IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **19.03.2018**

CORAM:

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

C.R.P.(PD).No.3239 of 2017
and
W.P.No.7700 of 2017
and
C.M.P.No.15161 of 2017

C.R.P.(PD).No.3239 of 2017
State Bank of India,
Stressed Assets Recovery Branch,
No.32, Monteith Road, Egmore,
Chennai - 600 008.
Rep. by its City Case Officer. ... Petitioner

vs.

1.M/s.Madhavi Food Products,
Represented by its Managing Partners,
Mr.N.Thangaraj & Mr.B.Madhaiyan,
Periya Poolapatty Via,
Periyampatti Post, Palacode Taluk,
Dharmapuri District, Pin - 635 205.

2.N.Thangaraj
3.B.Madhaiyan
4.K.Ramanathan
5.M.Rathna ... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 04.07.2017 made in O.A.No.208 of 2015, on the file of the Debts Recovery Tribunal-III, Chennai.

For Petitioner : Mr.OM.Prakash
Senior Counsel

For R1 and R2 : G.Jeremiah
For R3 to R3 : Not Claimed

W.P.No.7700 of 2017:

1.M/s.Madhavi Food Products,
Represented by its Managing Partners,
Mr.N.Thangaraj & Mr.B.Madhaiyan,
Periya Poolapatty Via,
Periyampatti Post, Palacode Taluk,
Dharmapuri District, Pin - 635 205. ... Petitioner

vs.

1.The Authorised Officer/Asst. General Manager,
Stressed Assets Recovery Branch,
State Bank of India,
32, Monteith Road,
Egmore, Chennai-600 008.

2.The Senior Manager,
State Bank of India,
Palacode Branch,
Palacode, Dharmapuri.

3.A.Perichi ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Declaration, directing the auction proceedings dated 18.1.2017 in respect of the petitioner's landed property comprised in S.No.408/1-A and 409/3A, Perianahalli Village, Palacode Taluk, Dharmapuri District of an extent of 1.42 acres based upon the sale notice dated 26.12.2016 as referred to by the 1st respondent in his proceedings dated 15.03.2017.

For Petitioner : Mr.G.Jeremiah
for Mr.S.Annamalai

For R1 and R2 : Mr.A.V.Arun
for R.Sugumaran

For R3 : Mr.K.A.Ramakrishnan

COMMON ORDER

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

M/s.Madhavi Food Products, represented by its Managing Partners, Mr.N.Thangaraj & Mr.B.Madhaiyan, Dharmapuri District, was sanctioned loan to the tune of Rs.125.93 lakhs, but the amount disbursed was a sum of Rs.65 lakhs, by State Bank of India, Chennai, first respondent herein, for which, the petitioner company offered their valuable properties i.e.(i) Factory land and building in S.No.411/2, 4082, Perianahalli Village, Palacode Taluk, measuring to an extent of 1.92 acres; (ii) Land at S.No.408/1-A and 409/3A, Perianahalli Village, Palacode Taluk, measuring an extent of 1.42 acres; (iii) land at Poultry shed st S.No.410/3, Perianahalli, measuring an extent of 0.36 cents; and (iv) land and poultry shed at S.No.407/2 and 411/3, Perianahalli Village, Palacode Taluk, measuring an extent of 1.56 acres. According to borrower, lands in S.No.408/1-A and 409/3A, are agricultural lands.

2. According to the petitioner though a request was made to State Bank of India, Chennai, for disbursement of the entire amount, the same was not done. As the private borrowers insisted for payment with huge interest, the cost of machineries and their installation and due to the financial crisis caused, the writ petitioner could not repay the loan amount, within the time schedule.

3. Bank has issued a sale notice dated 26.12.2016, fixing the auction on 18.01.2017. In order to avoid the proposed auction of the petitioner's agricultural property, during the first week of January 2017, the writ petitioner approached the first respondent/State Bank of India, to settle the dues by way of one time settlement. Responding to the same, bank has sent a communication dated 09.01.2017, offering one time settlement.

4. Writ Petitioner has further submitted that, on receipt of the communication, petitioner had to mobilize a sum of Rs.3,56,000/- being the payment of 5% of the minimum amount on the outstanding, as on 31.03.2016. Therefore, the writ petitioner met the Authorised Officer/Assistant General Manager, Stressed Assets Recovery Branch, State Bank of India, Chennai, first respondent herein, and was

informed that the period of OTS Scheme would be extended, if the petitioner makes the payment of 5% of the OTS amount.

5. Accordingly, the Authorised Officer/Assistant General Manager, Stressed Assets Recovery Branch, State Bank of India, Chennai, first respondent herein, issued a letter dated 07.02.2017, extending the OTS Scheme, along with the above upfront payment at 5% of the OTS amount, up to 15th February 2017.

6. Thereafter, writ petitioner deposited a sum of Rs.3,56,000/- being the 5% upfront on the very next day, i.e.8.2.2017 itself, with the Senior Manager, State Bank of India, Palacode Branch, Palacode, Dharmapuri, the second respondent herein. Subsequently, vide letter dated 10.02.2017, the Authorised Officer/Assistant General Manager, Stressed Assets Recovery Branch, State Bank of India, Chennai, first respondent herein, addressed the writ petitioner, stating that the letter dated 8.2.2017 of the petitioner, for settlement of dues to the bank, under the scheme of "SBI OTS Manufacturing, Trade and Services – 2016", has been accepted by the appropriate authorities.

