IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.03.2018
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.5745 of 2018
and
WMP No.7085 of 2018

B.Jayachandran ... Petitioner

vs.

1. Authorised Officer,
Central Bank of India,
Regional Office,
48/49, Second Floor, Montieth Road,
Egmore, Chennai - 600 008.

2. Authorised Officer,
Central Bank of India,
267, Kilpauk Garden Road,
Kilpauk, Chennai - 10.

3. H.Antony Irudayaraj ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, forbearing the respondents from interfering with petitioner's peaceful enjoyment and possession of the property in No.115, Samayapuram Castle, Santhoshi Block-II, Door No.G2, Chandraprabhu Colony, Ponniamman Medu, Madhavaram, Chennai - 110 without following the due process of law.

For Petitioner : Mr.I.Abrar Md Abdullah

ORDER

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

Claiming himself to be a tenant under the 3rd respondent, since June 2015 and apprehensive of forcible eviction by the bank or the successful auction purchasers, petitioner has filed the instant writ petition for a writ of mandamus, forbearing respondents from interfering with the possession and enjoyment of the property in Door No.No.115, Samayapuram Castle, Santhoshi Block-II, Door No.G2, Chandraprabhu Colony, Ponniamman Medu, Madhavaram, Chennai - 110 , without following due process of law.

2. Material on record discloses that for the default committed by 3rd respondent, bank has issued possession notice dated 21.09.2017 under Section 13(4) of the SARFAESI Act, 2002. Bank has also issued another notice dated 11.01.2018, taking symbolic possession. Thereafter, bank has issued sale notice dated 12.02.2018, under Rule 8 of the Security Interest (Enforcement) Rules, 2002, which reads thus.

Sir,

Sub: Your Credit facility with Kilpauk Branch, Chennai

Name of the Account and account No	Details of Advance granted	Balance as on 11/02/2018
Mr.H.Antony Irudayaraj & Mrs.A.Vadivukarasi H/L- A/c.No.3220829355 H/L- A/c.No.3956918455	A/c.No.3220829355 - Rs.25,00,000/- A/c.No.3956918455 - Rs.1,00,000/-	Rs.26,74,538/- Rs.1,04,171/- Total - Rs.27,78,709/-

You have availed the above mentioned credit facilities from Central Bank of India, Kilpauk Branch. The repayments of the said loans are inter alia secured by mortgage of schedule mentioned properties in the sale notice enclosed.

Since you have failed to pay the outstanding amount to the Bank, we have issued a Demand Notice dated 02/05/2017 calling upon you to repay the amount mentioned in the said notice being Rs.26,97,241/- (which represents Principal plus Interest charged up to 01/05/2017) and further interest from 02/05/2017 within 60 days from the date of receipt of the said notice. It was also made clear that if the payment is not made Bank will be constrained to exercise its rights by taking possession of the securities.

As you have failed to make payment, the authorized officer took symbolic possession of the securities on 11/01/2018.

As per Section 13(4) of the Act, the Bank is entitled to effect sale of the same and realize the proceeds towards costs, charges, expenses and outstanding balance with further interest due thereon. Accordingly, the authorised officer intends selling the secured assets described in the sale notice enclosed.

The sale is intended to be carried out by Regional Office Egmore Chennai by way of e-auction platform provided at the website https://www.bankeauctions.com on such terms and conditions as per the details of the sale notice attached herewith which is forming part of this notice.

