IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **25.06.2018**

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

CRP(PD) No.1877 of 2018
and
CMP No.10741 of 2018

Mr.Kamal ... Petitioner

vs.

1. The Authorised Officer,
Central Bank of India,
Asset Recovery Branch,
48/49, 1st Floor,
Monteith Road,
Egmore, Chennai - 600 008.

2. M/s.Krishna Constructions,
Prop: S.Mani.

3. Mr.S.Mani

4. Mrs.Krishnaveni ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 12.06.2018, passed in I.A.No.407 of 2018 in SA No.59 of 2018, on the file of the Debts Recovery Tribunal-I, Chennai.

For Petitioner : Mr.NK.Kabir, Senior Counsel.

ORDER

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

M/s.Krishna Constructions, represented by its Proprietor Mr.S.Mani, availed loan for Rs.7 Crores. (1) Mr.Mani, (2) Mrs.S.Krishnaveni, wife of Mr.Mani, and (3) Mrs. Malliga, extended their personal guarantee. Mr.S.Krishnaveni and Mr.Mani offered properties as a collateral securities to the credit facility availed. They also created mortgage over the property. Borrower and guarantors defaulted in making payment. Hence Bank has issued notice under Section 13(2) of the SARFAESI Act, 2002, demanding a sum of Rs.5,93,88,774/- as on 04.01.2016, to be paid within sixty days, failing which, bank would be constrained to take action under Section 13(4) of the SARFAESI Act, 2002. Thereafter, bank has issued notice dated 15.03.2016, under Section 13(4) of the SARFAESI Act, 2002. Sale notice dated 21.08.2017 did not fructify in sale. There was correspondence between the bank and the petitioner. On 07.05.2018, bank has issued a fresh sale notice under Rule 8 of the Security Interest (Enforcement) Rules, 2002, in which the amount due and payable to the bank, as on 14.12.2017 was Rs.4,50,57,371.41p. Bank has fixed the upset price as Rs.81 Lakhs.

2. Being aggrieved, Mr.Kamal, S/o. Mani, filed S.A.No.59 of 2018,

before the Debts Recovery Tribunal-I, Chennai, to set aside the auction dated 29.05.2018, pertaining to property bearing Plot No.84, Old Door No.4, New Door No.7, 3rd Street, Ashok Nagar, Chennai-81. Pending disposal of S.A.No.59 of 2018, petitioner has sought for an order of interim injunction restraining the bank from taking any further action on the basis of the alleged sale pertaining to the abovesaid secured asset.

3. Among other grounds raised in the supporting affidavit to I.A.No.407 of 2018, in S.A.No.59 of 2018 on the file of Debts Recovery Tribunal-I, Chennai, petitioner has contended as follows:

> "I submit I had paid the following amounts over a period of time, i.e. on 26.03.2018 Rs.5,00,000/- on 30.04.2018 Rs.10,00,000/- and on 04.05.2018 Rs.9,00,000/-, in all a sum of Rs.24,00,000/-. The appellant requested that the sale price be Rs.96,50,000/- as per the auction sale dt.12.09.2017 and after adjusting a sum of Rs.76,50,000/- (Rs.30,000/- paid on 12.09.2017, Rs.24,00,000/- paid in terms of auction sale dated 20.01.2018 and Rs.24,00,000/- paid as stated above between 26.03.2018 to 04.05.2018) he would pay a sum of Rs.20 Lakhs and requested the bank to grant time upto 10.06.2018 for payment of the balance of Rs.20 Lakhs. The correspondence exchanged between the bank and the Applicant are filed to demonstrate the above aspect."

4. Before the Debts Recovery Tribunal-I, Chennai, petitioner has also contended that he had sought for time after 10.06.2018, for making

payment of Rs.20 Lakhs, whereas, the bank without considering the request, had gone ahead with the sale of the property by issuing a sale notice dated 07.05.2018, fixing the auction on 29.05.2018.

