



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.06.2017

<i>Date of Reserving the Order</i>	<i>Date of Pronouncing the Order</i>
28.04.2017	05.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P. (MD) No.19046 of 2016
and
W.M.P. (MD) No.13762 of 2016

A.Jayakumar

... Petitioner

-vs-

1.The Chief Manager
Punjab National Bank
Nandhi Koil Street Branch
Malaikottai, Trichy-620 002

2.The Authorized Officer
Punjab National Bank
Nandhi Koil Street Branch
Malaikottai, Trichy-620 002

3.T.Balasubramaniam

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for records pertaining to the impugned sale certificate, dated 27.04.2015, and impugned letter dated 19.07.2016 issued by the 2nd respondent herein and quash the same as illegal, arbitrary, and contrary to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Security Interest (Enforcement) Rules, 2002 and consequently direct the respondents 1 & 2 to refund the sale consideration of Rs.18,00,000/- (Rupees eighteen lakhs) which the petitioner has already paid for the purchase of secured asset detailed in the sale certificate with interest to the petitioner.

For Petitioner : Mr.Y.Krishnan

For Respondents : Mr.Veera Pandian
for M/s.Vast Law Associates

**ORDER****T.S.SIVAGNANAM, J.,**

Heard Mr.Y.Krishnan, learned counsel appearing for the petitioner and Mr.Veera Pandian, learned counsel for M/s.Vast Law Associates for the respondents and carefully perused the materials placed on record.

2. The petitioner, who is the auction purchaser of the property in question in an auction sale conducted by the respondent - Bank bringing the property of the third respondent - defaulter for sale, is before this Court challenging the sale certificate, dated 27.04.2015 and the communication sent to him by the respondent - Bank, dated 19.07.2016, as being contrary to the provisions of the SARFAESI Act and the rules framed thereunder and consequently, to refund the sale consideration of Rs.18,00,000/- paid by the petitioner for the purchase of the property in question.

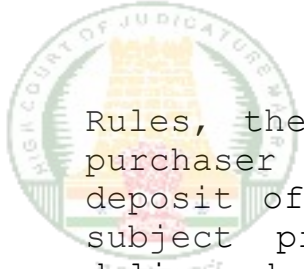
3. The Court before commencement of the hearing of the writ petition called upon the learned counsel for the petitioner to state as to how the writ petition is maintainable when he has an effective alternative remedy under the provisions of the SARFAESI Act by approaching the Debts Recovery Tribunal.

4. The learned counsel appearing for the petitioner would submit that on account of statutory violations committed by the respondent - Bank while issuing the sale certificate and such violations touch upon the validity of the impugned sale certificate, the petitioner is justified in approaching this Court under Article 226 of the Constitution of India.

5. The learned counsel appearing for the petitioner pointed out the following defects as being in violation of Rule 9 of the Security Interest (Enforcement) Rules, 2002 (hereinafter, referred to as "the Rules"). By referring to Rule 9(6) read with Appendix IV, it is submitted that it is mandatory on the part of the respondent - Bank to disclose the list of encumbrances in the sale certificate as mandated under Appendix V and this was not followed and the charge on the property in question was not disclosed. Rule 9(7) of the Rules provides where the immovable property sold is subject to any encumbrances, the authorised officer may, if he thinks fit, allow the purchaser to deposit with him the money required to discharge the encumbrances and such procedure was not followed by the authorised officer of the respondent - Bank and consequently, the procedure under Rule 9(8) of the Rules has not been followed.

<https://hcservices.ecourts.gov.in/hcservices/>

6. Further, it is submitted that in terms of Rule 9(9) of the



Rules, the authorised officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) of Rule 9 and the subject property not being free from encumbrances cannot be delivered to the petitioner and the fact being till date it has not been delivered. Further, it is submitted that rule 9(10) of the Rules has also been violated.

7. The learned counsel for the petitioner further referred to a reply sent by the respondent - Bank to the petitioner, dated 19.07.2016, stating that the Bank is not responsible for handing over physical and vacant possession of the property and advised the petitioner to take necessary action through competent forum for obtaining physical and vacant possession of the property. Therefore, it is submitted that the impugned sale certificate is liable to be set aside and the respondent - Bank may be directed to refund the entire sale consideration paid by the petitioner.

8. The respondent - Bank, while seeking to sustain the impugned sale certificate, submitted that there is no infirmity in the public auction, which was conducted by them and the provisions of the Act and the Rules were strictly adhered to. Further, it is submitted that the petitioner has filed W.P.(MD) No.9218 of 2015 before this Court seeking for virtually the same relief and the petitioner has suppressed the fact of filing the earlier writ petition in the present writ petition and therefore, the same is liable to be dismissed. Further, the petitioner is fully aware that the subject property was sold in public auction on account of the default committed by the third respondent, in repaying the loan and failing to comply with the conditional order passed by the Tribunal and knowing these facts, the petitioner participated in the sale and remitted the entire sale consideration within the time stipulated by the Bank and the present attempt of the petitioner is wholly devoid of merits.

9. It is further submitted that the respondent - Bank conducted E-Auction on 19.02.2015 on "as is where is" and "as is what is" basis and the petitioner had voluntarily participated in the E-Auction and he was declared as the successful bidder and received the sale certificate on 21.01.2016, received all the parent documents of the property on 28.01.2016 and as on date, the petitioner is the absolute owner of the property.

10. With regard to the taking over of possession, the respondent - Bank has initiated action, under Section 14 of the SARFAESI Act by application, dated 23.03.2015 and since the same was not considered, the respondent - Bank filed a writ petition before this Court in W.P.(MD) No.7021 of 2017 and a direction was issued by order dated 18.04.2017, to the District Collector to pass orders on the petition filed under Section 14 of the SARFAESI



Act within a time frame. Therefore, it is submitted that earnest steps have been taken by the respondent - Bank to secure possession of the property and to handover the same to the petitioner.

