IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09. 02.2018

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.8168 of 2017

and

WMP No.8949 and 8950 of 2017

M/s. Srinath Saw Mill
represented by its Proprietor K.Murugan
Nagalamman Street
Bye-Pass Road
Ambur, Vellore District. .. Petitioner

Versus

1. State Bank of India
   represented by its Authorized Officer
   Ambur Branch,
   No.11, Nethaji Road
   Ambur, Vellore District.

2. The District Collector
   Office of the District Collector
   Vellore District.

3. The Tahsildar
   Ambur, Vellore District.

4. K.Baskaran .. Respondents

Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to order dated 17.03.2017 passed in S.A.SR.No.5787 of 2016 on the file of Debt Recovery Tribunal-III, Chennai and quash the same and consequently, direct the first respondent to restore the possession to the petitioner.

For Petitioner	:	Mr.R.Subramanian
For Respondent-1	:	Dr.T.Ramasamy
For Respondents-2 & 3	:	Mr.P.S.Shivashanmugasundaram Special Government Pleader
For Respondent-4	:	Mr.KJ.Parthasarathy

ORDER

(Order of the Court was delivered by V.BHAVANI SUBBAROYAN,J.)

This Writ Petition is filed challenging the order passed by the Debt Recovery Tribunal-III, Chennai, made in S.A.SR.No. 5787 of 2016 dated 17.03.2017 and also for a direction to the first respondent to restore the possession to the petitioner.

2. Earlier, this Court, by order dated 13.04.2017, has granted an order of interim stay, which is extended periodically.

3. The case of the Writ Petitioner is as follows:-

(i) The petitioner K.Murugan, Proprietor of M/s.Srinath Saw Mill situated at Nagalamman Street, Ambur, Vellore District, is running the said business by availing small scale loan amount of Rs.12,00,000/- from the first respondent. However, due to family circumstances and other inevitable constraints like power cut, ban by forest officials etc., income from the business was not sufficient to repay the said loan. The bank initiated SARFAESI Proceedings and brought the property for auction, in which the fourth respondent had purchased the property. The petitioner came to know about the sale only when the bank informed him that they had deposited the balance sale amount, after adjusting the loan amount, in the petitioner's account. Thereafter, the petitioner contacted the recovery officer, who directed the petitioner to approach the auction purchaser.

(ii) In the mean time, the fourth respondent with his henchmen attempted to trespass into the petitioner's house during night time and threatened his wife, forcing the petitioner to make a complaint before the Superintendent of Police, Vellore. Thereafter, the fourth respondent met the petitioner and seemed to have stated that he would be satisfied if the auction amount with expenses incurred by him were paid by the petitioner, he would execute the sale agreement. Stamp papers were purchased and the agreement was also typed pursuant to the said talk. But to his dismay, the auction purchaser did not keep up his promise and instead attempted to disturb the petitioner's possession.

(iii) Since the auction purchaser could not succeed, he filed O.S.No.162 of 2013 before the Principal District Munsif Court, Ambur, as if he was in possession. Only after the receipt of summons in the above suit, the petitioner came to know that his application to set aside the sale had been dismissed on 05.09.2013 and by corrigendum dated 13.09.2013 the fourth respondent herein was impleaded as second respondent in S.A.No.107 of 2013.

(iv) The petitioner filed a Review Application before the Debt Recovery Tribunal-III, Chennai along with an application to condone the delay of 51 days in filing the Review Application. The Presiding Officer erroneously dismissed the application in M.A.No.18 of 2014. Therefore, the petitioner was forced to file an Appeal challenging the order passed by the Tribunal. The Appeal was allowed and the matter was remitted to the Tribunal for deciding the application on merits. Thereafter, the Tribunal erroneously dismissed the application, against which the petitioner preferred three Appeals in A.I.R.Nos.2,3 and 4 of 2016 before the Debt Recovery Appellate Tribunal and Notice has been ordered on 21.01.2016. As there was no Presiding Officer, the Appeals and Stay Petitions were not taken up.