5. Though on the abovesaid pleadings, petitioner had sought for interim injunction restraining Central Bank of India, Assets Recovery Branch, Chennai, 1st respondent therein from proceeding with the auction sale of the property bearing Plot No.84, Old Door No.4, New Door No.7, 3rd Street, Ashok Nagar, Chennai-81, vide proceedings dated 12.06.2018 and 13.06.2018, the tribunal declined to grant injunction, as prayed for. For brevity, proceedings in I.A.No.407 of 2019 in SA.No.59 of 2018, dated 12.06.2018 and 13.06.2018, respectively, are reproduced.

> "**12.06.2018**
>
> **IA 407/2018 (stay):** This IA is taken up for hearing as IA 406/2018 is allowed.
>
> 1. Heard the ld. counsel for the petitioner. Perused the petition, SA and the documents filed alongwith the SA.
>
> 2. Since, admittedly, the e-auction sale held on 29.5.2018 being the subject matter of this Application, it is hereby ordered that the said sale as well as all the subsequent proceedings, if any, are subject to the outcome of the present SA. The 1st respondent is hereby directed to communicate the same to the auction purchase forthwith. The petitioner shall take urgent notice to the respondents through Registered Post Acknowledgment Due for their appearance before the Tribunal on 29.6.2018.
>
> **13.06.2018**
>
> It has been noticed that while uploading the proceedings dt:

12.6.2018, instead of uploading the following:

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inadvertently, the following has been uploaded,

"Counsel for the applicant and respondent present. Passed over. Again called. Counsel for both sides present. For orders 30.6.2018".

This being an error the same is hereby deleted.

6. Being aggrieved by the record of proceedings dated 12.06.2018 in I.A.No.407 of 2018 in SA No.59 of 2018, instant Civil Revision Petition is filed under Article 227 of the Constitution of India, to quash the same.

7. On the above averments and in particular to the grounds extracted supra, Mr.NK.Kabir, learned senior counsel submitted that the petitioner has made substantial amount towards discharge of debt in terms of the auction notification dated 21.08.2017. He further submitted that Clauses 7

& 12 of the sale notice dated 21.08.2017, fixing the auction cum sale on 12.09.2017, have been duly complied with. For the sake of convenience, Clause 7 and 12 are extracted (page 15 and 19).

> "7. 100% of the reserve price as indicated in respect of each property should be remitted towards EMD through RTGS/NEFT to Account No.3053250538 of Central Bank of India Asset Recovery Branch, with Industrial Finance Branch Egmore, Chennai 600 008 IFSC Code CBIN0283026 and the remittance details should be clearly noted in the bid form. Cheques or demand draft shall not be accepted as EMD amount.
>
> 12. 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 24 hours of the acceptance of bid price by the authorised Officer and the balance 75% of the sale price on or before 15th of Sale. 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 sahll be put to re-auction and the defaulting bidder shall have no claim / right in respect of property / amount."

8. Mr.NK.Kabir, learned senior counsel submitted that though during the course of hearing of the said I.A.No.407 of 2018 in S.A.No.59 of 2018, a sum of Rs.20 Lakhs was tendered by way of Demand Drafts, but the Debts Recovery Tribunal-I, refused to accept the same, and ordered further proceedings of sale to go on, subject to the outcome of SA No.59 of 2018,

wherein the challenge has been made to the sale notice dated 07.05.2018. Learned senior counsel further submitted that if confirmation of sale is not made, and on the contra, if there is any order of forfeiture, then the petitioner/auction purchaser would be put to serious loss and irreparable hardship. On the abovesaid averments and submissions learned senior counsel seeks for interference with the record of proceedings dated 12.06.2018 in IA No.407 of 2018 in SA No.59 of 2018 on the file of Debts Recovery Tribunal.

9. Contention that as to whether subsequent sale notice dated 07.05.2018, is liable to be set aside on the grounds raised in SA No.59 of 2018, has to be adjudicated by Debts Recovery Tribunal-I, Chennai.

