



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**
AND
THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

W.P. [MD] .No.8763 of 2017
and
W.M.P. [MD] .No.6713 of 2017

S.Kamalam : Petitioner

Vs.

1.The Authorized Officer,
Indian Bank.
Cantonment Branch,
Trichy.

2.S.Palanivel
3.S.Ganesan : Respondents

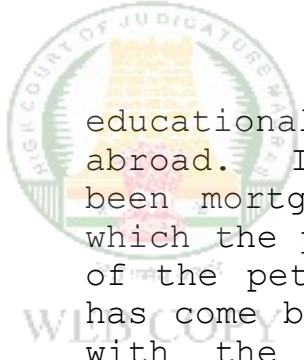
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent's Intended Sale Notice dated 02.12.2016 and quash the same and consequently forbearing the 1st respondent from taking possession of the property of the petitioner comprised in UDR 127/12 old RS.No.98 part and situated Pudur 2nd Street, Rayavaram, Thirumayam Taluk, Pudukottai.

For Petitioner : Mr.P.Santhoshkumar

O R D E R

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]
Heard Mr.P.Santhoshkumar, learned counsel appearing for the petitioner.

2. This Writ Petition has been filed by one Tmt.S.Kamalam, wife of late Sethu, challenging the auction notification issued under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, [for brevity "the SARFAESI Act"], bringing the property in question for auction for recovery of dues payable towards the



educational loan availed by the second respondent for his studies abroad. It is not in dispute that the property in question has been mortgaged with the respondent bank to secure the loan, in which the petitioner stood as a guarantor. That apart, the husband of the petitioner - Mr.Sethu was the co-borrower. The petitioner has come before this Court, contending that she is unable to deal with the property in question, as the another son of the petitioner has initiated civil proceedings in O.S.No.447 of 2016 before the Sub-Court, Pudukottai, wherein he has sought for a preliminary decree for partition of the property mentioned in the plaint, which is the subject matter of the property mortgaged with the bank. Therefore, the petitioner's case is that she is unable to deal with the property nor to approach the bank to settle the outstanding.

3. In our considered view, this can hardly be a ground to entertain the Writ Petition against the impugned auction notification, as the provisions of the SARFAESI Act provide for hierarchy of remedies not only to the borrower, but also to the guarantor as well as a third party, who is aggrieved by any "measure" taken by the respondent bank under the provisions of the SARFAESI Act. Thus, while closing the Writ Petition, we leave it open to the petitioner to work out his remedy under the provisions of the SARFAESI Act. Accordingly, this Writ Petition is closed. Registry is directed to return the original impugned order to the petitioner, after replacing the same by a photostat copy. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

+1cc to Mr.P.Santhoshkumar, Advocate, SR.No.58252

NB/sss

AE/KP/SAR4/08.06.2017/2P/2C

ORDER MADE IN
W.P. [MD] .No.8763 of 2017
and
W.M.P. [MD] .No.6713 of 2017
01.06.2017