(v) While so, on 13.07.2016, a notice was affixed in the petition premises stating that the petitioner has to hand over possession to the bank, with reference to the order passed by the District Collector on 16.03.2016 and a letter by Sub-Collector, Tiruppattur. The petitioner was intending to challenge the affixture notice dated 16.03.2016 and while he was in Chennai for that process, on 15.07.2016 the third respondent had broke open the premises with the assistance of the local police, without any intimation. Hence, the petitioner filed an Appeal before the Debt Recovery Appellate Tribunal on 15.07.2016 in S.A.SR.5787 of 2016 on the ground that the petitioner was neither furnished with nor communicated with the order of the District Collector. However, the Registry of the Tribunal listed the case for maintainability, since the Registry insisted that the appeal should have filed within 45 days from 16.03.2016, the date of order under challenge and that the Appeal is barred by limitation. The Tribunal, after notice, by order dated 17.03.2017 dismissed the Appeal holding that the Appeal filed by the petitioner challenging the order passed by the District Collector dated 16.03.2016 is not maintainable. Though there is an Appeal provision under Section 18 against the order passed by the Tribunal dated 17.03.2017, the petitioner has contended that there is no bar in filing a Writ Petition, since the alternative remedy is not expeditious and efficacious, when the respondents have illegally dispossessed the petitioner and his family members from their residential house. The above said order of the Tribunal dated 17.03.2017 is under challenge before this Court in the present Writ Petition, on the ground that the impugned order is perse illegal.

4. The first respondent has filed a detailed counter affidavit and contended that the Writ Petition is an abuse of process of law as the petitioner ought to have filed the Appeal before Debt Recovery Appellate Tribunal under Section 18 of the SARFAESI Act, and when alternative remedy is available under the

Statute, no Writ Petition can be entertained, as there is specific bar under Section 14(3) of the SARFAESI Act. The first respondent also contended that the secured creditor had taken actual possession of the secured asset in accordance with law and secured asset is not residential premises as alleged by the petitioner. The order passed under Section 14 of the SARFAESI Act was in strict compliance of the provisions of the statute and there is no illegality or infirmity in the said order. After taking over possession of the property under Section 14 of the SARFAESI Act, possession of the property was also handed over to the auction purchaser on 23.02.2017. Therefore, for the above said reasons, the first respondent sought for dismissal of the Writ Petition.

5. The fourth respondent / auction purchaser also has filed a detailed counter affidavit denying the averments in the petition affidavit and contended that there was no consent agreement as stated by the petitioner, between himself and the petitioner to return the property by receiving the auction sale consideration and expenses incurred. He further submited that the petitioner was a party to the Writ Petition filed by the fourth respondent in W.P.No.15225 of 2004, wherein he had sought for a direction to hand over possession, and this Court by order dated 08.09.2014, came to the conclusion that since the matter was being seized off by the Debt Recovery Appellate Tribunal, no direction as sought for by the petitioner therein could be granted and hence, the said Writ Petition was dismissed granting liberty to the petitioner therein to agitate the matter in the pending appeal before the Debt Recovery Appellate Tribunal. This Court also directed the Appellate Tribunal to dispose of the Appeal in M.A.(SA) No. 125 of 2014 filed against the order dated 14.02.2014 made in M.A.No.18 of 2014 in R.A.SR.180 of 2014 in SA No.107 of 2013 by the Tribunal, within a period of four months from the date of receipt of a copy of that order. It is also submitted that as per the directions of the District Collector, the Tahsildar and the Village Administrative Officer have taken physical possession of the property and handed over the same to the first respondent bank. The sale proceeds were adjusted to the loan account of the petitioner and the balance sale consideration was also deposited in the petitioner's account.

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

7. The only issue which has to be decided in the Writ Petition is whether the order dated 17.03.2017 in S.A.SR.5787 of 2016 is sustainable or not ?

