IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2018

CORAM:

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

W.P.No.6467 of 2018
and
WMP No.7983 of 2018

M/s.RMR Spinning Mills Pvt. Ltd.,
Rep. by its Director,
Shri R.Jagadeeswaran ... Petitioner

vs.

1. Authorised Officer,
Corporation Bank,
Industrial Finance Branch,
1604, Trichy Road,
Coimbatore - 641 018.

2. Corporation Bank,
Industrial Finance Branch,
1604, Trichy Road,
Coimbatore - 641 018. ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, calling for the records of the respondent bank herein sale notice on 19.02.2018 and scheduled held on 27.03.2018 is illegal and quash the same and consequential direction or nature of direction directing the respondents to consider the petitioners representation dated 02.02.2015 under the one time settlement scheme.

For Petitioner : Mr.K.Rajendra Prasad

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

Challenging the auction notice dated 19.02.2018, instant writ petition has been filed for a certiorarified mandamus, to quash the same and consequently to issue a direction to the respondents to consider the petitioner's representation dated

02.02.2015 for one time settlement.

2. Petitioner has availed, the following cash credit facilities.

i) 2011- Rs.2.50 Crores - CC (Cash Credit)
ii) 2011- Rs.1.00 Crores - ILC (Inland Letter of Credit)
iii) 2012 - Rs.2.50 Crores - CC (Cash Credit)
iv) 2012 - Rs.1.60 Crores - TL (Sanction of Rs.2.80 Crs.)
v) 2012 - Rs.1.00 Crores - C.C. (Cash Credit)
Total - Rs.8.60 Crores.

3. Petitioner has offered the following properties, as security.

i) Item No.1: Vacant land measuring about 445.15 Sq.m or 0.11 acres. Value of Rs.119.79 Lakhs.
ii) Item No.2: The Dwelling House Measuring land about 3600 Sq.ft. and building 7200 Sq.ft. - Value of Rs.205.00 Lakhs
iii) Item No.3: Vacant land Measuring about 12.07 acres of land and Factory building about 1,00,000 sq.ft - Value of Rs.900.00 Lakhs Situated at Dindigul District.
iv) Item No.4: Vacant land Measuring about 4,800 Sq.ft - Value of Rs.12.00 Lakhs.
v) Item No.5: Vacant land measuring about 3735 Sq.Ft. Value of Rs.11.00 Lakhs.

4. Total loan availed is Rs.8.60 Crores. According to the petitioner, the total value of the property mortgaged with the bank, is Rs.14 Crores. So far Rs.2 Crores have been paid towards interest till the bank declared the account as NPA on 10.10.2013. Notice issued under Section 13(2) of the SARFAESI Act, dated 07.10.2013 has been received on 21.10.2003. Within a period of 60 days, petitioner has sent a representation under Section 13(3-A) of the SARFAESI Act, 2002 dated 21.12.2013. Without considering the representation / objection in proper perspective, bank has proceeded to send a notice under Section 13(4) of the SARFAESI Act, 2002 dated 24.12.2013. Break up details were not given. Again on 11.01.2014, bank has issued another possession notice under Section 13(4) of the SARFAESI Act, 2002 and published the same in the newspapers. E-auction notice dated 27.02.2015, was also issued and published.

5. Being aggrieved by the possession notice dated 11.01.2014, petitioner has filed S.A.No.55 of 2014 on the file of the Debts Recovery Tribunal, Coimbatore and prayed for stay of the same. After considering the submission of the parties, vide order dated 28.03.2014, the tribunal ordered status quo in respect of Item No.B of the e-auction sale notice dated

27.02.2014 till 04.04.2014. In respect of other items, the tribunal permitted the bank to go ahead with the e-auction proceedings.

6. Based on the proceedings dated 28.03.2014 in SA No.55 of 2014, Mr.K.Rajendra Prasad, learned counsel for the petitioner submitted that after considering the submissions of the learned counsel for the parties and averments with regard to the procedural irregularities in issuing the possession notice dated 11.01.2014, the Debts Recovery Tribunal, Coimbatore, had thought it fit to order status quo in respect of Item No.B of the e-auction sale notice dated 27.02.2014 and in such circumstances, the impugned sale notice dated 19.02.2018, fixing the auction on 27.03.2018, is illegal and liable to be set aside.