11. The first hurdle, which the petitioner has to cross is with regard to the alternative remedy available under the Act. Section 17(1) of the SARFAESI Act states that any person (including borrower) against by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under Chapter III may make any application along with such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken.

12. Admittedly, the auction sale, which was conducted by the respondent - Bank, is one of the measures referred to under sub-section (4) of Section 13 of the SARFAESI Act. Therefore, the petitioner is at liberty to challenge the sale proceedings before the Debts Recovery Tribunal, if according to the petitioner, it is vitiated for certain reasons.

13. In *ICICI Bank Ltd. v. Mr.P.Veerendar Chordia*, reported in (2010) 4 MAD LJ 261, a Division Bench of this Court held that Section 17(1) makes it abundantly clear that any person (including borrower) aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer may make an application to the Debts Recovery Tribunal. Therefore, not only the borrower but any person who is aggrieved by the actions of the secured creditor has recourse to appeal to the Debts Recovery Tribunal under Section 17(1) of the SARFAESI Act. It was further pointed out that since the respondent, a third party to the loan transaction, has entered into a Memorandum of Understanding with the secured creditor / Bank for the purchase of the mortgaged property and the order of forfeiture came to be passed against him by the secured creditor / Bank, after having initiated the proceedings under the SARFAESI Act and having agreed to sell the property under private treaty, it will definitely fall within the jurisdiction of Debts Recovery Tribunal being a 'sale' within the meaning of Section 13(4) of the SARFAESI Act read with Rule 8(5) of the Security Interest (Enforcement) Rules, 2002 and therefore, the respondent is completely justified in approaching the Debts Recovery Tribunal for redressal of his grievance under Section 17(1) of the SARFAESI Act. Therefore, the Debts Recovery Tribunal-III, Chennai is completely within its jurisdiction in entertaining the appeal filed by the respondent / purchaser under Section 17(1) of the SARFAESI Act. Therefore, it is evidently clear that the petitioner has an effective remedy under the provisions of the Act, which he has failed to avail.



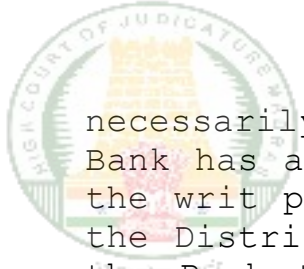
14. The petitioner's contention is that the sale is vitiated for non-compliance of Rule 9 of the Rules. The first objection raised by the petitioner is by relying upon Rule 9(6) of the Rules, which reads as follows:

"On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorised officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the Form given in Appendix V to these rules."

15. The contention raised by the petitioner is that in Appendix V, which is the form of sale certificate, list of encumbrances have to be furnished and the impugned sale certificate does not furnish the encumbrances over the property and therefore, the sale certificate is vitiated. The petitioner would state that the encumbrance, which is on the property is that of the charge on the property held by the third respondent - borrower. The plea raised by the petitioner is thoroughly misconceived. The third respondent - borrower defaulted in repayment of the loan, his property was brought for sale and the challenge to the proceedings initiated under the SARFAESI Act did not fructify into any result, since the third respondent failed to comply with the conditional order passed by the Tribunal and therefore, the property was brought for sale. Thus, merely because the possession of the property has not been handed over to the petitioner, it cannot be stated that there is a charge held by the third respondent. After initiation of action under Section 13 (4) of the Act, it is deemed that the property is held by the respondent - Bank and they have got right to transfer the property by way of lease, assignment or sale. Thus, the first contention raised by the petitioner is rejected.

16. The other contentions, which were raised by the petitioner by referring to Rules 9(7) to 9(10) are all consequential to the argument advanced based on Rule 9(6) read with Appendix V. As we have rejected the contention advanced by the petitioner based on Rule 9(6) of the Rules, the other contentions being subsidiary to it are also liable to be rejected.

17. So far as handing over of possession of the property in question is concerned, the stand taken by the respondent - Bank in their notice, dated 19.07.2016, is not tenable, since it is the duty of the respondent - Bank to take action by resorting to the remedy available under Section 14 of the Act and take over possession of the property. Thus, the stand taken by the respondent - Bank in their letter, dated 19.07.2016, has to be



necessarily eschewed. Further, as noticed above, the respondent - Bank has already initiated action under Section 14 of the Act and the writ petition filed by Bank has been disposed of by directing the District Collector to pass orders on the application filed by the Bank to render assistance in taking over possession of the property within a time frame.

18. In the light of the above, we are of the considered view that the plea raised by the petitioner is thoroughly misconceived and appears to be an attempt to wriggle out of the transaction, in which he had voluntarily participated, deposited the entire sale consideration, received the original sale certificate and the parent documents. Such belated attempt by the petitioner that too by way of writ petition cannot be entertained. Hence, for all the above reasons, no relief can be granted to the petitioner in this writ petition and the same is liable to be dismissed.

19. In the result, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Co)

/True copy/

Sub Assistant Registrar

To

1.The Chief Manager,
Punjab National Bank,
Nandhi Koil Street Branch,
Malaikottai, Trichy-620 002.

2.The Authorized Officer,
Punjab National Bank,
Nandhi Koil Street Branch,
Malaikottai, Trichy-620 002.

+1 cc to Mr.Y.Krishnan , Advocate in SR.No. 58380

+1 cc to Mr.Vast Law Associates , Advocate in SR.No. 58981

krk

AE/RSK/SAR4/09.06.2017/6P/5C

**W.P. (MD) No.19046 of 2016
and**

**W.M.P. (MD) No.13762 of 2016
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