IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/7/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.1490 of 2018

1. K.S.Shivakumaran

2. Mrs.Sudha Shivakumaran ... Appellants/Petitioners

Vs

1. The Chief Manager/
Authorised Officer
Indian Bank
Circle Office
Vellore 632 004.
2. The Branch Manager
Indian Bank
Arani Town
Tiruvannamalai District.
3. Bhaskar Rao
Indian Bank
Circle Office
Vellore 632 004.
4. The Assistant General Manager
Recovery Department
Indian Bank
Head Office
No.66 Rajaji Salai
Chennai 600 001. ... Respondents/Respondents

Appeal filed under Section 15 of Letters of Patent Act against the order, dated 21/8/2008, in W.P.No.12553 of 2008.

prayer in W.P.No.12553 of 2008.

Petition Under Article 226 of the Constitution of India for the Writ of Certiorari calling for the records of the 4th respondent in HO:REP:VEL:2007/2008 DATED 06.03.2008 and quash the same.

For appellants ... Mr.R.Karthik

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O R D E R

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

Mr.K.S.Shivakumaran, Proprietor of Rajkumar Silks, and his wife Mrs.Sudha Shivakumaran, Proprietor of M/s. Susi Company, and also one of the partners of Sakthi Silks, availed loan. Mortgaged two properties, at Mullaipattu Village, Arani Taluk, Tiruvannamalai District. Loan amount not duly paid. Hence Bank, filed O.A.No.192 of 1999, before the Debts Recovery Tribunal - I, Chennai, for recovery of a sum of Rs.86,62,316.78. Notice, dated 3/10/2004, under Section 13 (2) of the SARFAESI Act, 2002, was issued. Possession notice issued. Mortgaged properties were brought for sale. One Mr.G.Ramaligam was the bidder. As the amount offered by G.Ramalingam was low, Indian Bank, Vellore, cancelled the auction, by proceedings, dated 6/3/2008.

2. G.Ramalingam, filed W.P.No.31785 of 2005, to quash the proceedings, dated 14/9/2005. In the said writ petition, Mr.K.S.Shivakumaran and Mrs.Sudha Shivakumaran, borrowers were arrayed as respondents 2 and 3. Joint compromise memo, dated 20/6/2007, was filed by the petitioners therein and the respondents. Joint Compromise memo, reads thus:-

> "1. The first respondent herein brought the scheduled mentioned properties for sale by inviting tenders for the recovery of the amount due by M/s. Rajkumar Silks and Balaji Silks, Arni, by sale notice, dated 8/8/2005. The petitioner is the successful highest bidder as he offered to purchase the schedule mentioned properties for a sum of Rs.8,20,000/- and on confirmation of the sale, the petitioner has deposited a sum of Rs.2,15,000/- being 25% of the sale price as per the sale notice. Subsequently, the petitioner has also sent the balance amount of the sale consideration the prescribed time. However, the first respondent herein passed the impugned order, dated 14/9/2005 cancelling the sale and returned the amount paid by the petitioner. Hence the petitioner has filed the above writ petition to quash the said impugned order and to direct the first respondent to execute the sale deed and this Hon'ble Court was pleased to admits the writ petition and passed interim orders to maintain the status-quo by order dated

30/9/2005.

2. The petitioner and the first respondent have compromised the matter so as to put an end to the litigation and the respondents 2 and 3 herein who are the original owners of the schedule mentioned properties have also joined with the petitioner and the first respondent in the compromise. The following are the terms of the compromise arrived at and entered into between the petitioner and the respondents.

A. The petitioner and the respondents have agreed and confirmed that the sale price in respect of the schedule mentioned properties is fixed at Rs.17,00,000/- (Rupees Seventeen lakhs only).

B. The petitioner has paid the said sale price of Rs.17,00,000/- (Rupees Seventeen lakhs only) to the first respondent in the form of two demand drafts dated 16/4/2007, bearing Nos.889371 and 889366 for Rs.9 lakhs and Rs.8 lakhs respectively, drawn on Lakshmi Vilas Bank Ltd., Arni in favour of the first respondent bank, the receipt of which is hereby acknowledged by the first respondent.

C. The first respondent/Indian Bank shall execute, register and deliver necessary sale certificate and sale deed free from all encumbrance in respect of the schedule mentioned properties in favour of the petitioner or in favour of the person authorised by him within one week and deliver possession of the schedule mentioned properties to the petitioner and complete the sale.