The last date for submission of EMD through the web portal will be on or before 17/03/2018 4.00 PM. Date and time of auction will be 19/03/2018 : 11 AM to 12 Noon

Yours sincerely,

Authorized Officer [Encl: Sale Notice]

E-AUCTION SALE NOTICE

Sale of Immovable properties mortgaged to the Bank under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (No.54 of 2002) SARFAESI ACT

Whereas upon the borrowers Mr.H.Antony Irudayaraj s/o Late Mr.Habourt Jacob & Mrs.A.Vadivukarasi w/o.H.Antony Irudayaraj and guarantor Mr.S.Murugan s/o. Sundaramani had defaulted to Central Bank of India, Kilpauk Branch, and owe a sum of Rs.27,78,709/- as on 11/02/2018 and further interest and charges thereof, Central Bank of India, through its Authorized Officer had taken symbolic possession of the mortgaged property and the Bank has decided to sell the properties as described herein below in "as is where is" and "as is what is" condition under Section 13(4) (a) of SARFAESI ACT 2002, read with rule 8 to 9 of the Security Interest (Enforcement) Rules, 2002.

The last date for submission of EMD through the web portal will be before 17/03/2018 4.00 pm		DATE / TIME OF E-AUCTION 19/03/2018 11.00am TO 12.00 Noon
RESERVE PRICE	AND EMD	Bid Increase Amount
Rs.19,05,000.00	Rs.1,90,500.00	Rs.25,000.00

Property in the Name of H Antony Irudayaraj Type of Property : Residential flat	
Schedule A	
Item 1	All that piece and parcel of vacant site bearing Plot No.114 in Chandra Babu Colony, Madhavaram, Chennai - 600 110 comprised in S.Nos.1122/1A, 1A1B1 1122/1A1B2, 1122/1A, 1A1B3 and 1122/1B, 1B of Madhavaram Village of Ambathur Taluk, Thiruvallur Dist in Regularisation permit NO.20/2005 dtd 04.03.2005 measuring E*W-65"on Nortern side E*W-67"on Southern Side N*S-70"on eastern side N*S - 66"on Western side in all admeasuring an extent of 4488 sq.ft. bounded on the North by: Dr.CL Mehta Road, South by: Plot No.113, East by: Plot No.115 and West by : 30 feet Road, situated within the registration dist of North Chennai, Sub Regn Dist of Sembiam and Madhavaram Municipal Limits.
Item 2	All that piece and parcel of vacant house site bearing Plot No.113-A, measuring 1844 sq.ft and 113-B measuring 1864 sq.ft., as per sub-Division Plan D.Dis.NO.00003/06 and B.A.No.116/06 in Chandra Prabu Colony, Madhavaram, Chennai - 600 110, comprised in S.Nos.1122/1A, 1A1B1 1122/1A1B2, 1122/1A, 1A1B3 and 1122/1B, 1B of Madhavaram Village of Ambathur Taluk, Thiruvallur Dist, measuring E*W-70"3' on Northern side E*W-74"9' on Southern Side N*S-51"10.5'on eastern side N*S - 51" on Western side in all admeasuring an extent of 3708 sq.ft. bounded on the North by: Plot No.114, South by: Plot No.113-C, East by: Plot No.115 and West by : 30 feet Road, situated within the registration dist of North Chennai, Sub Regn Dist of Sembiam and Madhavaram Municipal Limits.

Property in the Name of H Antony Irudayaraj Type of Property : Residential flat	
Item 3	All that piece and parcel of vacant house site bearing Plot No.115, comprised in S.Nos.1122/1A, 1A1B1 1122/1A IA1B2, 1122/1A, 1A1B3 and 1122/1B, 1B of Madhavaram Village of Ambathur Taluk, Thiruvallur Dist, in Regularisation permit No.12/2005 measuring E*W-60" on Northern side E*W-60" on Southern Side N*S-127" on eastern side N*S - 123" on Western side in all admeasuring an extent of 7500 sq.ft. bounded on the North by: Dr.CL Mehtha Road, South by: Plot No.111, East by: Plot No.116 and West by : Plot No.114 & 113, situated within the registration dist of North Chennai, Sub Regn Dist of Sembiam and Madhavaram Municipal Limits.
Item 4	All that piece and parcel of vacant house site bearing Plot No.116, comprised in S.Nos.1122/1A, 1A1B1 1122/1A IA1B2, 1122/1A, 1A1B3 and 1122/1B, 1B of Madhavaram Village of Ambathur Taluk, Thiruvallur Dist, in Regularisation permit No.12/2005 measuring E*W-54" on Northern side E*W-41" on Southern Side N*S-131" on eastern side N*S - 127" on Western side in all admeasuring an extent of 5934 sq.ft. bounded on the North by: Dr.CL Mehtha Road, South by: Plot No.110, East by: Plot No.117 and West by : Plot No.115, situated within the registration dist of North Chennai, Sub Regn Dist of Sembiam and Madhavaram Municipal Limits.
Total extent of the 4 items of property in Schedule A is 21,630 Sq.ft	
Schedule B	