7. Learned counsel for the petitioner, further submitted that a sum of Rs.50 Lakhs has been deposited in the loan account. But the bank declined to regularise the loan account.

8. Heard Mr.K.Rajendra Prasad, learned counsel for the petitioner and perused the material available on record.

9. True that the tribunal while considering I.A.No.330 of 2014 in S.A.No.55 of 2014, filed to stay the possession notice under Section 13(4) dated 11.01.2014, passed orders directing status quo in respect of Item-B of the e-auction sale notice dated 28.02.2014. For brevity, proceedings dated 28.03.2014 is reproduced hereunder.

> "Learned counsel Ms.Shankaran Latha is appearing for the appellant Learned counsel Mrs.Sowmya Sitaram is appearing for the respondent bank.
>
> IA 330/14: This petition has been filed by the petitioner to stay the proceedings pursuant to the possession notice under Section 13(4) dated 11.01.2014. Counsel for the respondent bank filed Counter along with addl. documents. Heard both learned counsels. While arguing the matter the learned counsel for the petitioner fairly concedes the bank to go ahead with the proposed e.auction notice dated 27.02.2014 except the house property mentioned as Item 'b'. The learned counsel for the respondent bank also on the part of the bank fairly concedes for the same. Therefore, in view of the submissions made by both learned counsels, and the contentions raised in the affidavit averments with regard to the procedural irregularities, this Tribunal is of the view that it is a fit case to order status quo in respect of Item 'b' of the e.auction sale notice 27.02.2014. Accordingly, status quo is ordered in respect of Item 'b' of the e.auction sale notice dated 27.02.2014 till 04.04.2014. In respect of other items,

respondent bank can go ahead with the e.auction proceedings. For detailed enquiry, call on 04.04.2014."

10. However, further proceedings in SA No.55 of 2014, shows that when the matter was taken on 04.04.2014, learned counsel for the bank submitted that e-auction could not be given effect for want of successful bidders.

11. Now, the bank has issued another sale notice dated 19.02.2018, bringing the property for auction. For brevity, sale notice dated 19.02.2018 is reproduced.

"Dear Sir/Madam,

NOTICE OF 30 DAYS FOR SALE OF IMMOVABLE SECURED ASSETS UNDER RULE 8(5) OF THE SECURITY INTEREST (enforcement) RULES, 2002.

1. Corporation Bank, Coimbatore - Industrial Finance Branch, the secured creditor, caused a demand notice dated 17.10.2013 under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, calling upon you to pay the dues within the time stipulated therein. Since you have failed to comply with the said notice within the period stipulated, the Authorized officer has taken possession of the immovable secured assets under Section 13(4) of the Act read with Rule 8 of the security interest (Enforcement) Rules, 2002. Possession notice dated 06.01.2014 issued by the Authorized Officer, as per appendix IV to the Security Interest (Enforcement) Rules, 2002 was delivered to you and the same was also affixed to the properties mortgaged with the secured creditor.

2. As you have failed to clear the dues of the secured creditor, the immovable secured assets that have been taken possession by the Authorized Officer, will be sold by inviting tenders cum auction from the public on 27.03.2018, at Corporation Bank by E-Auction.

3. You are also requested to ensure participation by parties interested in buying the immoveable secured assets in the sale as proposed above.

4. A copy of the terms of sale is enclosed for your reference. Please note that tenders received will be opened by the undersigned at the place and time mentioned in the enclosed terms of sale.