8. It is seen from the records that the petitioner has

availed a term loan and cash credit facility to the tune of Rs.12,00,000/- from the first respondent bank, in the year 2007 and defaulted in repayment. The loan was secured by equitable mortgage of the schedule mentioned property as stated in the petition. When the respondent bank initiated SARFAESI Proceedings to recover its dues by way of sale of secured assets and conducted auction sale as early as on 04.03.2013, the fourth respondent herein was a successful bidder, and auction purchaser of the mortgaged property. The petitioner/borrower has challenged the above sale dated 04.03.2013 in SARFAESI Application S.A.No.107 of 2013. The Debt Recovery Tribunal-III, by order dated 05.09.2013 dismissed S.A.No.107 of 2013. Thereafter, on 11.09.2013 the petitioner/borrower has acknowledged the receipt of the balance sum of Rs.35,69,128/- by the bankers in DD No.295466 dated 27.03.2013, out of the sale proceeds, after adjustment of his loan account. The first respondent bank has accepted the offer of Rs.48,80,000/-, being the bid amount by the fourth respondent herein, and after adjusting Rs.13,10,872/- towards the loan amount, the petitioner has confirmed that the bank is not liable to pay any amount.

9. It is also seen that thereafter the petitioner filed M.A.No.18 of 2014 in R.A.SR.No.118 of 2014 in SARFAESI Application S.A.No.107 of 2013, on the ground that the secured asset has been sold to the fourth respondent herein, without his knowledge. The said application was filed with a delay of 51 days. The Debt Recovery Tribunal-III by order dated 14.02.2014 dismissed the said application M.A.No.18 of 2014 in R.A.SR.No.118 of 2014, on the ground that the petitioner had knowledge of the sale and also the dismissal of application in S.A.No.107 of 2013 dated 05.09.2013.

10. It is also seen that the petitioner has filed Appeal in M.A.(SA) No.125 of 2014 before the Debt Recovery Appellate Tribunal, challenging the order dated 14.02.2014 made in M.A.No.18 of 2014 in R.A.SR.No.118 of 2014 in SARFAESI Application No.107 of 2013 by the Debt Recovery Tribunal, but the Debt Recovery Appellate Tribunal has remitted the matter back to the Debt Recovery Tribunal-III, for fresh consideration of the delay condonation petition filed by the petitioner, in filing a petition seeking review of the order passed in S.A.No.107 of 2013. However, the Debt Recovery Tribunal-III, by order dated 15.12.2015, had dismissed the Application M.A.No.18 of 2014 in Review Application SR.No.118 of 2014 holding that no reason was furnished by the petitioner, either in the petition for condonation of delay or in the main Review Application.

11. It is also seen from the records that in the meanwhile, an order has been passed by the District Collector on 16.03.2016, on an application filed under Section 14(1) of the

SARFAESI Act by the first respondent herein. The District Collector, Vellore has passed a detailed order under Section 14 (2) of the SARFAESI Act, 2002, directing the Assistant Collector, Thirupattur and authorized him, to take possession of the property, and further directed the Deputy Superintendent of Police, Ambur, to assist the Assistant Collector, Thirupattur, for taking possession of the subject property, and hand over the same, to the authorized officer of the secured creditor, viz., the first respondent herein. Pursuant to the order of the District Collector dated 16.03.2016, the Assistant Collector, on 15.06.2016, has issued the proceedings of taking over possession and the Tahsildar, Ambur, on 15.07.2016, has completed the proceedings by taking over possession and then, handed over the same to the first respondent herein. Only thereafter, the petitioner has filed S.A.SR.5787 of 2016 before the Debt Recovery Tribunal-III, Chennai, challenging the proceedings of the Tahsildar, third respondent herein, and the order of the District Collector, the second respondent herein, dated 16.03.2016. The Debt Recovery Tribunal-III by order dated 17.03.2017 dismissed the said S.A.SR.5787 of 2016 at SR stage itself, on the ground of maintainability, as the same is preferred beyond the statutory period of limitation, for the alleged cause of action, especially when the petitioner had acknowledged the auction sale of the schedule mentioned property. Having exhausted all his remedy available, the petitioner has approached this Court by way of filing this Writ Petition challenging the order passed by the Debt Recovery Tribunal dated 17.03.2017 in S.A.SR.No.5787 of 2016.

