



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.12.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL**  
AND  
**THE HONOURABLE MRS.JUSTICE R.THARANI**

W.P. (MD) No.22347 of 2017  
and  
W.M.P (MD) No.18653 of 2017

G.Mangayarkarasi : Petitioner  
.vs.

1. The Authorized Officer/Chief Manager,  
Indian Bank, Thiruverambur Branch,  
No.4/700, Thanjavur Main Road,  
Trichy - 620 001.

2. The Branch Manager,  
Indian Bank, Thiruverambur Branch,  
No.4/700, Thanjavur Main Road,  
Trichy - 620 001.

: Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorari calling for the records pertaining to the impugned notice of intended re-sale dated 21.11.2017 issued by the 1<sup>st</sup> Respondent, quash the same.

For Petitioner : M/s.J.Anandhavalli

### **O R D E R**

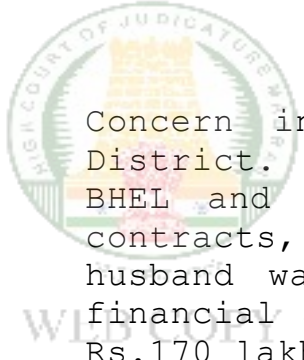
[Order of the Court was made by **M.VENUGOPAL, J.**]

The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in calling for the records pertaining to the impugned notice of intended re-sale dated 21.11.2017 issued by the First Respondent and quash the same.

2. Heard the Learned Counsel for the Petitioner.

3. Inasmuch as this Court is disposing of the present Writ Petition at the admission stage itself, notice is not ordered to Respondent Nos.1 and 2.

<https://hcservices.courts.gov.in/hcservices/>  
4. According to the Learned Counsel for the Petitioner, the Petitioner's husband Mr.Govindaraj was running a Proprietary



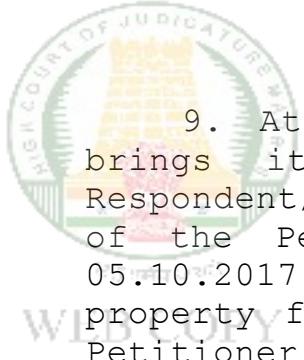
Concern in the name of 'MGB Engineering Works' in Thanjavur District. He was carrying out contract works (Engineering) for BHEL and Southern Railway. Taking into consideration of the contracts, which the Petitioner's husband had, the request of her husband was considered by the Second respondent by sanctioning financial assistance namely 'Over Draft facility' to an extent of Rs.170 lakhs and 'O.C.C facility' to an extent of Rs.20 lakhs.

5. The stand of the Petitioner is that due to sudden loss in the business of Contracts, the monthly installments could not be paid by her husband and utilization of the facility had also exceeded and the same could not be adjudged continuously for three months from March, 2017 to 6<sup>th</sup> June, 2017 and because of that, the First Respondent/Bank had issued a notice dated 08.06.2017 as per Section 13(2) of the SARFAESI Act, 2002, treating the account as NPA on 06.06.2017.

6. In fact, the Petitioner's husband paid a sum of Rs.9,21,013/- on 27.06.2017 and made a request before the First Respondent/bank to grant time. It comes to be known that the First Respondent/Bank on completion of 60<sup>th</sup> day on 10.08.2017, issued a possession notice as per Section 13(4) of the SARFAESI Act. A sum of Rs.9,56,063/- was deposited on 10.08.2017, a sum of Rs.6,88,726/- was deposited on 21.08.2017, a sum of Rs.6,66,500/- was deposited on 25.08.2017 and a sum of Rs.4,31,878/- was deposited on 14.09.2017. According to the Petitioner, in all, a sum of Rs.36,64,180/- was deposited to the account in the Second Respondent/Indian Bank, Thiruverambur Branch, Trichy.

