IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/3/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE M.GOVINDARAJ

Writ Petition No.7284 of 2018

1. Mr.T.K.Santhosh

2. Mrs.T.P.Mini. ... Petitioners

Vs

1. The Authorised Officer
M/s. IDBI Bank Ltd
No.115 Anna Salai
P.B.No.805, Saidapet
Chennai 600 015.

2. Mrs.S.Mary Kala ... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of declaration, declaring the sale deed, dated 22/1/2018, executed by the first respondent in favour of the second respondent in auction in respect of the immovable property, situated at S.Nos.194/1, 2 and 195/2, 3 A and New Survey Nos.194/1A2 & 7, Patta No.2748, measuring total extent of 12,240 sq.ft (5.1 grounds) situated at E.V.P.Rajeswari Avenue, No.53 Madananthapuram Village, Sriperumbudur Taluk, Kancheepuram District, which was executed without following the procedure as null and void and directing the first respondent bank to provide the particulars of auction sale related documents relating to loan agreement No.073667510000613 in favour of the second respondent.

For Petitioners : Mr.K.Bhuvaneswari

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O R D E R

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

Borrower has sought for a writ of declaration, declaring the action of the Bank, in selling the subject property mortgaged and also prayed to cancel the sale deed, executed by the bank, in favour of Mrs.S.Mary Kala, second respondent, on the following grounds:-

(i). First respondent had failed to ensure maximum price for the secured asset. First respondent bank valued themselves the property around Rs.7.5 crores at the time of approval of the loan, in the month of December 2014. The petitioner valued the same through a valuer for a sum of Rs.9,00,00,000/- on 6/12/2017, which was notified to the first respondent bank but the respondent bank sold to their well wisher for a price little more than the outstanding amount, which is half the market price at a throw away price to match the outstanding.

(ii). First respondent had not sold the property on auction held on 18/1/2018. No bidder came on the auction date. If the same was sold on the date of auction, the respondent bank would have credited the excess amount on the said date after receiving the sale price from the purchaser. But the first respondent bank credited the same on 8/2/2018, that is after more than 20 days.

(iii). No higher bidder details was notified the borrower though the petitioner had notified the present market value and was interested to bring the higher bidder on their intimation. After the auction date, the first respondent bank has sold the same at a throw away price to their well wisher for an amount to satisfy their outstanding and got it registered only on 23/1/2018. The sale was not done in accordance with law.

(iv). The first respondent bank suppressed about the sale of their property till 8/2/2018 to the petitioner for a meager amount after the petitioner has provided the valuation report of the property to Rs.9,00,00,000/-.

2. Material on record discloses that IDBI Bank has issued a letter dated 8/8/2017, to the petitioners, as hereunder:-

Loan Recall Notice

BY REGISTERED POST ACKNOWLEDGEMENT DUE/ RECORDED DELIVERY

Dear Sir(s) / Madam,

1. Shri. T K SANTHOSH
PLOT NO.66A,

DOOR NO. 348, OLD NO.1/296,
SAKTHI AVENUE 3RD STREET,
GERUGAMBAKKAM,
CHENNAI-600 122.

2. Shri. T P MINI
PLOT NO.66A,
DOOR NO. 348, OLD NO.1/296,
SAKTHI AVENUE 3RD STREET,
GERUGAMBAKKAM,
CHENNAI-600 122.

Loan of Rs.5,00,00,000/- sanctioned to you by IDBI – Defaults – committed (Loan A/c No.0736675100006613)

We, IDBI Bank Limited (the Bank), have granted to you, at your request, Home loan (BT+Construction) of Rs.5,00,00,000/- (Five Crore Rupees Only), You have, inter alia, entered into a Loan Agreement, created mortgage, hypothecation on your immovable/movable properties.

2. Pursuant to the Home Loan Agreement dated 11.12.2014 made between you and the Bank (hereinafter referred to as "the Loan Agreement"), in respect of the Home Loan of Rs.5,00,00,000/- (Five Crore Rupees only), (hereinafter referred to as "the Loan") and the securities created in respect thereof, the Bank has disbursed to you, from time to time, sums aggregating Rs.4,70,00,646/- (Four Crore Seventy Lakh six Hundred & Forty Six Rupees Only). The undisbursed/unavailed portion of Rs.29,29,354/- (Twenty Nine Lakh Twenty Nine Thousand Three Hundred & Fifty Four only) are hereby cancelled as on date.

