them. It is an admitted fact that they did not comply with the terms of the one time settlement offer. The case of the petitioners is pitched on technicalities. The facts mentioned above would show that during 2012, the petitioners had made an attempt to liquidate the dues by paying a sum of Rs.360 Lakhs, pursuant to which, five properties were released by the respondent - Bank. Probably, on account of this positive step taken by the petitioners, the respondent - Bank had acceded to their request for grant one time settlement offer to liquidate the entire dues.

20. It is an admitted fact that the petitioners did not comply with the terms and conditions of such one time settlement offer. They seek to raise a plea that the third party purchaser had deposited a sum of Rs.2 Crores in Basavangudi Branch of the respondent - Bank and that should be appropriated towards the one time settlement sanction. Nevertheless, this plea appears to have not been considered by the Court in the earlier writ petition, which came to be dismissed. The petitioners now plead that the relief sought for in W.P.(MD) No.2900 of 2015 had actually become infructuous on the ground that no auction was held on 05.03.2015. From the facts noticed above, such a plea raised by the petitioners appears to be factually incorrect as the said writ petition came to be dismissed on account of non-compliance of the condition imposed on them.

21. Mr.AR.L.Sundaresan, learned Senior Counsel, appearing for the petitioners, after elaborately setting out the factual matrix, the relevant details of which have been mentioned above, challenged the impugned auction notice on the ground that the respondent - Bank has acted in an utter dis-regard to the mandatory provisions of SARFAESI Act, without a public auction and without giving the petitioners thirty days time for redemption as required under Rule 8 of the SARFAESI Rules.

22. Further, it is contended that while issuing the impugned E-Auction Sale Notice, the respondent - Bank has grossly undervalued the properties furnished as security by the petitioners to sell the same to the same persons, who had entered an agreement of sale with them to purchase the property at a higher value.

23. In support of his contentions, the learned Senior Counsel placed reliance upon the decision of the Honourable Supreme Court in the case of ***Mathew Varghese vs. M.Amritha Kumar***, reported in ***(2014) 5 SCC 610***.

24. Mr.F.B.Benjamin George, learned counsel, appearing for the respondent – Bank submitted that the Bank has proceeded strictly in accordance with the provisions of SARFAESI Act. There is no breach of statutory provisions and the sale was in furtherance to the auction notice, which was already issued and in spite of sufficient opportunities having been granted to them to come forward with an effective proposal to settle the outstanding, they failed to utilize the opportunity and therefore, the respondent – Bank being a secured creditor is fully justified in proceeding with the auction sale and issuance of the sale certificate in favour of the third party purchaser/s.

25. Further, it is submitted that the petitioners have been dragging on the matter and they had earlier questioned the sale notices, this Court granted conditional order of stay, the condition was not complied with and the respondent – Bank received the bid and at that stage, the present attempt of the petitioners to challenge the sale certificates is not maintainable.

26. Further, by referring to the recitals in the sale certificate, dated 27.07.2015, it is submitted that the said sale after the disposal of the writ petition, in W.P.(MD) No.2900 of 2015, which was disposed of on 09.07.2015 and the recitals of the said sale certificate clearly show that as to how the funds were received by the respondent – Bank and there is absolute transparency in the manner in which the respondent - Bank has proceeded and the writ petitions are liable to be dismissed.

27. We have heard the learned counsel appearing for the parties and carefully perused the materials placed on record.

28. After elaborately considering the factual matrix, we are of the firm view that the petitioners' present attempt appears to be futile and it amounts to somehow stall the recovery proceedings. The grounds raised by the petitioners to challenge the sale effected by the respondent - Bank are clearly inadmissible. This is so because of the various orders passed by this Court from time to time in the various cases filed by the petitioners.

29. In the preceding paragraph, we have made an elaborate reference to various writ petitions filed by the writ petitioners, nature of relief sought for and the orders passed therein.

30. From the facts narrated above, we find that except on the first occasion, when a conditional order was passed that the petitioners should remit a sum of Rs.360 Lakhs, which was complied with, consequently, five properties were released, after this happening, which occurred during May, 2012, the petitioners have not been able to comply with the various directions issued by this Court, which was indulgence granted by this Court, so that the petitioners would be able to redeem their properties. Thus, the conduct of the petitioners in not being able to comply the conditional interim orders passed by this Court clearly demonstrate that they were unable to settle the matter though submissions were made by offering proposals for one time settlement.