Place: Coimbatore Sd/-
Date: 19.02.2018 CORPORATION BANK

E-auction Sale Notice Coimbatore IFB(562)
Industrial Finance Branch,
1604, Trichy Road,

Coimbatore - 18

Sale of Movable / Immovable Assets under the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002

Whereas the Authorized Officer of Corporation Bank had taken possession of the following secured assets pursuant to notice issued under Sect. 13(20 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) for recovery of the secured debts of the secured creditor, for the dues as mentioned herein below with further charges and cost thereon from the following borrowers/guarantors. Public at large is informed that e-auction (Under SARFAESI Acct) of the following property for realization of the debs due to the Bank will be held on "As is Where is" and "As is What is" basis and on the terms and conditions specified herein below:

Borrower: M/s.RMR SPINNING MILLS PVT LTD., No.643/2B, Kuluthupalayam, Lakshmi Kayanamandapam Road, Palladam Road, Tirupur - 641 605.

Guarantor: 1.Mr.Jagadeeswaran, D.No.14 & 14 A, Old T.S.No.201/1, New T.S.No.287/1B/10/4, Thennampalayam Extn., Cross Street, Tiruppur - 641 604.

2. Mr.R.M.Rajamanickam; D.No.14 and 14A, Old T.S.No.201/1, New T.S.No.287/1B/10/4, Thennampalayam Extn., Cross Street, Tiruppur - 641 604.

3. Mrs.R.Logambal, D.No.14 and 14 A, Old T.S.No.201/1, New T.S.No.287/1B/10/4, Thennampalayam Extn., Cross Street, Tiruppur - 641 604.

Debt Due: 16,04,04,533.89 Lakhs as on 19/10/2017 with further interest, cost & expenses

Secured Creditor: Corporation Bank, Coimbatore - IFB

Date of Demand Notice: 17/10/2013 and

Date of Possession : 06/01/2014

EMD (a) Rs.12.60 Lakh (b) Rs.7.90 Lakh (c) Rs.0.85 Lakh (d) Rs.0.65 Lakh

Account No.056200201001603; IFSC Code - CORP0000562

Reserve Price: Property (a) Rs.126.00 Lakh (b) Rs.79.00 Lakh (c) Rs.8.50 Lakh (d) Rs.6.50 Lakh Bid incremental value Rs.25,000.00

Description of the property:

Property a):-

All that piece and parcel of Land measuring 3600 Sq.ft and Residential Building constructed therein at Door No.14-14A, T.S.No.287/1B/10/4, Site No.3, S.F.No.201/1 in Tirupur Registration District, Tirupur Joint II Sub

Registration District, Tirupur Taluk, Tirupur Municipal Town, earlier in Ward No.19, presently Ward No.29, Thennampalayam Cross Street, Tirupur in the name of Mr.R.M.Rajamanickam.

Property b):-
all that piece and parcel of residential Plot to the extent of 4791.55 Sq.Ft at TS.No.13 & 16/1, in Tirupur Registration District, Tirupur Joint II Sub Registration District, Tirupur Municipal Town Ward No.34, Ramegounder Layout Extension, Nallur Village, Tirupur in the name of Mr.R.M.Rajamanickam.

Property c):-
All that piece and parce of vacant land to the extent of 4800 sq.ft with right to use all common usual pathway at SF.No.594/6, 595/1, 595/5 and 607/3 and Site No.227, 302, 262, and 263 Sri Balaji Nagar, Madampor Village, Palladum Taluk, Tirupur District in the name of Mrs.R.Logambal.

Property d):-
All that piece and parcel vacant Land to the extent of 3735 sq.ft. with right to use all common usual pathways at SF.No.594/6, 595/1, 595/5 and 607/3 in the name of Sri Balaji Nagar. In this side No.226 & Site No.303, Sri Balaji Nagar, Madampor Village, Palladum Taluk, Tirupur District in the name of Mr.R.Jagadeeswaran.

Date of Inspection: Between 21/02/2018 to 26/03/2018 with prior appointment from the Branch Manager (Mr.Prabhat Kumar: 94425 05688)

TERMS AND CONDITIONS:

(1) E-Auction is being held on "AS IS WHERE IS" & "AS IS WHAT IS" BASIS and will be conducted On Line.

(2) The E-auction will be conducted through portal, https://bankauctions.in on 27/03/2018 from 11.45AM to 1.15PM with unlimited extension of 5 Min.