3. In terms of the Loan Agreement, you were required to repay to the Bank, the principal amount. You were also required to pay to the Bank interest on th principal amount along with other monies of the Loan outstanding from time to time, at the rate and in the manner contained in the Loan Agreement.

4. You have failed and neglected to pay to the Bank, the installments of the principal, interest and other monies, the particulars whereof are given in Annexure II hereto. You have also committed other defaults in terms of the Loan Agreement.

5. The particulars of the outstanding amounts due to the Bank, in respect of the Loan are mentioned in Annexure III hereto.

6. Despite repeated requests made by the Bank, you have failed and neglected to clear the over dues and outstanding dues.

7. Since, you have committed defaults in the payment of principal amount of the Loan, interest and other monies and also in observance and performance of the other conditions of the Loan Agreement, the Bank has become entitled to recall the entire principal amounts of the Loan disbursed, interest and

other monies due in respect thereof.

8. Accordingly, the Bank, hereby declares in writing as follows:-

i) THAT the outstanding principal amounts of the Loan aggregating Rs.4,70,00,646/- (Four Crore Seventy Lakh six Hundred & Forty Six Rupees Only) together with interest, further interest, liquidated damages, etc. aggregating Rs.15,04,394/- (Fifteen Lakh Four Thousand Five Three Hundred & Ninety Four Rupees Only), making the aggregate amount of Rs.4,85,05,040/- (Four Crore Eighty Five Lakh Five Thousand & Forty Rupees only), the particulars whereof are mentioned in Annexure III hereto, have become immediately due and payable by you to the Bank;

(ii) THAT a sum of Nil payable by you towards expenses incurred by IDBI, as per Annexure IV hereto, have become immediately due and payable by you to the Bank;

9. In the premises, we hereby call upon you and demand from you, to pay to the Bank, within a period of 15 days from the date hereof, the aforesaid sums aggregating Rs.4,85,040/- (Four Crore Eighty Five Lakh Five Thousand & forty Rupees Only), as per Annexure (s) III and IV hereto, together with further interest thereon with effect from last Interest date to the Bank, at the contractual rates upon the footing of compound interest until payment/realization.

ANNEXURE-I

Particulars of the Loan and documents executed

Sr. No.	Amount of the Loan	Particulars of the loan agreement and other documents of security
1.	Home Loan of Rs.5,00,00,000/-	i) Loan Agreement dated 11.12.2014

ANNEXURE-II

Particulars of defaults in repayment of Principal and payment of Interest as on 10.07.2017

DEFAULTS

Home loan Amount of	Principal Overdue	Interest Overdue	Total Overdue
Rs.5,00,00,000/-	Nil	Rs.15,04,394/-	Rs.15,04,394/-

ANNEXURE-III

PARTICULARS OF THE OUTSTANDING AMOUNTS IN RESPECT OF THE

LOANS AS ON 10.07.2017)

	Amount
PRINCIPAL	Rs.4,70,00,646/-
INTEREST	Rs.15,04,394/-
ADDITIONAL INTEREST	NIL
FURTHER INTEREST	NIL
LIQUIDATED DAMAGES	NIL
TOTAL	Rs. 4,85,05,040/-

ANNEXURE-II
Shri.T K Santhosh & Smt. T P Mini
Particulars of Defaults in repayment of Principal and payment of interest etc. as on 11.07.2017

Financial Assistance	Principal Overdue Amount	Principal Due Date	Interest overdue Amount	Interest Due Date	Remark
Rs. 5,00,00,000/-	Rs. 4,70,00,646/-	10.07.2017	Rs. 15,04,394/-	10.07.2017	Nil

ANNEXURE-III
Shri.T K Santhosh & Smt. T P Mini
PARTICULARS OF THE TOTAL CLAIM AS ON 11.08.2017

Financial Assistance	Principal (in Rs.)	Interest (in Rs.)	Additional Interest	Further Interest	Liqui-dated Damages	Total (in Rs.)
Housing Loan	4,70,00,646	19,02,447	-	-	-	4,89,03,093