31. The learned Senior Counsel, after referring to the dates, on which the Bank had directed the petitioners to effect payment, submitted that sufficient time was not granted to the petitioners to comply with the condition. After the disposal of the writ petition in W.P.(MD) No.3781 of 2014, the respondent – Bank processed the first petitioners' one time settlement proposal and informed them vide their letter, dated 08.05.2015, agreeing to accept Rs.400 Lakhs towards full and final settlement of the dues, repayment should be made within one month on conveying the sanction and in case of default, the sanction will be automatically cancelled.

32. The petitioners would state that M/s.S.M.Fish Meal and Oil Company, Bangalore, who wanted to purchase the property from the first petitioner, had deposited a sum of Rs.2 Crores in their Bank account at Bangalore for the same property. Thereafter, by reply, dated 26.06.2015, the respondent – Bank conveyed the approval granted by the competent authority for extension time for remitting the money till 15.07.2015 and that is the last extension and no further extension will be granted. For this communication, the first petitioner sent a reply, on 07.07.2015, requesting that the Bank should accept a sum of Rs.200 Lakhs from M/s.S.M.Fish Meal and Oil Company, Bangalore, to release the Kanyakumari factory and they will pay the balance amount of Rs.200 Lakhs in three months time from the date of release of the property.

33. The respondent – Bank, in no uncertain terms, by communication, dated 13.07.2015, informed the first petitioner that the request for partial release of the factory property and other properties on payment of Rs.200 lakhs has been rejected by the Central Office. Subsequently, the respondent – Bank issued a notice to the borrower Company as well as its Directors, dated 23.07.2015, informing them that in spite of sufficient time granted by the High Court to remit Rs.2.00 Crores, the petitioners have not paid the same. They have failed to remit Rs.4 Crores with interest as per one time settlement sanctioned by the respondent - Bank and the one time settlement lapsed due to non-payment of the agreed amount within the stipulated period and that the second property at Pudukottai has been sold to one Mr.M.Selvamani for Rs.68.25 Lakhs on 20.07.2015 and requested the petitioners to pay the remaining amount of the contractual dues of Rs.36.02 Crores with interest from 23.01.2015 less by 68.25 lakhs being the amount recovered through the sale of Pudukottai property. The petitioners were informed that if they fail to do so, the respondent - Bank would be constrained to sell the property and this is how, the sale has fructified.

34. One of the purchasers, namely, Mr.R.R.Govindarajan, who is the fourth respondent in W.P.(MD) No.15659 of 2016, has purchased the property at Kumbakonam, through E-Auction at the rate of Rs.772.21 Paise per sq.ft. It is stated that the petitioner suppressed facts in their affidavit filed in support of the writ petition and stated that he sold 4851 sq.ft., and 1013 sq.ft., totally 5864 sq.ft., which was valued and sold to him under a separate sale, which has been registered.

35. Further it is stated that the value is Rs.44,00,000/- and the sq.ft., rate for 5864 sq.ft., is Rs.750.34 and this has not been specifically mentioned by the writ petitioner in their affidavit. The fourth respondent had purchased the property in question because of the adjoining properties have been sold to the fourth respondent by different vendors including the wife of the petitioner / Mr.Shakul Hameed in the year 1999 itself. Further, it is stated that he is a bonafide purchaser by a Sale Deed registered as document No.1778 of 2013. Further, the sale was challenged by Mr.Shakul Hameed in O.S.No.57 of 2003, on the file of the Sub Court, Kumbakonam, in which evidence was let in and when the suit was at part-heard stage, he withdrew the suit as not pressed. These facts have been placed on record by the fourth respondent and prayed for dismissal of the writ petition.

36. In the light of the above facts, we are of the clear view that the present attempt of the petitioners is to delay and defeat the interest of the respondent - Bank, from which they have borrowed substantial funds. Further, from the undisputed facts, we observe that the respondent - Bank has been indulgent to the petitioners. However, the petitioners did not keep up their commitment. Except on one occasion that was in 2012 and on receipt of the payment, the respondent - Bank released the properties, which they had agreed to release. Thereafter, the petitioners did not keep up their commitment, did not comply with the Court orders in spite of this Court showing sufficient indulgent and the present attempt is clearly not maintainable. Therefore, we find no illegality in the auction conducted and due procedures have been followed.

37. We have noted the dates on which the auctions were conducted and funds were realised and it is continuation of the original proceedings and not fresh proceedings. Therefore, the interpretation given by the learned Senior Counsel appearing for the petitioners cannot be countenanced nor the auction initiated by the respondent - Bank nor the sale certificate issued by the respondent - Bank could be faulted and the law laid down by the Honourable Supreme Court in the case of ***Mathew Varghese*** (cited supra) cannot be applied to the facts of the present case.