7. Writ Petitioner was also informed that the total amount payable under the scheme, would be Rs.56,86,424/-, application money of Rs.3,56,000 paid by the petitioner, would be appropriated towards OTS. 25% of the OTS amount be deposited by the writ petitioner, as upfront money within 30 days from the letter dated 10.2.2017 (i.e. within 12.03.2017), and this would include the amount deposited by the petitioner along with the application. The balance amount paid within 6 months from the date of the letter dated 10.8.2017 (the validity period) together with interest at 7.95% (documented rate/MCLR whichever was lower) for 6 months, failing which OTS sanction, would be rendered infructuous, and no interest will be charged, if the entire OTS amount is paid within 3 months from the date of the letter dated 10.2.2017 (i.e up to 10.5.2017).

8. Bank in letter dated 10.02.2017, has further stated that the writ petitioner would be eligible for an additional incentive of 10% discount on the OTS amount on making payment of the entire OTS amount on or before 31.3.2017.

9. Vide letter dated 10.2.2017, bank has also advised the writ petitioner to accept the terms and conditions of the abovesaid

sanction, and to arrange for payment of OTS amount, as per the terms mentioned above. Vide said letter dated 10.02.2017, bank has also intimated that the resolution of the company for acceptance of the OTS terms and authorising an officer/partner, to execute/sign necessary documents be submitted. Bank has sent a communication dated 10.2.2017, accepting the proposal of one time settlement, but the writ petitioner wanted to see the communication dated 15.3.2017 from the Authorised Officer/Assistant General Manager, Stressed Assets Recovery Branch, State Bank of India, Chennai, first respondent herein, wherein he has stated that item No.2 of the secured asset had already been sold for a sum of Rs.20,00,000/- in the auction held on 18.1.2017 and that the sale amount has been realised.

10. Writ Petitioner has contended that the communication dated 9.1.2017, by which the bank has offered one time settlement, and that the same been reiterated, and extension of time was also granted for making payment upto 10.8.2017 has not been disputed by the bank, but came to know that the auction purchaser, has created encumbrance by registering the sale as Document No.202/2017 in favour of the third respondent. Petitioner has contended that the auction purchaser, has not been informed of the OTS Scheme

proposed and accepted by the borrower.

11. Writ Petitioner has further contended that the very purpose of the offer made to the writ petitioner/borrower, to make payment of Rs.56,86,424/- on or before 10.08.2017, i.e. 6 months from the date of receipt of the letter dated 10.2.2017, is to arrive at a settlement of the dispute between the bank and borrower, and not to invite any third party, and expand litigation, with others.

12. On the above said facts, Mr.G.Jeremiah, learned counsel for the petitioner in W.P.No.7700 of 2017, made submissions that bank has hurriedly, brought the property for auction on 18.1.2017, and sold one item of the properties mortgaged for a very less price. According to the learned counsel, when the bank has accepted the one time settlement, and permitted payment till 10.08.2017, sale ought not to have been made, and therefore the same is in contradiction with the one time settlement arrived at by the writ petitioner and bank.

13. Inviting attention of this Court, to the letter dated 15.03.2017 considered by this Court in W.P.No.7700 of 2017, Mr.G.Jeremiah, learned counsel for the owner of the property,

submitted that when arguments were advanced, and challenge was made to the auction sale dated 18.1.2017, after hearing, the learned counsel for the owner of the property as well as the bank and taking note of the OTS and sale of one of the properties, a Hon'ble Division Bench of this Court, in W.P.No.7700 of 2017 dated 05.06.2017, ordered that the property sold was against the terms of the undertaking made in OTS and it is for the bank to take the risk and that writ petitioner was directed to pay the amount calculated on or before 10.08.2017. The Hon'ble Division Bench further observed that if there was any violation or non-compliance of the principles of natural justice, it is for the bank to verify the same, and to do needful, in accordance with law as per the undertaking, if any, by the borrower. Hon'ble Division Bench, further observed that the respondent/bank shall not take any coercive steps against the petitioner till 10.08.2017.

14. Learned counsel for the writ petitioner further submitted that the Hon'ble Division Bench of this Court, directed that W.P.No.7700 of 2017 to be listed on 12.08.2017. State Bank of India, Chennai, had already filed a memorandum, dated 13.04.2017 before the DRT-III, Chennai, and sought for a direction to the Registry to

return the title deed Ex.A22, to the applicant bank. In the memorandum dated 13.04.2017, bank has stated that when the bank requested the borrower to hand over possession to the auction purchaser, there was resistance by the mortgagor and that he has also lodged a police complaint. Before the Tribunal, bank has submitted that as the abovesaid document was required for production before the investigation agency. Learned counsel for the writ petitioner has further submitted that O.A.No.208 of 2015 filed by the bank for realisation of the money and that the same was posted for arguments on 04.07.2017. Contending that the document was urgently required,I.A.No.798 of 2017 was filed by the bank on 23.05.2017, for advancing the hearing of the O.A.No.208 of 2015 from 04.07.2017 to an earlier date.

15. The Tribunal, Vide order dated 14.06.2017, advanced the hearing in O.A.No.208 of 2015 and on that date, ordered to return the document to the bank. Subsequently, when attention of the Tribunal was brought to the notice of the DRT-III, Chennai, that the bank had obtained the order for return of documents, without disclosing the order of the High Court, dated 05.06.2017 in W.P.No.7700 of 2017, vide proceedings dated 04.07.2017, DRT-III, Chennai, has withdrawn

the earlier order dated 14.06.2017, directing return of documents to the bank, by observing that DRT-III, Chennai, has been misled due to the non-furnishing of the details of the order of the High Court, dated 05.06.2017. DRT-III, Chennai, passed observation against the bank officials. Being aggrieved by the same, the bank has filed C.R.P.No.3239 of 2017.