ANNEXURE-I B
Shri.T K Santhosh & Smt. T P Mini
Particulars of the Secured Assets intended to be enforced
(A) The Mortgaged Assets
(Assets owned and mortgaged by the Borrower
Shri. T K Santhosh & Smt. T P Mini who has created mortgage)
SCHEDULE OF THE PROPERTY

All that Part and Parcel of Residential House measuring 8250 Sq.ft comprised in survey No's:194/1,2 & 195/2,3A and New Survey No's 194/1A2 & 7, Patta No.2748 measuring an total extent of 12,240 Sq.ft (5.1 Grounds) situated at E.V.P Rajeswari Avenue,

No.53, Madananathapuram Village, Sriperambudur Taluk, Kancheepuram District and is Bounded as follows:-
On the North By :40 ft Road;
On the South By :Plot No's 25&32
On the East By :30 ft Road &
On the West By :30 ft Road;
Situated within the Sub-Registration District of Kundratur & Registration District of Chennai South.
Together with all and singular the structures and erections thereon, both present and future.

3. Thereafter, demand notice, dated 28/8/2017, under Section 13 (2) of the SARFAESI Act, has been issued, and the same reads thus:-

(Demand Notice-Section 13(2) of SARFAESI Act.)
REGISTERED POST WITH ACKNOWLEDGEMENT DUE
Ref:IDBI/CHN REC/03/2017-18

Date: 28.08.2017

Dear Sir / Madam,
1. Shri. T K SANTHOSH
PLOT NO.66A,
DOOR NO. 348, OLD NO.1/296,
SAKTHI AVENUE 3RD STREET,
GERUGAMBAKKAM,
CHENNAI-600 122.

2. Shri. T P MINI
PLOT NO.66A,
DOOR NO. 348, OLD NO.1/296,
SAKTHI AVENUE 3RD STREET,
GERUGAMBAKKAM,
CHENNAI-600 122.

Financial assistance sanctioned to you by IDBI Bank Limited – Defaults committed – Statutory notice under Section 13(2) of the Securitisation and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002 Account No. 0736675100006613)

We, IDBI Bank Limited ("IDBI Bank"), through the Authorised Officer, do hereby issue this statutory notice to you, under Section 13(2) of the Securitisation and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002 ("the Act") in the circumstances narrated below:

1. IDBI Bank, granted financial assistance to you, the Addresee No.1) viz. Shri. T K Santhosh & 2) Smt. T P Mini

comprising of Housing Loan (BT+Construction) of Rs.5,00,00,000/- (Five Crore Rupees Only) (collectively "the Financial Assistance") on the terms and conditions contained in the Loan Agreement(s) dated 11.12.2014 ("the Loan Agreement") and the security documents including other securities ("the Security Documents"), the particulars whereof are given in Annexure 1A

2. As security for the Financial Assistance, You, the Addressee No.1)Shri. T K Santhosh & 2) Smt. T P Mini has security interest in favour of IDBI Bank, inter alia, by way of hypothecation in respect of movable properties. Yourselves, Shri. T K Santhosh & Smt. T P Mini also mortgaged immovable properties situated at No.53, E.V.P. Rajeswari Avenue, Madananathapuram Village, Sriperambudur Taluk, Kancheepuram District. The above movable and immovable properties are hereinafter collectively referred to as "the Secured assets", particulars whereof are given in Annexure-1B.

3. Pursuant to the above, you, the Addressee No.1 have availed the disbursement aggregating Rs.4,70,00,646/- (Four Crore Seventy Lakh Six Hundred & Forty Six Rupees Only) from time to time.

4. In terms of the Loan Agreement read with the Security Documents, you, the Addressee No.1 has agreed to repay to IDBI Bank, the Financial assistance in accordance with the amortization schedule contained in the Loan Agreement. The Addressee No. 1 has failed and neglected to pay to IDBI Bank, the installments of principal amount of the Financial Assistance, interest and other monies, the particulars whereof are given in Annexure II. Consequent upon the defaults committed by you, the Addressee No.1, the account(s) in respect of the Financial Assistance, has/have been classified by IDBI Bank as non performing asset in accordance with the directions/ extant guidelines issued by the Reserve Bank of India from time to time.

