IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.10118 of 2018
and WMP No.12078 of 2018

N.Shanmugapriya ... Petitioner

vs.

1. The Authorised Officer,
Central Bank of India,
Asset Recovery Branch,
48/49, Montieth Road, Egmore,
Chennai - 8.

2. The Central Bank of India,
Represented by its Branch Manager,
520-521, Gandhi Road,
Kanchipuram ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari, calling for the records of the impugned e-auction sale notice issued by the 1st respondent in his proceedings in ARB: CHEN:2018-19:013 dated 04.04.2018 and quash the same being illegal.

For Petitioner : Mr.D.Ravichander

ORDER
(Order of the Court was made by S.MANIKUMAR, J)

Petitioner has availed housing loan for a sum of Rs.2,05,490/-, Cent Mortgage for a sum of Rs.22,78,786/- and Vehicle loan for a sum of RS.8,50,000/- and defaulted. Bank has issued notice dated 19.02.2015 under Section 13(2) of the SARFAESI Act, 2002, demanding a sum of Rs.28,67,011/- within 60 days, failing which, further action would be taken under the provisions of the SARFAESI Act, 2002. Petitioner is stated to have paid a sum of Rs.9,50,000/- on various dates i.e. on 22.01.2018, Rs.3,00,000/-, on 22.01.2018 Rs.5,50,000/- and on 02.02.2018, a sum of Rs.1 Lakh, towards discharge of the outstanding amount. Thereafter, bank has issued a notice of sale dated 04.04.2018 under Rule 8 of the Security Interest (Enforcement) Rules, 2002. Amount outstanding under loan accounts are as follows:

Facility	Account No.	Sanctioned Limit	Balance O/s as on 26.12.2017
Cent Mortgage Loan	3126433077	Rs.15,00,000.00	Rs.26,47,534.00
Cent Vehicle Loan	3196078970	Rs.8,50,000.00	Rs.9,95,644.00
Total		Rs.25,55,496.00	Rs.36,43,178.00

2. Sale is fixed on 24.04.2018 between 12 Noon and 1.00 PM. Contending interalia that sum of Rs.9.50 Lakhs paid in loan account No.3053250538, has not been taken note of, by the bank and that notice of sale was not served on the petitioner, but he came to know only from the website of the bank, instant writ petition has been filed to quash the same, on the grounds of violation of statutory rules.

3. Heard the learned counsel for the parties and perused the materials available on record.

4. Notice dated 19.02.2015, issued under Section 13(2) of the SARFAESI Act, is extracted hereunder:

Dear Sirs/Madam

NOTICE U/S 13(2) OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002

1. Our Big Kancheepuram branch have, at your request granted to you various credit limits for an aggregate amount of Rs.25,55,496/- (Rupees Twenty Five lakhs fifty five thousand four hundred ninety six only) and we give below full details of various credit facilities granted by the aforesaid branch:

Facility	A/c. No.	Sanctioned Limit	Balance O/s as on 18.02.2015
Housing Loan	1812052799	Rs.2,05,496/-	Rs.1,19,585/-
Cent Mortgage Loan	3126433077	Rs.15,00,000/-	Rs.18,36,277/-
Cent Vehicle Loan	3196078970	Rs.8,50,000/-	Rs.9,11,149/-

Facility	A/c. No.	Sanctioned Limit	Balance O/s as on 18.02.2015
Total		Rs.25,55,496/-	Rs.28,67,011/-

2. We inform you that out of total amount of Rs.28,67,011/- (Rupees Twenty Eight Lakhs Sixty Seven Thousand Eleven Only) outstanding as on 18.02.2015, you have defaulted in repayment of entire amount of Rs.28,67,011/- (Rupees Twenty Eight lakhs Sixty Seven thousand eleven only), (which represents the principal plus interest charged upto 18.02.2015).

3. As you have defaulted in repayment of your full liabilities, we have classified your dues as Non-performing Asset on 30.06.2014 in accordance with guidelines of the bank / directives or guidelines issued by the Reserve Bank of India.

4. We also inform you that in spite of our repeated demand notices and oral requests for repayment of the entire amount due to us, you have not so far paid the same.

7. The amount realized from the exercising of the powers mentioned above, will first be applied in payment of all costs, charges and expenses which in the opinion of us have been properly incurred by ur or any expenses, incidental thereto, and secondly applied in discharge of the dues of us as mentioned above with contractual interest from 19.02.2015 till the date of actual realization, and the residue of the money, if any, shall be paid to the person entitled thereto in accordance with his right and interest, if no person is entitled to receive such amount, shall be paid to you.