16. Learned counsel for the writ petitioner submitted that but for the non-disclosure of the High Court order in W.P.No.7700 of 2017, the Tribunal would not have ordered to return of the documents on 14.06.2017. Consequential proceedings dated 04.07.2017 in O.A.No.208 of 2015, would not have been passed. Mr.G.Jeremiah, learned counsel for the writ petitioner fairly submitted that insofar as the observations made against the officer of the State Bank of India, is concerned he has nothing to say and leave it to the discretion of this Court to consider as to whether deletion is required or not.

17. Responding to the above said submissions, Mr.A.V.Arun, learned counsel for the 1st and 2nd respondents in W.P.No.7700 of 2017, submitted that the borrower/writ petitioner, availed loan and did not make repayment. Bank has filed O.A.No.208 of 2015 on the

file of the DRT-III, Chennai for recovery of Rs.1,32,36,750.01/- together with further interest and cost. Simultaneously, proceedings were taken under the provisions of the SARFAESI Act, 2002. Thereafter, sale notice dated 08.03.2016 was issued for sale of the secured assets and for want of bidders, sale could not take place.

18. Authorised Officer/Assistant General Manager, Stressed Assets Recovery Branch, State Bank of India, Chennai, first respondent herein, has issued another sale notice dated 26.12.2016, fixing the auction sale on 18.01.2017, and the sale notice was duly served, affixed and published in the newspapers thereby complying with the statutory requirement.

19. Mr.A.V.Arun, learned counsel for the first and second respondents in W.P.No.7700 of 2017, further submitted that, a new scheme known as "SBI scheme for One Time Settlement of NPAs & AuCAs in Manufacturing, Trade and Services Sector, 2016", hereinafter referred to as Scheme came to be introduced by the Head Office, to enable small time entrepreneurs in the above sectors to tide over their financial crisis.

20. According to him, as per the scheme, the accounts, where bank has issued notice and taken action, under Section 13(2) of the SARFAESI Act, 2002 are eligible to be considered, without prejudice to the rights of the bank to continue action already initiated under a Act, unless a compromise is arrived, at under the scheme. He further submitted that the loan account of the writ petitioner was eligible to be recovered under the scheme. Therefore, vide letter dated 09.01.2017, Authorised Officer/Assistant General Manager, Stressed Assets Recovery Branch, State Bank of India, Chennai, first respondent herein, informed the writ petitioner about the newly created scheme. He further states that as per the scheme the offer of settlement is without prejudice to the rights of the bank under the SARFAESI Act, 2002.

21. Learned counsel for the bank/first and second respondents in W.P.No.7700 of 2017 further submitted that, there was no reply to the letter dated 09.01.2017. Therefore, bank proceeded with the auction on 18.01.2017. Auction purchaser paid the entire sale consideration on 25.01.2017 and the sale proceeds were appropriated towards the loan account on 30.01.2017. Sale certificate has been issued to the auction purchaser on 06.02.2017.

22. Mr.A.V.Arun, learned counsel for the bank / first and second respondents, further submitted that the period of scheme of OTS, initially scheduled for completion on 31.01.2017 was extended by the Head Office of the bank till 15.02.2017. Bank has sent a letter dated 07.02.2017, to the writ petitioner informing about the extension of the scheme. In response to the said letter, writ petitioner expressed willingness to settle the dues in OTS and paid 5% of the upfront amount payable as per the scheme. By letter dated 10.02.2017, bank has accepted the offer of the petitioner for settlement of the dues under OTS. However, sale of the property, which was concluded prior to 10.02.2017, is valid and OTS scheme does not nullify the same.

23. Learned counsel for the bank further submitted that the action of the bank, to sell the property on 18.01.2017, is without prejudice to the right of the bank taken either before DRT-III, Chennai, for recovery of Rs.1,32,36,750.01, or under SARFAESI Act, 2002, but before the date of acceptance of offer by the writ petitioner.

24. According to him, in the case on hand, writ petitioner has not come forward to accept the offer of the bank before 18.01.2017,

the date fixed for auction and therefore, bank has proceeded with the auction and there is no serious irregularity.

25. As regards the observations of the DRT-III, Chennai, Mr.A.V.Arun, learned counsel for the first and second respondents/ bank submitted that as regards the order dated 05.06.2017 passed by this Court in W.P.No.7700 of 2017, bank was informed that the no coercive steps should be taken. In the light of the scheme, which permits the simultaneous OTS, without prejudice to the right of the bank to proceed against the borrower under the provisions of the SARFAESI Act, 2002, there was intention to suppress the order of the High Court, dated 05.06.2017, but there was an inadvertant omission. But the DRT-III, Chennai, has found fault with the bank official.

26. Mr.OM.Prakash, learned Senior Advocate appearing for the State Bank of India, in C.R.P.No.3239 of 2017, submitted that for realisation of the debts, bank had already filed O.A.No.208 of 2017. Bank has also issued sale notice dated 26.12.2016, fixing the sale on 18.01.2017.

27. Though bank had offered the one time settlement on 09.01.2017, and the writ petitioner is aware of the sale fixed on 18.01.2017, writ petitioner has not come forward to accept the one time settlement proposal.