5. In view of the defaults committed by you, the Addressee No.1, IDBI Bank, vide it's letter bearing dated 08.08.2017, has declared the Financial Assistance together with interest and other moneys aggregating Rs.4,85,05,040/- (Four Crore Eighty Five Lakh Five Thousand & Forty Rupees Only), as on 11.07.2017 to have become immediately due and payable by you, the Addressee No.1 and called upon you, the Addressee No.1 to pay to IDBI Bank the said amount. The particulars of outstanding amount as on 11.07.2017 are given in Annexure III.

6. In the premises, IDBI Bank has become entitled to and does issue this statutory notice to you under Section 13(2) of the Act and hereby calls upon you to pay to IDBI Bank at Retail

Asset Centre, Khivraj Complex, Ground Floor, No.480, Anna Salai, Nandanam, Chennai-600 035, within a period of 60 days from the date of this notice, the aforesaid sum aggregating Rs.4,89,03,093/- (Four Crore Eighty Nine Lakh Three Thousand and Ninety Three Rupees Only) as per Annexure - III, together with further interest thereon with effect from 11.08.2017 to IDBI Bank, at the contractual rates upon the footing of compound interest, until payment/realisation, failing which IDBI Bank, as a secured creditor shall be entitled to enforce its security interest without intervention of the Court or Tribunal, by taking recourse to one or more of the measures under Chapter III of the Act, including (but not limited to) taking over of possession and / or management of the secured Assets, short particulars whereof are given in Annexure-IB for realising its dues at your own risk as to the costs and consequences thereof.

7. Please note that after receipt of this notice. In terms of Section 13(13) of the Act, you shall not transfer by way of sale, lease or otherwise (other than in the ordinary course of your business) any of the Secured Assets described in Annexure-IB hereto, without prior written consent of IDBI Bank. Please note that contravention of the provisions of the Act is an offence punishable under section 29 of the Act.

8. Please further note that this statutory notice is issued without prejudice to all the other rights and remedies available to IDBI Bank in law or in contract or both, in respect of the Financial Assistance.

ANNEXURE-I A

Shri.T K Santhosh & Smt. T P Mini

Particulars of the Financial Assistance, Amounts Disbursed and Documents Executed

Financial Assistance (Amount Disbursed)		Particulars of the Loan Agreements and Security Documents
Housing Loan Rs. 4,70,00,646/-	i)	Loan Agreement dated 11.12.2014
	ii)	Mortgage by deposit of title deeds created by the Borrower in respect of its immovable properties Situated at Survey No's: 194/1,2 and 195/2,3A and New Survey No's: 194/1A2 & 7, Patta No. 2748 measuring an total extent of 12,240 Sq.ft (5.1 Grounds) situated at E.V.P.Rajeswari Avenue, No.53, Madananathapuram Village, Sriperambudur Taluk, Kancheepuram District with Residential Building measuring 8250 Sq.ft.

4. On 7/11/2017, Bank has issued a possession notice, and the same reads thus:-

(Possession Notice under SARFAESI Act)
APPENDIX IV
[RULE 8(1)]
POSSESSION NOTICE
(FOR IMMOVABLE PROPERTY)

Whereas

The undersigned being the authorised officer of IDBI Limited under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and in exercise of the powers conferred under Section 13(12) of SARFAESI Act read with Rule 3 of Security Interest (Enforcement) Rules, 2002 (the Rules) issued a demand notice dated 28.08.2017 calling upon Shri.T K Santhosh & Smt. T P Mini (the Borrowers) to repay the amount mentioned in the notice being Rs.4,89,03,093/- (Four Crore Eighty Nine Lakh Three Thousand and Ninety Three Rupees Only) plus cost, interest up to date plus charges at applicable rates within 60 days from the date of the receipt of the said notice.

The Borrower having failed to repay the amount, notice is hereby given to the Borrower / Mortgagor and the public in general that the undersigned has taken Physical Possession of the property described herein below, in exercise of powers conferred under section 13(4) of the SARFAESI Act read with Rule 8(1) of the Rules on this 07 November 2017.