10. Heard Mr.NK Kabir, learned senior counsel for the petitioner and perused the materials available on record.

11. Petitioner is stated to have made substantial payments and also complied with Clauses 7 and 12 of the sale notice dated 21.08.2017, stated supra and in the abovesaid circumstances, challenged the subsequent sale notice dated 07.05.2018. Though the petitioner has contended that the tribunal, has declined to accept the demand drafts for Rs.20 Lakhs and ordered that the sale, as well as the subsequent proceedings, if any would

be subject to the outcome of the S.A.No.59 of 2018 and apprehended that if confirmation of sale is not made, then it would result in irreparable hardship and therefore sought for interference, this Court is not inclined to interfere with the record of proceedings dated 12.06.2018 in IA No.407 of 2018 in SA No.59 of 2018 for the reason that whatever averments and submissions are made in the instant CRP, same can always be made before the Debts Recovery Tribunal-I, on 29.06.2018, when IA No.407 of 2018 in SA No.59 of 2018 is listed before the tribunal.

12. Besides when matter is pending before the tribunal, this Court cannot preempt the tribunal from exercising its jurisdiction on the averments / submissions made. That apart, Court cannot suggest that the tribunal should act in the manner as proposed by the petitioner. From the order impugned, it could be seen that while declining to grant injunction, the tribunal has directed that the sale as well as all subsequent proceedings, if any, would be subject to the out come of the SARFAESI application SA No.59 of 2018. Tribunal has directed the bank and others / respondents therein to communicate the order to the auction purchaser forthwith.

13. It is also pertinent to take note of the judgment of the Hon'ble Supreme Court in ***T.P.Vishnu Kumar Vs. Canara Bank, P.N.Road,***

Tiruppur and Others reported in **2013 (10) SCC 652**, wherein, the Hon'ble Supreme Court held that ordinarily, writ petitions should not be entertained by High Courts at the interim stage. Relevant paragraphs from the said judgment is extracted hereunder:

> "10. Powers of the High Court under Article 226 cannot be invoked in the matter of recovery of dues under the Act, unless there is any statutory violation resulting in prejudice to the party or where such proceedings or action is wholly arbitrary, unreasonable and unfair. When the Act itself provides for a mechanism, by an appeal under Section 20 of the Act, in our view, the High Court is not justified in invoking jurisdiction under Article 226 of the Constitution of India to examine that the rejection of the applications by the Tribunal was correct or not. The petitioner and the contesting respondents have no case that either the Bank or the Tribunal had violated any statutory provisions by rejecting their applications.
>
> 11. A writ petition was preferred against the rejection of applications and the same were entertained by the learned Single Judge and decided on merits and which in our view is impermissible while exercising its jurisdiction under Article 226 of the Constitution. If the correctness or otherwise of each and every interim order passed by the Tribunal is going to be tested in a writ Court, it will only defeat the object and purpose of establishing such Tribunal. We have already noticed that due to the intervention of the writ Court, the matter got delayed for four years defeating the very purpose and object of the Act. We therefore, find no merit in these petitions and the same are dismissed."

14. Proceedings dated 12.06.2018, is challenged by way of Civil Revision Petition under Article 227 of the Constitution of India. It is at the

interim stage. Principles of Law enunciated by the Hon'ble Supreme Court in ***T.P.Vishnu Kumar's*** case, in the matter of entertaining the writ petition, at the interim stage would equally be applicable for entertaining a Civil Revision Petition under Article 227 of the Constitution of India, as well, though, there is slight variance, in the exercise of jurisdiction by the High Court under Article 226 of the Constitution of India.

15. For the reasons stated supra, Civil Revision Petition is dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

(S.M.K., J.) (S.P., J.)

25.06.2018

Index: Yes

Internet: Yes

Speaking/Non speaking

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To

The Authorised Officer,
Central Bank of India,
Asset Recovery Branch,
48/49, 1st Floor,
Monteith Road,
Egmore, Chennai - 600 008.

S.MANIKUMAR,J.

AND

SUBRAMONIUM PRASAD, J.

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