28. Mr.OM.Prakash, learned Senior Counsel appearing for the bank submitted that even in the one time settlement proposal dated 09.01.2017, there was a categorical statement that the offer is without prejudice to the measures taken under the SARFAESI Act, 2002.

29. According to the learned senior counsel as per the scheme, bank is entitled to proceed under any of the measures provided under Section 13(4) of the SARFAESI Act, 2002 and that is why, in all the correspondence, bank has mentioned that without prejudice, to the rights of the bank to take measures under Section 13(4) of the SARFAESI Act, 2002. bank has offered one time settlement, which the petitioner did not come forward to accept immediately. As bank had made it clear to the writ petitioner, that the offer of settlement itself, was without prejudice to the right of the bank to proceed under Section 13(4) of the SARFAESI Act, 2002, sale was conducted and

accordingly sale certificate was issued in favour of the auction purchaser and duly registered with the Sub-Registrar on 06.02.2017.

30. Mr.OM.Prakash, learned Senior Counsel, further submitted that there was no intention or suppression on the part of the bank official, observation has been made.

31. Though Mr.OM.Prakash, learned senior counsel, made submissions, and sought to justify the auction conducted on 18.01.2017, urged only for deletion of the observation made against the bank officeial, in the proceedings 04.07.2017, on the file of the DRT-III, Chennai.

32. On the observations of the DRT-III, Chennai, Mr.OM.Prakash, learned senior counsel for the revision petitioner/bank submitted that the averments made in the Memo, dated 13.04.2017, the application in I.A.No.798 of 2017, reflected date 23.05.2017, for advancing the hearing of O.A.No.208 of 2015, on the file of the DRT-III, Chennai, the same reflected the factual position and the fact that an interim order was made in W.P.No.7700 of 2017, could not have been mentioned, because the High Court granted the interim order only on 05.06.2017.

According to the learned senior counsel for the revision petitioner/bank that when the advance hearing petition came on 14.06.2017, either the bank, through their representative or the learned counsel appearing for the bank, could have brought to the notice of the Tribunal, that the High Court had directed the petitioner/bank not to take coercive steps against the first respondent. For the abovesaid reasons, he prayed for the deletion of the observation.

33. Heard the learned counsel for the parties and perused all the materials available on record.

34. Fact that M/s.Madhavi Food Products, represented by its partner N.Thangaraj, Periyapoolapatty, Periyapatti Post, Karimangalam Taluk, Dharmapuri - 635 205., has availed term loan facility of Rs.65 lakhs, sanctioned vide letter dated 25.05.2010, has not been disputed. Writ petitioner has deposited the title deeds and created a mortgage. Writ petitioner has defaulted in payment.

35. For realisation of a sum of Rs.13,36,750.01 and for other reliefs, bank has filed O.A.No.208 of 2015, on the file of the Debts

Recovery Tribunal-III, Chennai. When the matter stood thus, bank has decided to realise the said amount by bringing the property for auction, under the SARFAESI Act, 2002. Thus, bank has issued a sale notice dated 26.12.2016 under Rule 8(6) of the Security Interest (Enforcement) Rules, fixing the auction on 18.01.2017.

36. As per the claim in O.A.No.208 of 2015, the outstanding amount, as on 03.11.2014, the date on which O.A.No.208 of 2015 was filed for recovery, was Rs.1,32,36,750.01/-. When the matter stood thus, on 09.01.2017, bank has issued a communication to the petitioner M/s.Maadhavi Food Products, Dharmapuri stating that the bank has recently come out with the "SBI scheme for One Time Settlement of NAPs & AUCAs in Manufacturing, Trade and Services Sector, 2016". Bank has advised the petitioner and others, that the dues to the bank are eligible to be settled under "SBI OTS Manufacturing, Trade & Services, 2016 Scheme of certain conditions. For better details, letter dated 09.01.2017 of the Authorised Officer/Assistant General Manager, Stressed Assets Recovery Branch, State Bank of India, Chennai, sent to the writ petitioner and others is extracted hereunder:-

"Dear Sir,

SBI OTS - Manufacturing, Trade & Services, 2016

A/c No.31188523549

Branch: SARB, Chennai

State Bank of India has recently come out with a scheme for One Time Settlement (OTS) of non-performing assets in Manufacturing, Trade and Services, 2016 sector. In this connection, we would like to advise you that your dues to the Bank are eligible for settlement under the SBI OTS-Manufacturing, Trade & Services, 2016 on the following terms and conditions:

(i)	*Amount outstanding on 31.03.2016*	*Rs.7108030/-*
(ii)	*Amount of OTS (As per the formula given in the scheme)*	*Rs.5686424/-*
(iii)	*Application for OTS will be processed only on deposit of minimum 5% of the outstanding as on 31.03.2016.*	
(iv)	*25% of the OTS amount will have to be deposited by you as upfront money within thirty days from the date of sanction of OTS. This would include the amount deposited by you along with the application*	
(v)	*The balance amount can be paid within 6 months from the date of sanction of OTS (the validity period) together with interest @ the documented rate/MCLR for six months, whichever is lower, failing which the OTS sanction will be rendered infructuous*	
(vi)	*However, no interest will be charged after the date of crystallisation, if the entire OTS amount is paid within 3 months from the date of sanction.*	
(vii)	*You will be eligible for an additional incentive of 10% discount on the OTS amount, on making payment of the entire OTS amount on or before 31.03.2017*	

2. (Where applicable)

Since your case is pending before Court/Lok Adalat/DRT/BIFR any settlement will be subject to consent decree/necessary orders from the Court/Lok Adalat/DRT/BIFR, and this letter is without prejudice to the rights and contentions of the Bank in the said proceedings.