8. Please take note that after receipt of this notice, you shall not transfer by way of sale, lease or otherwise any of the secured assets referred to in this notice, without prior written consent of the secured creditor. We draw your attention to section 29 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, which awards imprisonment upto one year, or with fine, or with both, if you contravene the provisions of the Act.

9. We also inform you that, not withstanding our action or proceeding under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, we reserve our right either (i) to simultaneously file, proceed and pursue suits / applications / cases against you and or guarantors before

DRT/Court, as the case may be to realize the outstanding dues from you and or guarantors, and or (ii) to proceed against you and or guarantors before Debts Recovery Tribunal / Courts, for recovery of the balance amount due to our bank, if the entire outstanding amount together with the contractual rate of interest are not fully satisfied with the sale proceeds of the secured assets (iii) to proceed against you and/or guarantor/s for initiating Criminal action for the acts, or omission committed by you under the provisions of law (iv) to publish your name, address along with your photograph as a defaulter of the Bank's dues in the newspapers and/or magazines and/or on the Websites."

5. Particulars of amount remitted after issuance of 13(2) notice is as hereunder:

Sl.No.	Date of Remittance	Amount Remitted	Remittance Account
1	16.11.2017	Rs.4,25,000/-	A/c.3126433077 Cent Mortgage Account
2	22.01.2018	Rs.3,00,000/-	A/c.3053250538 ARB Branch Account
3	22.01.2018	Rs.5,50,000/-	A/c.3053250538 ARB Branch Account
4	02.02.2018	Rs.1,00,000/-	A/c.3053250538 ARB Branch Account
Total Amount (Since November 2017)		Rs.13,75,000/-	

6. Notice dated 04.04.2018, issued under Section 13(4) of the SARFAESI Act, is extracted hereunder:

Dear Sirs/Madam

Notice of intended sale under Rule 8 of the Security Interest (Enforcement) Rules 2002, under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Reg: Your Cent Mortgage Loan account and Cent Vehicle Loan Account.

Mrs.Shanmugapriya availed the following facilities from Big Kancheepuram Branch of Central Bank of India.

Facility	Account No.	Sanctioned Limit	Balance O/s as on 26.12.2017
Cent Mortgage Loan	3126433077	Rs.15,00,000.00	Rs.26,47,534.00
Cent Vehicle Loan	3196078970	Rs.8,50,000.00	Rs.9,95,644.00
Total		Rs.25,55,496.00	Rs.36,43,178.00

The repayment of the said loan is interalia secured by mortgage of the schedule mentioned property belonging to Mrs.N.Shanmugapriya.

The borrower and the Guarantor having failed to pay the outstanding to the bank and therefore were called upon to pay the outstanding balance amount of Rs.28,67,011.00 as on 18/02/2015 with further interest due thereon vide our notice dated 19/02/2015 issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. It was made clear that if the payment was not made within 60 days, Bank will be constrained to exercise its rights by taking possession of the securities.

As the borrower and the Guarantor failed to make payment, the undersigned took possession of the securities, more fully described in the Schedule hereunder, on 18/06/2015.

As per Section 13(4) of the Act, the bank is entitled to effect sale of the same and realise the proceeds towards costs, charges, expenses and outstanding balance with further interest due thereon. Accordingly, the undersigned intends to sell the secured assets described in Schedule hereunder.

The sale is intended to be carried out by way of e-auction on such terms and conditions as per the details of the sale notice attached herewith which is forming part of this notice. The last date of submission of the bid through electronic mode will be on or before 23rd April 2018. Date of e-auction sale will be on 24th April 2018 between 12:00 Noon to 1.00 PM.

Amount due and future interest upto 26.12.2017 is Rs.36,43,178/- (Rs.Thirty Six Lacs Forty Three Thousand One Hundred Seventy Eight Only) and further interest at contracted rate of interest with cost and expenses till the date of realization.

The copy of the sale notice attached herewith and the same may be treated as part and parcel of this notice.

The specific details of the assets which are intended to be brought to sale are as shown below:

Description of the Immovable Property

Property owned by: Mrs. P.Shanmugapriya
Property Type: Independent House

All that piece and parcel of Land measuring 1200 sq.ft. with building (GF 845 sq.ft. and first floor 845 sq.ft.) at Kanchipuram District, Kanchipuram Registration District, Kanchipuram Circle, Kanchipuram No.04 Sub Registration District, No.67, Arappanancheri Village, Patta No.605, Survey No.39/1A2, New Survey No.39/6, Plot No.49/50, SSK Nagar.

Reserve price fixed for the above property as under : Rs.30.34 lacs.