7. It transpires that the properties, which were given as security are land and the residential house. As a matter of fact, possession notice was assailed by the Petitioner's husband before the Debt Recovery Tribunal, Madurai in S.A.No.332 of 2017 and stay of all further proceedings was prayed for in I.A.No.1683 of 2017. In this connection, it is not out of place for this Court to make a significant mention that the Tribunal passed a conditional order on 01.09.2017 in I.A.No.1683 of 2017 in S.A.No.332 of 2017 directing to pay a sum of Rs.22,41,000/- as installment amount each, in three consecutive months viz., on or before 03.10.2017, 02.11.2017 and 04.12.2017 and failure to pay even a single installment, the order of stay will stand vacated and posted the matter to 05.12.2017.

8. The grievance of the Petitioner is that since her husband had already deposited a sum of Rs.32,33,000/- within a short period of two months viz., from 27.06.2017 to 25.08.2017, he was unable to mobilise funds to comply with the conditional order of the Debt Recovery Tribunal. The Petitioner was able to pay only a sum of Rs.4,31,878/- on 14.09.2017.

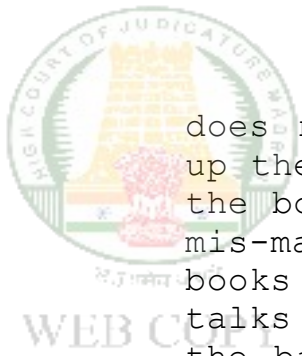


9. At this stage, the Learned Counsel for the Petitioner brings it to the notice of this Court that the First Respondent/Bank waited till 03.10.2017 to find out the compliance of the Petitioner's husband and issued a sale notice dated 05.10.2017 by bringing the landed properties and her residential property for sale on 08.11.2017. As an affected party, the Petitioner moved the Debts Recovery Tribunal for stay of the auction notice dated 05.10.2017. However, the Tribunal on 07.11.2017 passed a conditional order to pay a sum of Rs.21,12,000/- per month for three consecutive months starting from 08.12.2017 till 07.02.2018 and directed the Respondents not to confirm the same. Once again, the Tribunal according to the Petitioner, had observed that a default in single installment will result in vacating the said order. In fact, order was passed on 07.11.2017 and stay was granted only in respect of confirmation and indeed, the Tribunal had given a green signal to proceed with the sale. Besides the above, the First Respondent/Bank had issued another notice for sale stating the same as notice of intended re-sale dated 21.11.2017 thereby bringing the properties for sale on 08.12.2017 by 'E-auction'. In fact, the Petitioner was shocked about the said notice since the Respondents are acting in respect of the account by not even giving breathing time to regulate the work and the account and as such, the intention to take the property for a lesser price is highly malafide. Hence, the Petitioner has challenged the impugned notice of intended re-sale dated 21.11.2017 issued by the First Respondent.

10. It appears that in the notice of intended sale, dated 21.11.2017, the Bank according to the Petitioner had reduced Rs.10 lakhs and fixed the Reserve price at Rs.56,70,000/- in respect of the land mentioned as Item No.1 in the schedule. Again, in respect of the Item No.2, it appears that the First Respondent had reduced a sum of Rs.10 lakhs and fixed the Reserve Price for the property and determined the same at Rs.66,99,000/-.

11. The Learned Counsel for the Petitioner refers to the judgment of the Honourable Supreme Court in M/s.Transcore v. Union of India & Another reported in CDJ 2006 SC 1081, wherein it is observed as under:

"Therefore, when Section 13(4) talks about taking possession of the secured assets or management of the business of the borrower, it is because a right is created by the borrower in favour of the bank/FI when he takes a loan secured by pledge, hypothecation, mortgage or charge. For example, when a company takes a loan and pledges its financial assets, it is the duty of that Company to see that the margin between what the Company borrows and the extent to which the loan is covered by the value of the financial asset hypothecated is retained. If the borrower company