38. It would be worthwhile to reiterate that the writ petition, in W.P.(MD) No.2900 of 2015, was dismissed on 09.07.2015. The Court took into consideration all the series of defaults committed by the petitioners in not adhering to the payments directed to be made pursuant to the interim orders granted in the cases filed by them. After taking note of the orders, dated 04.03.2015, in M.P.(MD) No.2 of 2015 in W.P.(MD) No.2900 of 2015 and noting that the orders have not been complied with and that the respondent - Bank, after following the statutory provisions issued the sale notice, dated 27.01.2015, dismissed the writ petition as not maintainable. At this stage, it would be worthwhile to refer certain paragraphs of the said order, which reads as follows:

> "*7. Debt has not been discharged. After following statutory provisions, impugned sale notice has been issued on 27.01.2015. Even as per the averments made in the supporting affidavit, the petitioner has agreed to pay a sum of Rs.850 lakhs, together with interest at the rate of 10.75% plus 4% from 21.08.2010, on the date of filing of the writ petition. A sum of Rs.1 Crore is said to have been deposited. Though a Hon'ble Division Bench of this Court had shown indulgence in granting stay of the impugned sale notice, dated 27.01.2015, vide order dated 04.03.2015 in M.P.(MD)No.2 of 2015 in W.P.(MD) No.2900 of 2015, on condition that the petitioner should deposit Rs.2 Crores with the respondent bank,*

without prejudice to the claim of both the parties, on or before 25.03.2015 and further made it clear that on failure, the conditional order of stay granted shall stand automatically vacated, without any further reference to this court, admittedly, the conditional order has not been complied with. The fact remains that the petitioner has enjoyed the benefit of stay, without complying with the orders of this Court, from 04.03.2015.

8. Writ of mandamus sought for against the respondent bank to receive the balance amount, as per one time settlement, together with reasonable interest at the rate of 9% per annum and release the petitioner's property from security cannot be granted, in view of the admission on the part of the petitioner that as on the date of filing of the writ petition a sum of Rs.850 lakhs with interest at the rate of 10.75% plus 4% from 21.08.2010 was due, which was agreed to be paid. Bank is always empowered to decide as to whether One Time Settlement can be offered or not. Till today, no proceedings have been placed before this Court, in support of the contention that One Time Settlement, has been agreed upon by the Bank. Bank cannot be compelled to do so. Petitioner has not shown his bona fide in complying with the directions of this Court.

9. Though a Writ Petition is not maintainable, against an auction notice, issued under SARFAESI Act, still a Hon'ble Division Bench has exercised its discretion, in granting a interim order, which the petitioner has not complied with. As remedy under Article 226 of the Constitution of India, is equitable, having regard to the conduct of the petitioner, in enjoying the benefit of stay, without complying with the conditions, equity cannot be extended to him. Therefore, for the reasons stated supra, writ of certiorarified mandamus cannot be granted. Accordingly, the writ petition is dismissed. No order as to costs. Connected miscellaneous petition is also dismissed and the interim order of stay granted is vacated."

39. We are of the firm view that the present attempt of the petitioners is an attempt more or less similar to the attempts made by them earlier before this Court, which failed and all that the petitioners seek to do is to impede the recovery process.

40. Thus, for all the above reasons, we find that the writ petitions are not maintainable and there is no error in the decision making process and the sale certificates issued by the respondent - Bank in favour of the third party purchaser are valid and legal.

41. In the result, the writ petitions fail and they dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

+1cc to M/S.AL.GANTHIMATHI Advocate in SR. No.51817
+1cc to M/s. S.KARTHIK Advocate in SR. NO.51974
+1cc to M/s. F.B.BENJAMIN Advocate in SR. No.51914
+1cc to M/s.F.DEEPAK Advocate in SR. No.51865
+1cc to M/s. T.R.SUBRAMANIAN Advocate in SR. No.51792

KRK
JS/SV.MMS/SAR.4/12.05.2017/14P-6C

PRE-DELIVERY COMMON ORDER
IN
W.P.(MD) Nos.1052, 24535 of 2016 & 14521, 15657 of 2015
and
W.M.P.(MD) Nos.870, 871, 17512, 17692, 17693 of 2016 & 2, 3 & 1 of 2015 in respective W.Ps.
13.04.2017