Since you have been issued notice under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, this notice is without any prejudice to our rights to take/continue actions under the Act unless a compromise is settled under the present SBI OTS-Manufacturing, Trade & Services, 2016 Scheme as stated above.

3. Please advise your willingness to settle the dues within 15 days from the date of the letter. Your request for settlement will be processed for acceptance or otherwise on receipt of your communication and deposit of minimum 5% of the outstanding as on 31.03.2016."

37. A reading of the abovesaid letter, shows that amount outstanding as on 31.03.2016 was Rs.71,08,030/-. Amount offered to be settled under OTS was Rs.56,86,424/-. As per Clause VII of the OTS proposal dated 09.01.2017 sent by SBI, Chennai, to the writ petitioners and others, they would be eligible for an additional incentive of 10% discount on the OTS amount, on making payment of entire OTS amount on or before 31.03.2017.

38. At paragraph No.3 of the said letter dated 09.01.2017, bank has advised the writ petitioner and others to express their willingness to settle the dues within 15 days from the date of the letter. Bank has also stated that request for settlement would be processed for acceptance or otherwise, on receipt of the communication and deposit of minimum 5% of the outstanding as on 31.03.2016.

39. From the abovesaid letter dated 09.01.2017, it could be further deduced, writ petitioner and others were given 15 days time to express their willingness to settle the dues on the terms and conditions of OTS proposal and 15 days time expires on 24.01.2017.

40. At paragraph No.2 of the letter dated 09.01.2017, bank also informed the writ petitioners and others that proposal for one time settlement, is without prejudice to the rights to take/continue actions under the SARFAESI Act, 2002, unless a compromise is settled under the present SBI OTS-Manufacturing, Trade & Services, 2016 Scheme. When clear 15 days notice was given to the writ petitioner and others express their willingness to accept the one time proposal, offered by the bank, sale as notified vide notice dated 26.12.2016, has been effected, sale has been confirmed on 19.01.2017 and sale certificate

dated 06.02.2017, has been issued to Mr.A.Perichi, the third respondent in W.P.No.7700 of 2017.

41. In continuation of the letter dated 09.01.2017, and even after the sale, bank has issued another letter dated 07.02.2017 to the writ petitioner and others, informing them that the last date for submitting their consent for the above OTS scheme along with the upfront payment at 5% of the OTS amount has been extended up to 15th February 2017, meaning thereby, that the writ petitioner and others can submit their consent for the OTS proposal dated 09.01.2017 till 15.02.2017 and make payment.

42. For brevity, letter dated 07.02.2017, addressed to 1.Shri.B.Madhiyan, 2. SMT.M.Rathna, 3.Shri.N.Thangaraj, 4.Shri.K.Ramanathan, is extracted hereunder:-

"Dear Sir,

SBI OTS - Manufacturing, Trade & Services, 2016
A/c No.31188523549
Branch: SARB, CHENNAI

With reference to our letter dated 09.01.2017 regarding the subject matter, we inform you that the last date for submitting your consent for the above OTS scheme along with the upfront payment @ 5% of the OTS amount has been extended upto 15th February 2017.

Therefore, we request you to avail/utilize this opportunity for closing your account/s under the scheme.

This is for your information."

43. Thereafter, bank sent a letter dated 10.02.2017 to the writ petitioner and others, informing them that the application under "SBI OTS- Manufacturing, Trade and Services, 2016" scheme and their consent communicated vide letter dated 08.02.2017, has been accepted by the appropriate authority.

44. Letter dated 10.02.2017, addressed to the writ petitioner and others is extracted hereunder:-

"Dear Sir,
SBI OTS - Manufacturing, Trade & Services, 2016
A/c.No.31188523549
We refer to your letter dated 08.02.2017 for settlement of your dues to the Bank under the captioned scheme. We are pleased to advise that your application under the captioned scheme has been accepted by the appropriate authority.

1.Total amount payable under the OTS Scheme will be Rs.56,86,424/-(Rupees Fifty six lakhs eithty six thousand four hundred and twenty four only)

2. Application money of Rs.3,56,000/- paid by you will be appropriated towards your OTS amount.

3. 25% of the OTS amount will have to be deposited by you as upfront money within thirty days from the date of this letter, i.e. within 12/03/2017. This would include the amount deposited by you along with the application.

4. The balance amount can be paid within 6 months from the date of this letter, i.e.10/08/2017 (the validity period) together with interst @7.95% (documented rate/MCLR, whichever is lower) for six months, failing which the OTS sanction will be rendered infructuous.

5. However, no interest will be charged if the entire OTS amount is paid within 3 months from the date of this letter, i.e.10/05/2017.

6. You will be eligible for an additional incentive of 10% discount on the OTS amount, on making payment of the entire OTS amount on or before 31.03.2017.

7.Consent terms with default clause will be filed before Presiding Officer of DRT / Court for obtaining Consent Decree.

We, therefore, advise you to accept the terms and conditions of the above sanction and arrange for payment of OTS amount as per terms mentioned above. A resolution of the Company for acceptance of the OTS terms and authorising a Partner to execute/sign necessary documents may also be submitted.

The duplicate of this letter duly signed be sent to us indicating your acceptance of above mentioned terms and conditions of OTS."