(3) For detailed procedure and terms and conditions of E-Auction, interested bidder may visit https://bankauctions.in & download business rule document.

(4) The intending purchaser / bidder is required to submit EMD by way of demand draft or NEFT/RTGS in the above mentioned respective account of Authorised officer, Corporation Bank on or before 26/03/2018, 03.30 PM and register their name at https://bankauctions.in and get user ID and password free of cost and get training / on-line training on E-

Auction from M/s.4Closure, Hyderabad. Intending bidders shall hold a valid e-mail address. For details, please contact M/s.4closure, Hyderabad, Contact details: 08142000062/66/67 and +91-9515160063 (Mr.S.Ganesh) Email id: info@bankauctions.in and ganesh@bankauctions.in.

(5) To the best of Information and Knowledge of the Authorised Officer, there is no encumbrance on the property. However the intending bidders should make their own independent enquires regarding the encumbrances, title of the property put on auction and the claims / rights / dues affecting the property, prior to submitting their bid. The E Auction advertisement does not constitute and will not be deemed to constitute any commitment or any representation of the Bank to sell the property. The Authorised Officer / Secured Creditor shall not be responsible in any way for any third party claims / rights / dues.

(6) The person declared to be the successful bidder shall deposit 25% (Twenty five percent) of sale price, less EMD deposited immediately and remaining amount shall be paid within 15 days from the date of confirmation of Sale.

(7) Bank reserves the right to cancel the sale for any reason it may deem fit or even without assigning any reason therefor.

(8) This publication is also to be treated as 30 days notice to the borrower and the guarantor.

(9) On receipt of the entire sale consideration the Authorised Officer will issue the Sale Certificate and sale will be complete thereafter and the Bank shall entertain no claims.

(10) Nothing in this notice constitutes or shall be deemed to constitute any commitment or representation on the part of the bank to sell the property. Bank reserves the right to cancel the sale for any reason it may deem fit or even without assigning any reason and such cancellation shall not be called in question by the bidders.

(11) The Bank reserves its right to accept, reject any or all bids at any stage and vary, modify and waive any condition of sale in its absolute discretion.

Date & Time of Auction: 27/03/2018, 2.30pm to 3.30pm (with 5 min unlimited auto extensions)"

12. The Hon'ble Supreme Court held that each cause of action can independently be challenged, by way of application under Section 17(1) of the SARFAESI Act, 2002. When bank has

brought the property for auction by sale notice dated 27.02.2014, the Debts Recovery Tribunal, Coimbatore, ordered status quo in respect of Item-B of the e-auction sale notice dated 27.02.2014 till 04.04.2014.

13. Though the learned counsel for the petitioner submitted that there are irregularities in possession notice issued under Section 13(4) of the SARFAESI Act, 2002, and that is the reason, why the Debts Recovery Tribunal, Coimbatore, ordered status quo in respect of Item -B of the property mentioned in sale notice dated 27.02.2014 and therefore, sought for interference with the impugned auction notice dated 19.02.2018, we are not inclined to entertain the writ petition, for the reason that when there is an effective and alternative remedy to challenge the sale notice by way of an application under Section 17(1) of the SARFAESI Act, 2002, it is for the petitioner to approach the tribunal and seek for appropriate orders.

14. On the aspect as to whether a writ petition can be entertained when there is an effective and alternative remedy, provided therefor, under the Act, 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.
.... "

15. In the light of the above discussion and decisions, we are not inclined to entertain the instant writ petition and hence, the same is dismissed as not maintainable. No Costs. Petitioner is at liberty to approach the tribunal for appropriate relief, if so advised. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

ars

To
1. Authorised Officer,
Corporation Bank,
Industrial Finance Branch,
1604, Trichy Road,
Coimbatore - 641 018.

2. Corporation Bank,
Industrial Finance Branch,
1604, Trichy Road,
Coimbatore - 641 018.

+1cc to Mr.Rajendraprasad, Advocate SR.No.21629

W.P.No.6467 of 2018
and
WMP No.7983 of 2018

KJI(CO)
GN(22/03/2018)