The Borrower / Mortgagor in particular and the public in general is hereby cautioned not to deal with the property and any dealing with the property will be subject to the charge of IDBI Bank Limited for an amount of Rs.4,89,03,093/- (Four Crore Eighty Nine Lakh Three Thousand and Ninety Three Rupees Only) as on 11.08.2017 Plus cost and interest thereon.

DESCRIPTION OF THE PROPERTY

SEHEDULE OF THE PROPERTY

All that Part Parcel of Residential House measuring 8250 Sq.ft comprised in Survey No's 194/1,2& 195/2,3A and New Survey No's:194/1A2&7, Patta No.2748 measuring an total extent of 12,240 Sq.ft (5.1 Grounds) situated at E.V.P. Rajeswari Avenue, No.53, No.53, Madananathapuram Village, Sriperambudur Taluk, Kancheepuram District and is Bounded as follows:-

On the North By :40 ft Road;
On the South By :Plot No's 25&32
On the East By :30 ft Road &
On the West By :30 ft Road;

Situated within the Sub-Registration District of Kundratur & Registration District of Chennai South.

5. On 15/12/2017, sale notice has been issued and on the same day, sale auction notice has been published in "Tamil" and "English" newspapers and the same reads thus:-

AUCTION SALE NOTICE

The undersigned being the Authorized Officer (AO) of the IDBI Bank Ltd., (IDBI) invites Bids/Offers in sealed covers for sale of the following below mentioned property under the provisions of the securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 read with the Security Interest (Enforcement) Rules, 2002.

Notice is hereby given to the borrower and the public in general.

Auction Date & Time	Borrower's Name	Outstanding Amount	Reserve Price & Earnest Amount in Rupees	Schedule of the property

Auction Date: 18.01.2018 ; Time: 10.00am to 11.00 am	Shri.T.K.Santhosh & Smt.T.P.Mini Account 0736675100006613	Rs.5,05,17,975/- + interest and charges thereon as on 11.12.2018	Reserve Price 5,25,00,000/- EMD Amount 52,50,000/- Last Bidding Date 17.01.2018	All that Part and Parcel of Residential House measuring 8250 Sq.ft comprised in Survey No's: 194/1,2& 195/2,3A and New Survey No's:194/1A 2&7, Patta No.2748 measuring an total extent of 12,240 Sq.ft (5.1 Grounds) situated at E.V.P. Rajeswari Avenue, No.53, Madananatha-puram Village, Sriperambudur Taluk, Kancheepuram District and is Bounded as follows: On the North By : 40 ft Road; On the South By : Plot No's 25&32 On the East By :30 ft Road & On the West By :30 ft Road;

Terms and conditions:-

1. For participating in the bid, the intending bidders should submit their Tender in the prescribed format in a sealed cover along with the respective Earnest Money Deposit (EMD) (i.e.10% of the reserve price) by way of Banker's Cheque/Demand Draft favourding IDBI/Bank Ltd payable at Chennai, addressed to IDBI Bank Ltd, First Floor, PM Towers, No.37, Greams Road, Chennai-600 006.

2. The Tenders sent without EMD or below reserve price as mentioned above will be rejected summarily.

3. The Tenders containing detailed terms and conditions along with relevant particulars can be obtained only from the office of the IDBI Bank Ltd, Regional Office at the address mentioned above on working days from 15.12.2017 to 17.01.2018 between 10.00 am to 4.00 pm. Tender forms other than bank format will not be accepted.

4. The Tender along with EMD & Photocopy of photo bearing identity card (Voter ID/PAN card/Ration card/Driving license) of bidders shall be submitted to IDBI Bank Ltd, Regional Office, Greams Road, Chennai-600 006.

5. The tenders shall be opened on 18.01.2018 at time & address as mentioned above.

6. Tenders once submitted to the Authorized Officer cannot be allowed to be withdrawn.

7. The property shall be sold to the highest bidder. In case the same amount being quoted in the bids by the highest bidders, the inter-se-bidding will be conducted only among those highest bidders. The successful bidders shall deposit 25% of the bid amount (less the EMD) immediately on the sale being confirmed in his/her favour and the balance money within 15 days from the date of sale.

8. The EMD shall be refunded only after fifteen days, without interest, if the bid is not successful.

9. In default of payment of the amounts referred to above within the time stipulated unless otherwise extended the sale will stand automatically revoked and the earnest money deposit forfeited.