7. Though, learned counsel for the petitioner submitted that the abovesaid facts, are exceptions to the normal rule of directing the parties to avail the alternate and efficacious remedy under Section 17(1) of the SARFAESI Act, 2002 and therefore, prayed to entertain the writ petition, we are not inclined to accept the said contentions for the reason that the said facts, could also be adjudged before the tribunal, under Section 17(1) of the Act and we deem it fit to consider the following decisions.

(i) In Precision Fastenings v. State Bank of Mysore, reported in 2010(2) LW 86, this Court held as follows:

> "This Court has repeatedly held in a number of decisions right from the decision in Division Electronics Ltd. v. Indian Bank (DB) Markandey Katju, C.J., (2005 (3) C.T.C., 513), that the remedy of the aggrieved party as against the notice issued under Section 13(4) of SARFAESI Act is to approach the appropriate Tribunal and the writ petition is not maintainable. The same position has been succinctly stated by the Hon'ble the Supreme Court in Transcore v. Union Of India (2006 (5) C.T.C. 753) in paragraph No. 26 wherein the Supreme Court has held as under:

"The Tribunal under the DRT Act is also the Tribunal under the NPA Act. Under Section 19 of the DRT Act read with Rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993 (1993 Rules), the applicant bank or FI has to pay fees for filing such application to DRT under the DRT Act and, similarly, a borrower, aggrieved by an action under Section 13(4) of NPA Act was entitled to prefer an Application to the DRT under Section 17 of NPA." (Emphasis added) "

(ii) In Union Bank of India v. Satyawati Tondon, reported in 2010 (5) LW 193 (SC), the Hon'ble Apex Court, at paragraph Nos.16 to 18 and 27 to 29, held as follows:

"16. The facts of the present case show that even after receipt of notices under Section 13(2) and (4) and order passed under Section 14 of the SARFAESI Act, respondent Nos. 1 and 2 did not bother to pay the outstanding dues. Only a paltry amount of Rs. 50,000/- was paid by respondent No. 1 on 29.10.2007. She did give an undertaking to pay the balance amount in installments but did not honour her commitment. Therefore, the action taken by the appellant for recovery of its dues by issuing notices under Section 13(2) and 13(4) and by filing an application under Section 14 cannot be faulted on any legally permissible ground and, in our view, the Division Bench of the High Court committed serious error by entertaining the writ petition of respondent No. 1.

17. There is another reason why the impugned order should be set aside. If respondent No. 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression 'any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.

Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for re-dressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes,

cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad AIR 1969 SC 556, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1=1999-2-L.W. 200 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order.

27. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.

28. Insofar as this case is concerned, we are convinced that the High Court was not at all justified in injuncting the appellant from taking action in furtherance of notice issued under Section 13(4) of the Act.

29. In the result, the appeal is allowed and the impugned order is set aside. Since the respondent has not appeared to contest the appeal, the costs are made easy."

(iii) In Saraspathy Sundararaj v. Authorised Officer and Assistant General Manager, State Bank of India, reported in (2010) 5 LW 560, the Court held as follows:

"The petitioner has filed this writ petition praying for a Writ of Certiorarified Mandamus calling for the records relating to the possession notice dated 16.09.2004 issued by the respondent under the SARFAESI Act and consequently direct the respondent to effect the settlement in accordance with the SBI OTS-SME 2010 Scheme as contained in its letter dated 18.03.2010 and unconditionally restore physical possession of the six rooms taken physical possession by it at No. 29, Sarojini Street, T. Nagar, Chennai - 17 with such damages.

... When a specific forum has been created which enables the borrower to challenge the action of the financial institution by filing necessary petition under Section 17, the petitioner is not entitled to invoke the writ jurisdiction of this Court. What could not be achieved by the petitioner by filing a petition before the appropriate Forum, which is at present barred by period of limitation, could not be permitted to be achieved by extending the jurisdiction conferred to this Court under Article 226 of The Constitution of India. Above all, since the petitioner has violated the terms and conditions of the loan by transferring the property in favour of her son, this Court is not inclined to entertain the petition.
.... "

8. Sensing the mind of this Court, learned counsel for the petitioner seeks permission to withdraw the writ petition. Permission denied. Writ petition is dismissed. No costs. Consequently, the connected Writ Miscellaneous Petition, is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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1. The Authorised Officer,
Central Bank of India,
Asset Recovery Branch,
48/49, Montieth Road, Egmore,
Chennai - 8.

2. The Branch Manager,
Central Bank of India,
520-521, Gandhi Road,
Kanchipuram

+1cc to Mr.D.Ravichander, Advocate, S.R.No.30942

W.P.No.10118 of 2018

RSI(CO)
CS/18/05/18