D. The first respondent/Indian Bank shall deliver all the title deeds, patta and other documents, necessary to perfect the title in respect of the schedule mentioned properties to the petitioner or to the person authorised by him at the time of execution and registration of the sale certificate and sale deed.

E. The respondents 2 and 3 herein undertake not to challenge the present sale of the schedule mentioned properties by the first respondent in favour of the petitioner or the person authorised by the petitioner in any manner whatsoever before any forum and they hereby given their consent and no objection for the sale of the schedule mentioned properties by the first respondent in favour of the petitioner or the person authorised by him, under the provisions of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act.

In the foregoing circumstances, it is prayed that this Hon'ble Court may be pleased to record the present joint compromise memo in the above writ petition and dispose of the same accordingly and render justice."

3. Based on the Joint Compromise Memo, dated 20/6/2007, W.P.No.31785 of 2005, was disposed of, on 21/6/2007, as hereunder:-

"A Joint compromise memo, dated 20/6/2007, signed by the petitioner as well as respondents 2 and 3 identified by their respective counsel has been filed today.

2. Learned counsel for the petitioner submits that in view of the compromise reached between the parties, writ petition may be closed.

3. In view of the above, writ petition is closed. No costs. Connected W.P.M.P.No.1179 of 2007 is also closed."

4. Thereafter, the petitioners therein have sent a letter, dated 31/12/2007, seeking for the issuance of No Due Certificate/Full Satisfaction Certificate. In the said letter, they have also stated that if No Due Certificate/Full Satisfaction Certificate is not issued, within 15 days, then, they would approach the Hon'ble Debts Recovery Tribunal, to set aside the sale. They further submitted that sale already effected by the Bank is cancelled/set aside and the original documents, relating to the property were not returned, borrowers would like to settle the account, under OTS scheme, by offering Rs.32 lakhs, in full quit/full satisfaction of the amount due under loan account.

5. Contending inter alia that the representation, dated 31/12/2017, remained unanswered, petitioner/K.Shivakumaran, has filed W.P.No.3926 of 2008, for a mandamus, directing the Chief Manager, Authorised Officer, Indian Bank, Vellore, to pass orders, on the representation, dated 31/12/2007 and to issue a No Due Certificate to the petitioner.

6. In W.P.No.3926 of 2008, on the representation of the learned counsel for the Bank that representation, dated 31/12/2017, had already been considered and rejected by Indian

Bank, Arni Town Tiruvannamalai District, respondent No.2, therein, vide, order, dated 14/3/2008, W.P.No.3926 of 2008, has been dismissed as infructuous. However, High Court has granted liberty to the petitioner therein, to seek for appropriate remedy available to him under law.

7. Representation, dated 31/12/2017, has been considered and rejected, vide, letter, dated 6/3/2018, by Indian Bank, Chennai, as hereunder and the same is reproduced:-

> "The compromise memo signed by you on the writ petition filed by the bidder Shri.G.Ramalingam was for execution of sale in favour of the bidder/writ petitioner only and not for any other settlement. We are informed that branch has not agreed/promised to issue no due certificate at any point of time.
>
> Moreover, you have signed the memo only at the request of the petitioner/bidder. The property was sold under SARFAESI Act by strictly following due procedure of law based on then market value of the property.
>
> Hence, we are unable to consider your request to issue No Due Certificate/Cancel Sale. You are advised to pay the entire dues and avoid further recovery proceedings before DRT."

8. Instant appeal is filed against the order made in W.P.No.12553 of 2008, which came to be disposed of, taking note of the joint compromise memo, dated 20/6/2007, executed by the writ petitioners, bidder and Bank respectively.

9. Order made in W.P.No.12553 of 2008, dated 21/8/2008, is assailed on the following grounds:-

(i). Writ Court has failed to note that writ petition No.31785/2005 was compromised on the understanding that "No Due Certificate" would be issued by the Bank. Promise of a public authority is amenable to writ jurisdiction and dismissal of the writ is against law.

(ii). No notice has been issued to the third respondent or first respondent by the Court and therefore, there is no denial of the fact by the Bank authorities.

10. Appellants have also raised additional grounds:-

(i). Once the auction sale is cancelled by the official communication by the authorised officer, it would be never permitted under the statutory law or any other law of the nation without following the law laid down under stipulated law in conducting any of the illegal discussions or negotiation with the intending purchaser which is against the proviso of Section 9 (4) of the Security Interest (Enforcement) Rules, 2002.