45. Reading of the above said letter dated 10.02.2017, shows that the bank has accepted the consent of the writ petitioner and others to make payment of Rs.56,86,424/-, the total amount payable under OTS scheme, 25% of the OTS amount has to be deposited by the writ petitioner and others, as upfront money within 30 days from the letter dated 10.02.2017 (that means 25% of the OTS amount should be deposited within 12.03.2017). Balance amount can be paid within 6 months from the date of the letter dated 10.02.2017 (i.e.10.08.2017) (the validity period) together with interest at the rate of 1.95% for 6 months, failing which OTS sanction would be rendered infructuous, that no interest would be charged if the entire OTS amount is paid within 3 months from the letter dated 10.02.2017 (i.e.before 10.05.2017).

46. Bank has also stated that the consent terms with default clause would be filed before the Presiding Officer of DRT-III, Chennai for obtaining consent decree.

47. From the above, it could be deduced that bank has not only arrived at a full and final settlement of the amount due and payable

under OTS scheme and also agreed to obtain a consent decree from the DRT-III, Chennai, provided the writ petitioner and others, agreed for the one time settlement.

48. Material on record discloses that towards realisation of a sum of Rs.13,36,750.01 together with future interest and cost, bank had sold the subject property in favour of Shri.A.Perichi, third respondent in W.P.No.7700 of 2017 for Rs.20 lakhs, and after confirmation of the sale, issued a sale certificate dated 06.02.2017.

49. Bank has filed a memo dated 10.03.2017, for part satisfaction of the debt and prayed for a direction to return the title deeds mentioned in S.No.8 (Ex.A22). On 10.03.2017, M/s.Madhavi Food Products, Dharmapuri, has sent a letter to the Authorised Officer/Assistant General Manager, Stressed Assets Recovery Branch, State Bank of India, Chennai, stating that 5% of the OTS amount, Rs.3,56,000/- has been paid on 08.02.2017 and on 10.03.2017, another sum of Rs.10,66,000/- being 25% of Rs.56,86,424/- has been paid. In letter dated 10.03.2017, writ petitioner has also stated that the entire OTS amount would be paid. Unfortunately, without reference to the payments made, towards settlement of the OTS

amount, bank has sent a letter dated 15.03.2017, to the writ petitioners and others stating that the writ petitioners have failed to satisfy the liabilities to the bank, even after receipt of said notice under Section 13(2) and Section 13(4) of the Act, 2002 and thus the bank in exercise of its rights granted under the Act and Rules, proceeded under the Act, with the sale of secured properties and realised a sum of Rs.20 lakhs.

50. When the matters stood thus, M/s.Madhavi Food Products, Dharmapuri, has filed instant W.P.No.7700 of 2017 on 27.03.2017, for declaring the auction proceedings dated 18.1.2017 in respect of the petitioner's landed property comprised in S.No.408/1-A and 409/3A, Perianahalli Village, Palacode Taluk, Dharmapuri District of an extent of 1.42 Acres, based upon the sale notice dated 26.12.2016, as referred to by the 1st respondent therein, in his proceedings dated 15.03.2017 as null and void and not binding on the petitioner.

51. Taking note of the filing of the writ petition, bank has sent a letter dated 15.03.2017, to the writ petitioners and others, as follows:-

"Dear Sir,

Sub: Notice for sale under the Security Interest (Enforement) Rules 2002 (hereinafter called the Rules)

Borrower: M/S MAADHAVI FOOD PRODUCTS

E auction conducted on: 18.01.2017

Sale confirmed for Rs.20,00,000/-

We refer to our Sale Notice dated 26/12/2016 Whereas you have failed to satisfy the liabilities to the bank even after receipt of said notice under Section 13(2) and Section 13(4) of the Act. Therefore the Bank in exercise of its rights granted under the Act and Rules, proceeded under the act with the sale of secured property(ies) and realized the amount as stated above.

Description of the property sold:

Land at s.No.408/1A and 4093A, Periyanahalli village, Palacode Taluk, Dharmapuri District, admeasuring 1.42 acres in the name of M/s Maadhavi Food Products.

This is for your information."

Thereafter another letter dated 27.04.2017, which is extracted:-

Dear Sir/Madam,

SBI OTS-Manufacturing, Trade & Services, 2016
A/c No.31188523549

With further reference to our letter dated 10.02.2017 regarding settlement of your dues to the bank under the captioned scheme, we have to advise that the concessions given under the scheme for settlement of dues, will not be considered favourably unless you withdraw the legal action i.e.filing of writ petition, WP No.7700 of 2017 in the Hon'ble High Court of Judicature at Madras.

This is for your information
yours faithfully,

Asst. General Manager.

52. Lateron, referring to the letter dated 27.04.2017, advising the writ petitioner and others to withdraw the order dated 05.06.2017 made in W.P.No.7700 of 2017, the bank had sent another letter dated 17.07.2017, stating that the payment of Rs.14,50,000/- received by the bank on 13.07.2017, was without prejudice to the Bank's rights and claims in the pending proceedings and another letter dated 27.07.2017, for the receipt of Rs.4,00,000/- made on 24.07.2017. In both the letters dated 17.07.2017 and 27.07.2017, bank had reiterated and advised the writ petitioner and others to withdraw W.P.No.7700 of 2017 stating that receipt of payment was without prejudice to the bank's right. Letters are extracted hereunder:-

"Dear Sir/Madam,

Sub: Payment of Rs.14.50 lakhs received on 13.07.2017 in our Branch Collection Account No.31277537776

Ref: (1) Our letter dated 27/04/2017 advising you to withdraw W.P. No.7700/2017 filed in the Hon'ble High Court of Madras

(2) Order dated 05.06.2017 passed in the above writ petition

In respect of the payment of Rs.14.50 lakhs made on

13.07.2017 at our Palacode branch for the credit of our Branch Collection Account No.31277537776, we state that the said payment is received by the Bank without prejudice to the Bank's rights and claims in the pending proceedings relating to the above matter.