Property in the Name of H Antony Irudayaraj Type of Property : Residential flat	
	All that piece and parcel of land measuring 486/21630 undivided share of the vacant land 826 sq.ft with 55 sq.ft., Car parking area (486+55+=541 sq.ft or 50.36 sq.m) of Ground floor bearing Flat NO.G-II, Santhoshi Block II, Door No.115, Samayapuram Castle, Chandra Prabu Colony, Madhavaram, Chennai comprised in Old Survey No.1122/1A1A1B1, 1122/1A, 1A1B2, 1122/1A1A1B3 and 1122/1B, 1B, permit NO.12/2005 situated at Madhavaram Village, Madhavaram Taluk, Thiruvallur Dist, within the Sub Regn Dist of Madhavaram and Regn. Dist. of North Chennai.

Terms and Conditions

1. The e-Auction is being held on "AS IS WHERE IS" and "AS IS WHAT IS BASIS" and "NO COMPLAINT" condition.
2. The auction sale will be Online E-Auction/Bidding through website https://www.bankeauctions.com on 19/03/2018 from 11.00AM to 12.00 Noon.
3. Intending bidders shall hold a valid, e-mail address and PAN number. For details please contact M/s.C1India Pvt. Ltd., E-Mail ID: support@bankeauctions.com or tn@c1india.com.
4. Bidders are required to go through the website https://www.bankeauctions.com for details terms and conditions of auction sale before submitting their bids and taking part in the e-Auction sale proceedings.
5. To the best of knowledge and information of the Authorized Officer, there is no encumbrance on property affecting the security interest. However, the intending bidders should make their own independent inquiries regarding the encumbrances, title of property put on auction and 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 . The property is being sold with all the existing and future encumbrances whether known or unknown to the bank. The Authorised Officer / Secured Creditor shall not be responsible in any way for any third party claims / rights / dues.
6. It shall be the responsibility of the bidders to inspect and satisfy themselves about the asset and specification before submitting the bid. The inspection of property put on auction will be permitted

to interested bidders at side on 12/03/2018.

7. The above mentioned amount should be remitted towards EMID through RTGS/NEFT to Account No.3025227047 of Central Bank of India Regional Office, Egmore, Chennai - 600 008 IFSC Code CBIN0283026. Cheques or demand draft shall not be accepted as EMD amount.

8. Prospective bidders are advised to obtain user id and password which are mandatory for bidding in the above e-auction from M/s.C1India Pvt Ltd., helpline 01244302000, +91-9840446485, E-mail : support@bankeauctions.com or tn@c1india.com. Passwords will be allotted only to those bidders who fulfill all the terms and conditions of e-auction and have deposited the requisite EMD. And for further property related query you may contact Branch Manager Central Bank of India, Kilpauk Branch, Tel.No.044-23464318, Mobile: 8939975812 e-mail ID : bmchen1620@centralbank.co.in during office hours i.e. 10AM to 5 PM during the working days.

9. After Registration by the bidder in the website the intending bidder / purchase is required to get the copies of the following documents uploaded in (date of submission of the bid viz, i) copy of the NEFT/RTGS/Challan ii) Copy of PAN card, iii) Proof of Identification (KYC) viz., self - attested copy of Voter ID Card/ Driving License / Passport etc. iv) Copy of proof of address; without which the bid is liable to be rejected.