10. The sale certificate will be issued in the name of the successful bidder only, after payment of the entire bid amount and other charges, if any.

11. The successful bidder should bear the charges / fee payable for conveyance such as registration fee, stamp duty etc., as applicable as per law.

12. The property is generally said on “AS IS WHEREIS”, WHATEVER THERE IS BASIS” and “NO RECOURSE BASIS”. The purchasers should make their own enquires regarding any statutory liabilities arrears of property tax, electricity dues etc., of the company by themselves before participating in the sale.

13. The prospective bidders can inspect the property on

12.01.2018 between 10.00 am to 5.00 pm.
14. The Authorized Officer has the absolute right accept or reject the bid or adjourn/postpone/cancel the tender without assigning any reason thereof and also to modify any terms and conditions of this sale without any prior notice.
15. For further details regarding inspection of property, etc. the intending bidders may contact IDBI Bank Ltd, Regional Office, First Floor, PM Towers, No.37, Greams Road, Chennai-600 006 during office hours Phone No.044-2220 2009, 94861 99251, 98843 52606.
16. Any dispute regarding the matter would be under Jurisdiction of Courts at Chennai only."

6. IDBI has also issued a letter, dated 5/1/2018, to the first petitioner, stating that a sum of Rs.35,17,329/- was due. Thereafter, on 8/2/2018, Bank has sent a communication, to the petitioners, stating that the property was auctioned, on 18/1/2018, for Rs.5,26,08,000/- and that the sale was confirmed, in favour of the second respondent, who had paid the entire sale consideration. Bank has also informed that the sale certificate, dated 22/1/2018, issued in favour of the second respondent. Possession has also been handed over to the second respondent, on 22/1/2018. Thereafter, the petitioner has sent a letter, dated 17/2/2018 to the Bank, alleging cheating.

7. Petitioner has also sent a letter, dated 26/2/2018, to the Chief General Manager, IDBI Bank Limited and three others, seeking for clarification.

8. Material on record discloses that the petitioners were aware of notice under Section 13 (4), and sale notice, dated 15/12/2017 and also received a letter, dated 8/2/2018, intimation from the Bank about the sale of the property, on 18/1/2018 and consequently, the issuance of sale certificate, dated 22/1/2018, in favour of the second respondent.

9. Petitioners have not challenged any of the proceeding. In the event of any irregularities in sale, remedy is available, under Section 17 (1) of the SARFAESI Act, 2002, to challenge the action of the Bank, on tenable grounds. Two months' time have expired, since the issuance of sale certificate.

10. On the aspect of alternate remedy, 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, at Paragraphs 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.
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> 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, at Paragraphs 1, 5 to 7, 9 and 13, 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.

5. At the outset, it is a clear case where the petitioner has come to this Court challenging the possession notice dated 16.09.2004 after a period of six years. The possession notice under Section 13(4) of the SARFAESI Act was issued on 16.09.2004 for which the petitioner has not sent any objection or reply. The possession notice was also published in the newspaper on the same day. Even thereafter, the petitioner has not come forward to make any payment. On 28.09.2004, the petitioner sent a letter requesting the respondent for accepting Rs. 30 lakhs towards full and final settlement, but that was negatived by the bank on 09.10.2004. Thereafter, by letter dated 22.02.2005, she increased the offer to Rs. 35 lakhs, which was also declined by the bank on 01.03.2005. The petitioner further increased the offer to Rs. 36 lakhs by her letter dated 01.03.2005 which was not accepted by the bank. The offer was further increased by the petitioner to Rs. 40 lakhs and thereafter she also deposited Rs. 20 lakhs over a period of time from 12.03.2005 to 23.09.2005 for a period of six months in a no lien account. Thereafter, by letter dated 26.06.2006, the petitioner increased the offer to pay Rs. 43 lakhs in full quit but it was not accepted by the bank. On 04.07.2006, the bank directed the petitioner to increase the offer and immediately