Yours faithfully,
Assistant General Manager

Acknowledgment of receipt of Rs.4.0 lakhs issued."

Dear Sir/Madam,

Sub: Payment of Rs.4.00 lakhs received on 24.07.2017 in our Branch Collection Account No.31277537776

Ref: (1) Our letter dated 27/04/2017 advising you to withdraw W.P. No.7700/2017 filed in the Hon'ble High Court of Madras

(2) Order dated 05.06.2017 passed in the above writ petition

(3) Our letter SARB/NRS/621 dated 17.07.2017

In furtherance to our letter referred to as (3) above, it is observed that a payment of Rs.4.00 lacs is made on 24.07.2017 at our Palacode Branch for the credit of our Branch Collection Account No.31277537776, which is received by the Bank without prejudice to the Bank's rights and claims in the pending proceedings relating to the above matter.

Yours faithfully,

Assistant General Manager"

53. From the perusal of the above letters, it could be seen that by referring to the letter dated 10.02.2017, wherein bank had already accepted the petitioners' offer, dated 08.02.2017, for settlement of the dues under OTS Scheme, bank has sent a letter dated 27.04.2017, to the writ petitioner stating that concessions given under the scheme for settlement of dues, will not be considered favourably, unless the writ petitioner withdraws the legal action (i.e.filing of writ petition, W.P.No.7700 of 2017),. No where in the letter dated 27.04.2017, the bank has said anything, about the continuous receipt of the payments made by the writ petitioner, and their acceptance of offer vide letter dated 08.02.2017.

54. As stated supra, on 08.02.2017, a sum of Rs.3,56,000/- has already been paid, and on 10.02.2017, a sum of Rs.10,66,000/- representing 25% of Rs.56,86,424/-, has also been paid. Nearly 3 months, thereafter, bank in their letters dated 17.07.2017 and 27.07.2017, has stated that payments received were, without prejudice to bank's rights and claims. It is apparent from the above, that when the writ petitioner / M/s.Madhavi Food Products, Dharmapuri, did not withdraw W.P.No.7700 of 2017, as suggested,

bank which had received amounts under OTS, on various dates, started saying that payment received, was without prejudice to bank's rights and claims in the pending proceedings.

55. While, the bank was corresponding with the writ petitioner, regarding payments made towards one time settlement, bank has filed a memo dated 13.04.2017, in O.A.No.208 of 2015, on the file of the DRT-III, Chennai, seeking for a prayer to return original title deed Ex.A22.

56. For the sake of convenience, memo dated 13.04.2017, filed by the bank before the DRT-III, Chennai, is reproduced hereunder:-

MEMO FILED ON BEHALF OF THE APPLICANT

It is humbly submitted that the above OA has been filed for recovery of a sum of Rs.1,32,36,750.01 together with future interest and costs. It is submitted that pursuant to the e-auction held on 18.01.2017, the property more fully described in Schedule A to the OA was sold for a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) to and in favour of Shri A.Perichi, son of Shri Anbalagan, Palacode - 635 205 and sale certificate has been issued in his name since the entire amount was paid on 25.01.2017 and appropriated to the loan account on 30.01.2017.

It is submitted that a memo to that effect was filed before this Honourable Tribunal on 14.03.2017 and the same was taken on record on 05.04.2017. It was also requested to direct the Registry to return the title deeds *mentioned at S. No.8 in the O.A. Book and marked as Exhibit No.A22 along with the proof affidavit.*

It is submitted that when the applicant sought to hand over possession to the auction purchaser, there was resistance by the mortgagor and he has also lodged a police complaint. As the aforesaid exhibit is to be produced before the investigation agency, the applicant is in need of the said document.

It is therefore just and necessary that this Honourable Tribunal may be pleased to direct the Registry to return the title deed being Exhibit A22 to the applicant and to pass such further or other orders as it may deem fit and proper in the facts and circumstances of the case and thus render justice.

Dated at Chennai on this the 13th day of April 2017.
For STATE BANK OF INDIA
Stressed Assets Recovery Branch, Chennai
Authorised Officer

Applicant   Counsel for Applicant"

57. On 23.05.2017, bank has filed I.A.No.798 of 2017, to advance hearing of O.A.No.208 of 2015. Reiterating the contents of the Memo dated 13.04.2017, bank in the supporting affidavit, in I.A.No.798 of 2017, at paragraphs 4 and 5, has stated as follows:-

"4. It is submitted that when the applicant sought to hand over possession to the auction purchaser, there was resistance by the mortgagor and he has also lodged a police complaint. As the aforesaid exhibit is to be produced before the investigation agency, the applicant is in need of the said document.