does not repay, becomes a defaulter and does not keep up the value of the financial asset which depletes then the borrower fails in its obligation which results in a mis-match between the asset and the liability in the books of the bank/FI. Therefore, Section 5 and 9 talks of acquisition of the secured interest so that the balance sheet of the bank/FI remains clean. Same applies to immovable property charged or mortgaged to the bank/FI. These are some of the factors which the Authorised Officer of the bank/FI has to keep in mind when he gives notice under Section 13(2) of the NPA Act. Hence, equity, exists in the bank/FI and not in the borrower. Therefore, apart from obligation to repay, the borrower undertakes to keep the margin and the value of the securities hypothecated so that there is no mis-match between the asset-liability in the books of the bank/FI. This obligation is different and distinct from the obligation to repay. It is the former obligation of the borrower which attracts the provisions of NPA Act which seeks to enforce it by measures mentioned in Section 13(4) of NPA Act, which measures are not contemplated by DRT Act and therefore, it is wrong to say that the two Acts provide parallel remedies as held by the judgment of the High Court in M/s Kalyani Sales Co.. As stated, the remedy under DRT Act falls short as compared to NPA Act which refers to acquisition and assignment of the receivables to the asset reconstruction company and which authorizes banks/FIs. to take possession or to take over management which is not there in the DRT Act. It is for this reason that NPA Act is treated as an additional remedy (Section 37), which is not inconsistent with the DRT Act."

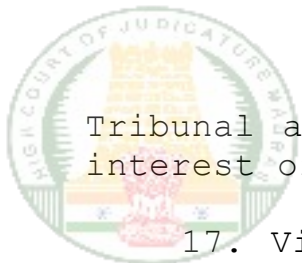
12. Apart from the above, the Learned Counsel for the Petitioner seeks in aid of the order dated 06.07.2010 in W.P.Nos.5313 and 5314 of 2010 (Between M/s.Signal Apparels Pvt. Ltd., Rep. by its Director and M/s.Signal Export v. Canara Bank and another), wherein at Paragraph No.12 it is observed as under:

"12. In Mardia Chemicals' case, referred supra, the Apex Court, while dealing with the rights of the secured creditor to declare a debt as non-performing asset, has held in Paragraph 44 as follows:

44. As a matter of fact, the Narasimhan Committee also advocates for a legal framework which may clearly define the rights and liabilities of the parties to the contract and provisions of speedy resolution of disputes, especially for financial intermediation. Even the guidelines of Reserve Bank of India in relation to



16. No wonder, the SARFAESI Act, 2002, is self contained and services courts in its services. It is true that the Act is an onerous one. As a matter of fact, the said Act provides for an effective and efficacious, viable and an alternative remedy of approaching the



Tribunal as against the Bank when measures are taken against the interest of any person/debtor concerned.

17. Viewed in that perspective, this Court is of the earnest opinion that the Petitioner can approach the Debts Recovery Tribunal and assail the Legality, Validity and Correctness of the notice of intended re-sale dated 21.11.2017 and to seek appropriate remedy for redressal of her grievance, if she so desires/advised by filing necessary Application as per the SARFAESI Act, 2002 and Rules.

18. In view of the foregoing, this Court directs the Petitioner to approach the Debts Recovery Tribunal, Madurai and to assail the Validity, Legality and Correctness of intended re-sale dated 21.11.2017 issued by the First Respondent/Bank forthwith and to seek appropriate/proper remedy in the manner known to Law and in accordance with Law.

19. Before parting with the case, this Court also grants liberty to the Petitioner to file any other Application before the Debts Recovery Tribunal and to seek appropriate remedy in regard to the purported onerous condition imposed by virtue of the order dated 07.11.2017 passed in I.A.No.2152 of 2017.

20. It cannot be gainsaid that in the event of filing of any Application by the Petitioner thereto, the Debts Recovery Tribunal, Madurai, shall dispose of the same as expeditiously as possible giving utmost priority to the said Application considering the facts and circumstances of the present case, which float on the surface and also taking into account the exigency of the situation.

21. With the above said observation(s) and direction(s), the Writ Petition stands disposed of. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

TO

1. The Debts Recovery Tribunal, Madurai.

+1cc to M/s.J.Anandhavalli , Advocate, in SR No.91234

**ORDER MADE IN**  
**W.P. (MD) No.22347 of 2017**  
**06.12.2017**