she increased it to Rs. 45 lakhs and also offered to close the debt with C.I.T. Nagar Branch and close the personal loan accounts on 09.10.2006. Finally, after a period of one year, on 20.03.2007, she agreed to pay Rs. 44 lakhs towards all the accounts. This was also ultimately rejected by the bank on 27.09.2007 and directed to make arrangement to liquidate the dues without any further loss of time. The bank also sent a telegram on 22.11.2007 directing the petitioner to close all the accounts. The petitioner has not challenged the orders of rejection of her proposal to pay or deposit the amount in one lumpsum before the competent forum namely Debts Recovery Tribunal. After a period of three years, now the petitioner has taken up the whole issue on the basis of a communication dated 18.03.2010 received from the respondents intimating her about the one time settlement offer introduced by the bank. Even for this, the petitioner would contend that she is willing to take up the offer, but she has not paid any amount towards the scheme, but only sent a letter stating that she is ready to deposit the amount provided all the loan should be closed and documents released to her. At this point of time, when the bank came to the knowledge regarding the sale of the secured assets by the petitioner to her son and created encumbrance, the bank declined to extend the benefits of one time settlement to the petitioner. In the counter, it was brought to the notice of this Court regarding clause 1.7 of the one time settlement scheme introduced by the bank wherein it was stated that fraud, malfeasance and willful default committed by the borrower are not not be eligible for OTS Scheme.

6. It is categorically brought out by the bank that pending the SARFAESI proceedings initiated by the bank, the petitioner, in order to deprive the right of the bank to recover the amount, has clandestinely transferred the secured assets in favour of her son and in that event, the bank has got every right to decline to extend the benefits of One time settlement scheme to the petitioner. Further, the possession notice sent to the petitioner way back in the year 2004, remains unchallenged by her till 2010 by approaching the competent Forum namely Debts Recovery Tribunal. 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.

7. In this connection, we are fortified by the decision of the Honourable Supreme Court reported in (United Bank of India v. Satyawati Tondon and others) III (2010) BC 495 (SC) = 2010-5-L.W. 193, wherein in para Nos. 17 and 18, it was held thus:—

"17. …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 t he 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 redressal 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 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, (underlining added).

9. In the light of the above decision of the Honourable Supreme Court, the writ petition filed by the petitioner seeking to set aside the possession notice issued to her long back is legally not sustainable. We are of the considered view that this petition has been filed only to drag on the proceedings and to evade repayment of the loan. That be so, the petitioner has no legal right to compel the bank to accept the one time settlement offer made by her.

13. The present case is identical in nature and it is covered by the judgment of the Supreme Court mentioned supra. In this case, the petitioner has violated the condition of mortgage by transferring the secured asset in favour of her son and therefore, as per clause 1.7 of the OTS Scheme offered by the bank, the petitioner has to be excluded from extending the benefits of the scheme which was rightly done by the bank. In any event, without exhausting the alternative remedy, the relief sought for by the petitioner by invoking the discretionary remedy under Article 226 of The Constitution of India cannot be granted."

iv) In Simon's Foot Wear Pvt. Ltd. v. Indian Bank, reported in (2015) 2 MLJ 166, a Hon'ble Division Bench of this court held as follows:

“9.As against the confirmation of sale and issuance of the sale certificate, the writ petitioners did have their remedy of filing an appeal under Section 18 of the SARFAESI Act before the Debts Recovery Appellate Tribunal. The appeal remedy is an effective and efficacious remedy. When such an effective and efficacious remedy is available, this court will decline exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. ....

10.So far as the challenge made to the order dated 24.06.2013 is concerned, since an appeal remedy is available the writ petitioners ought to have exhausted the appeal remedy before approaching this Court with this writ petition. ....”

11. In the light of the decisions and discussion, we are of the view that the instant writ petition, is not maintainable and accordingly, the same is dismissed.

12. Though the petitioners have not approached the Tribunal, within the time provided therefor, we permit the petitioners, to approach the Tribunal, by filing an application, under Section 17 (1) of the SARFAESI Act, 2002. If any application is filed, Tribunal shall assign appropriate number, without insisting on the limitation period. It is open to the petitioners to raise all tenable grounds therein.

No Costs. Consequently, connected, Writ Miscellaneous Petition is closed.

Sd/-
Deputy Registrar(CO)

//True Copy//

Sub Assistant Registrar

mvs

To

+1cc to Mr.P.Veeramalai, Advocate, S.R.No.23729

Writ Petition No.7284 of 2018

RRK(28/04/2018)