(ii). Act will not provide any of the provision of law enabling to attempt such kind of illegal advantageous of advantageous powers provided under the Act, 2002, for collusive sale by the first respondent and misleading the eyes of the Court of Law and Justice.

(iii). First and second respondents have protracted to issue No Due Certificate for the reasons unknown to the appellants.

(iv). Hon'ble Apex Court and various High Courts have held that the Banker should be very cautious in dealing with the property, whether any agricultural activity is in process or not? If so, the said property should not be brought under the purview of the SARFAESI Act, 2002.

(v). First respondent/Indian Bank, adopted an extraneous way and despite the official communication, dated 23/9/2007, proceeded beyond the scope, without following the provision of law as contemplated under the SARFAESI Act, 2002.

(vi). Neither re-auction nor the provision of law is followed in the proceedings as stipulated under Rule 9 of the Act.

11. Though Mr.R.Karthik, learned counsel for the appellants reiterated the grounds/additional grounds, and sought for reversal of the order, made in W.P.No.12553 of 2008, dated 21/8/2008, we are not inclined to accept the same. Contention of the appellants that subject property is an agricultural property and by virtue of Section 31 (i) of the SARFAESI Act, 2002, the same cannot be permitted to be sold, at this point of time and that too in a writ appeal, when the petitioners themselves have consented for sale of the property, by entering into a joint compromise, with the bidder and the Bank, cannot be countenanced. Writ petition No.31785 of 2005 was disposed of in the year 2007, based on the compromise. Now, after 11 years, contention has been made that the property is an agricultural property. Even taking for granted that subject property is an agricultural property, for the purpose of discharge of loan due and payable to the Indian Bank, Vellore, petitioners have consented for such sale.

12. Though learned counsel for the appellants contended that on receipt of the sale consideration, from Mr.G.Ramalingam, bidder, Bank ought to have issued a No Due Certificate/full satisfaction, and Bank has failed to do so and for the above said reason, order made in W.P.No.12553 of 2008, dated

21/8/2008, requires to be reversed, we are not in agreement with the said submission, for the reason that reading of the terms and conditions of the joint compromise, dated 20/6/2007, entered into between the borrower, bidder/Indian Bank, and form part of the order in W.P.No.31785 of 2005, dated 21/6/2007, does not disclose that the Bank has agreed to issue a No Due Certificate/or record full satisfaction. Terms and conditions of the memorandum of compromise deal only with sale and there is no whisper, regarding issuance of No due certificate/full satisfaction.

13. Before the writ Court in W.P.No.31785 of 2005, when the borrowers wanted to discharge the debt, knowing fully well that it is an agricultural property, they have entered into a compromise and got the writ petition No.31785 of 2005, disposed of, in the year 2007. Now, after nearly nine years, contention of the learned counsel for the appellants that it is an agricultural property and therefore, ought not to have been permitted to be sold, is liable to be rejected. Decision made in W.P.No.31785 of 2005, dated 21/6/2007, on the basis of joint compromise Memo, dated 20/6/2007, cannot be erased.

14. It is evident from letter, dated 6/3/2008 of Indian Bank, addressed to the petitioner that Bank has also reiterated their contention that there was no consent/compromise to issue No Due Certificate, at any point of time. Besides in the said letter, Bank has also directed the borrowers, to pay the entire dues and further proceedings, before DRAT, which only goes to show that according to the Bank, debt has not been fully discharged.

15. There are absolutely no grounds warranting interference. Though the learned counsel for the appellants seeks permission of this Court to withdraw the Writ Appeal, to pursue their remedy elsewhere, we are not inclined to grant permission. Writ Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS-ix)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Chief Manager/
   Authorised Officer
   Indian Bank
   Circle Office
   Vellore 632 004.

2. The Branch Manager
   Indian Bank
   Arani Town
   Tiruvannamalai District.

3. Bhaskar Rao
   Indian Bank
   Circle Office
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4. The Assistant General Manager
   Recovery Department
   Indian Bank
   Head Office
   No.66 Rajaji Salai
   Chennai 600 001.

+1cc to Mr.S.JEYAKUMAR, Advocate, S.R.No. 48172

Writ Appeal No.1490 of 2018

TR(30/07/2018)