10. The interested bidders, who have submitted their bid not below the Reserve price through online mode before 4.00 PM on 17/03/2018 shall be eligible for participating the e-bidding process. The e-auction of above properties would be conducted exactly on the scheduled Date & Time as mentioned against each property by way of inter-se bidding amongst the bidders. The bidder shall improve their offer in multiple of the amount mentioned under the column "Bid Increase Amount". In case bid is placed in the last 5 minutes of the closing time of the e-Auction, the closing time will automatically get extended for 5 minutes (subject to maximum of unlimited extensions of 5 minutes each). The bidder who submits the highest bid amount (not below the Reserve Price) on closure of e-Auction process shall be declared as Successful Bidder and a communication to that effect will be issued which shall be subject to approval by the Authorized Officer / Secured Creditor.

11. The Earnest Money Deposit (EMD) of the successful bidder shall be retained towards part sale consideration and the EMD of unsuccessful bidders shall be refunded. The Earnest Money Deposit shall not bear

any interest. The successful bidder shall have to deposit 25% of the auction price less the EMD already paid, within next working day of the acceptance of bid price by the Authorised Officer and the balance 75% of the sale price on or before 15 th day of sale or within such extended period as agreed upon in writing by and solely at the discretion of the Authorized Officer. If any such extension is allowed, the amount deposited by the successful bidder shall not carry any interest. In case of default in payment by the highest and successful bidder, the amount already deposited by the bidder shall be liable to be forfeited and property shall be put to re-auction and the defaulting bidder shall have no claim / right in respect of property/amount.

12. The authorized Officer is not bound to accept the highest offer and the authorized officer has absolute right to accept or reject any or all offer(s) or adjourn/postpone/cancel the e-auction without assigning any reason thereof.

13. The sale is subject to the confirmation of the Bank

Date: 12/02/2018 Authorised officer

Place: Chennai CENTRAL BANK OF INDIA"

3. Sale has been fixed on 19.03.2018. Though, Mr.I Abrar Md. Abdullah, learned counsel for the petitioner contended that tenant cannot be thrown out of the subject property, mortgaged with the bank, without due process of law and on the apprehension stated supra, sought for a mandamus to be issued, this Court is not inclined to entertain the writ petition, for the reason that as per Section 17 (4-A) inserted by Act 44 of 2016 with effect from 01.09.2016, where any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purpose of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy, -

(a) has expired or stood determined; or

(b) is contrary to Section 65 A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of Section 13 of the Act; and

(ii). the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act."

4. Though reliance has been placed on the decision of Harshad Govardhan Sondangar Vs. International Assets Reconstruction Company Limited, reported in 2014 (6) SCC 1, we are inclined to accept the same for the reason that the said decision was rendered, when there was no provision in SARFAESI Act, 2002, enabling the tenant to challenge any action taken by the bank under Section 13(4) of the SARFAESI Act, 2002. Now, that Section 4-A has been inserted to Section 17 of the SARFAESI Act, 2002, petitioner who claims to be a tenant has an alternate and effective remedy before the tribunal to challenge any action taken by the bank under Section 13(4) of the SARFAESI Act, 2002 or even an order passed under Section 14 of the SARFAESI Act, 2002, as the case may be

5. 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.
.... "

6. In the light of the above discussion and decision, prayer sought for cannot be granted and writ petition is dismissed as not maintainable. No Costs.

7. Though the learned counsel for the petitioner submitted that an interim protection be ordered, pending appropriate action to be taken by the petitioner/tenant, the same cannot be countenanced, for the reason that once writ petition is held as not maintainable, no interim order can be granted. Hence, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ars

To

1. Authorised Officer,
Central Bank of India,
Regional Office,
48/49, Second Floor, Montieth Road,
Egmore, Chennai - 600 008.

2. Authorised Officer,
Central Bank of India,
267, Kilpauk Garden Road,
Kilpauk, Chennai - 10.

+1 cc to Mr.I.Abrar Md Abdullah Advocate sr 19629

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aa27/03/2018