12. From the above stated facts, it is clear that the petitioner having knowledge of the auction sale dated 04.03.2013, wherein the fourth respondent, who offered Rs.48,80,000/-, was declared as successful bidder of the auction by the banker. The auction purchaser has remitted the sum of Rs.48,80,000/- to the first respondent bank and the bank, after adjusting the loan amount of Rs.13,10,872/- as stood on 27.03.2017, has deposited the remaining amount of Rs.35,69,128/- into the account of the petitioner by way of DD No.295466 dated 27.03.1999. The petitioner has also issued a letter dated 11.09.2013 acknowledging the receipt of the remaining amount of auction sale proceeds after adjusting the debt amount towards the bank. After receiving the remaining amount, the petitioner has initiated the battle of filing Review Application with a petition to condone the delay of 51 days in filing the Review Application in M.A.No.18 of 2014 in R.A.SR.No.118 of 2014 in S.A.No.107 of 2013 and the same was dismissed. At every point of time, the petitioner not only suppressed the fact that he has received the balance amount of auction sale amount, before the Debt Recovery Tribunal and Debt Recovery Appellate Tribunal, the petitioner even in this Writ Petition not only has suppressed

the same in his affidavit, but did not rebut the averments stated at paragraph-3 of the counter affidavit filed by the first respondent bank, wherein the bank has clearly stated that the petitioner by his letter dated 11.09.2013 accepted and acquiesced the sale and received the excess/surplus sale proceeds of Rs.35,69,129/- and was aware of the sale. Letter dated 11.09.2013 enclosed in the typed set of papers filed by the first respondent was also not disputed by the petitioner, by filing appropriate rejoinder to the counter filed by the first respondent. Despite accepting the surplus amount from the sale proceeds, the petitioner has approached the Debt Recovery Tribunal as well as Debt Recovery Appellate Tribunal by way of Review against the initial order dated 05.09.2013 passed in S.A.No.107 of 2013 by Debt Recovery Tribunal-III. In the letter dated 11.09.2013, the petitioner in his own hand had written and acknowledged the receipt of the balance sale proceeds. There is no averment in the said letter that the amount received by him was under protest so as to enable him to challenge the sale. Under these circumstances, this Court is of the view that the petitioner, having knowledge of sale and having accepted the surplus/excess sale proceeds from the bank, cannot agitate or challenge the sale.

13. That apart, the petitioner has not stated any valid ground for not exhausting the Appeal remedy available under Section 18 of the SARFAESI Act before the Debt Recovery Appellate Tribunal, challenging the order passed by the Debt Recovery Tribunal-III dated 17.03.2017. Despite there being an alternative remedy, Writ jurisdiction can be invoked only under special circumstances, wherein the principles of natural justice was violated or orders passed by the authorities are without jurisdiction. Only under special circumstances, the writ jurisdiction can be invoked foregoing the availability of alternative remedy.

14. Considering all the facts and above stated circumstances, We do not find any reason to entertain this Writ Petition, merely because the alternative remedy available is not expeditious. Though there is an averment in the affidavit filed in support of the Writ Petition that the writ petitioner was illegally dispossessed from the residential premises, going through the materials on record and the order dated 16.03.2016 passed by the District Collector under Section 14(2) of the SARFAESI Act, it is well found that the order is within the jurisdiction and holds good. The petitioner's conduct in suppressing the valid fact of receiving surplus amount, after adjusting the loan amount cannot be countenanced.

15. Under the above circumstances and on the facts, this Writ Petition is liable to be dismissed and accordingly

dismissed. Consequently, the interim order granted as early as on 13.04.2017 ceases and all the connected Miscellaneous Petitions are dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Chair Person
Debt Recovery Appellate Tribunal,
Chennai.

2. The Presiding Officer
Debt Recovery Tribunal-III,
Chennai.

3. The Authorized Officer
State Bank of India
Ambur Branch,
No.11, Nethaji Road
Ambur, Vellore District.

4. The District Collector
Office of the District Collector
Vellore District.

5. The Tahsildar
Ambur, Vellore District.

+1cc to Mr.R.Subramanian, Advocate, S.R.No.10485

+3cc to Mr.Dr.T.Ramasamy, Advocate, S.R.No.10198

+3cc to Mr.K.J.Parthasarathy, Advocate, S.R.No.10223

Writ Petition No.8168 of 2017
and connected M.Ps.

LRS(CO)
RRK(05/03/2018)