5. I submit that the above OA stands posted for arguments on 04.07.2017. As the above document is required on an urgent basis, the hearing of the OA requires to be *advanced. Unless the present application is allowed, the applicant would be greatly prejudiced and would be put to heavy and irreparable and hardship."*

58. When W.P.No.7700 of 2017 filed by M/s.Madhavi Food Products, Dharmapuri, as prayed for, is pending on the file of this Court, which the bank is also aware of and when there was simultaneous receipt of payment under the "SBI OTS Manufacturing, Trade and Services – 2016" it could be deduced that to defeat the prayer sought for in the writ petitioner, bank has requested the DRT-III, Chennai, to return the title deed (Ex.A22), stating that the same has to be produced before the investigating agency. Bank has filed a memo and a supporting affidavit to I.A.No.798 of 2017, stating that there was resistance by the mortgagor/writ petitioner and a police complaint was also lodged. O.A.No.208 of 2015, was originally listed on 04.07.2017. On the averments made in the memo dated 13.04.2017 and I.A.No.798 of 2017 filed by the bank, Tribunal has ordered notice to the writ petitioner and others and advanced the hearing of O.A.No.208 of 2015 to 14.06.2017. Writ petitioner did not appear on 14.06.2017 and DRT-III, Chennai, vide order dated 14.06.2017, directed return of the document marked as Ex.A22, title deed of the property of the writ petitioner, mortgaged to the applicant bank.

59. Being aggrieved by the direction, writ petitioner has brought it to the notice of the Tribunal, that earlier, a Hon'ble Division Bench of this Court in W.P.No.7700 of 2017, dated 05.06.2017, has directed the bank not to take any coercive steps. Attention of the Tribunal was also brought to the notice that the High Court in W.P.No.7700 of 2017, dated 05.06.2017, has also observed that the property sold is against the terms of the undertaking made in OTS and it is for the bank to take the risk. High Court has also permitted the writ petitioner to pay the amount calculated on or before 10.08.2017. When the Tribunal was appraised, the order passed by this Court in W.P.No.7700 of 2017, the Tribunal observed that the bank has concealed the order of this Court in the advancement application and screened away vital information / orders of the High Court restraining the bank not to take any coercive steps till 10.08.2017 and thus obtained an order, for return of documents behind the back of the borrowers with oblique motive and intention.

60. Vide proceedings dated 04.07.2017 in O.A.No.208 of 2015, DRT-III, Chennai directed not to release any documents. For the sake of convenience, Proceedings dated 04.07.2017, is extracted hereunder:-

__"TRUE EXTRACT OF THE PROCEEDINGS 04.07.2017__

OA NO.208/2015 04.07.2017

Ld. Counsel for the applicant bank, Ld. Counsel representing the 1st defendant are present. Heard both sides.

It is brought to the notice of the Tribunal, that consequent to forwarding an OTS scheme on 09.01.2017, which is since accepted and complied by remitting initial 5% of the amount by the 1st defendant, the OTS between the parties is concluded by the Applicant Bank's letter dated 10.02.2017 which inter alia contained the terms of repayment by the borrowers to be adhered to, with an upper limit to remit the total outstanding amount as arrived under OTS on or before 10.08.2017. It is further demonstrated that the 1st limb of compliance of 25% amount is to be made on or before 12.03.2017, when it was remitted on 10.03.2017 and the borrowers were extended time till 10.08.2017 for paying the balance 75% of the outstanding OTS amount. While so, concealing all this applicant bank had filed an advance hearing application into this Tribunal on 23.05.2017 praying to advance the matter from 04.07.2017 only to record part satisfaction of sale proceeds received on 25.01.2017 and appropriated to loan account of the borrower on 30.01.2017 and also for ordering return of title deed of the sold property since marked as Ex.A-22, as it is pleaded / deposed therein that pursuant to a police complaint by the auction purchaser, on the resistance of *the principal borrower for handing over vacant physical possession, they had to furnish the original document to the investigating agency. Believing the applicant bank's officer's deposition, this Tribunal had ordered for matter to be advanced as notices sent to respondents were duly filed and respondents did not put up appearance, on 14.06.2017, when it is reported that the notices received by the respondents had the date of hearing as 15.06.2017 and further that the bank had knowledge and information about W.P. 7700/2017 as early as in March and April, when the same counsel had appeared before the Hon'ble High Court in the matter.*

But, however, all the above faces were concealed in the advancement application and the applicant bank had willfully and vehemently hoodwinked this Tribunal and screened away vital information / orders of the Hon'ble High Court restraining the bank not to take any coercive steps till 10.08.2017, obtained an order for return of documents behind the back of the borrowers with oblique motive and intention.

This Tribunal is pained by the unlawful acts of applicant bank and for inducing this tribunal to pass wrong orders based on the deposition of deponent on behalf of the bank in her capacity as City Case Officer, SARB, Chennai.

In the result, and for the detailed circumstances as stated above, order passed on 14.06.2017 for return of documents is herewith recalled as annulled.

This Tribunal is inclined to pass appropriate orders for perjury against the City Case Officer, SARB of the Applicant Bank, but is restraining itself by intimating the attitude of the applicant bank to the higher forum viz., Hon'ble High Court of Madras for taking appropriate action as thought fit.

However, Registry is henceforth directed not to accept any affidavit in any manner before DRT-III by the City Case Officer, SARB of the applicant bank.

A copy of this order is directed to be sent to the Hon'ble High Court of Madras to be attached and appraised to the Lordships in W.P. NO.7700/2017 for their kind concern and also to the General Manager (Law) of the applicant bank under proper acknowledgment of his office.

Registry is directed not to release any documents. Call on 18.08.2017."

61. Though the Tribunal has observed that the order of the High Court made in W.P.No.7700 of 2017, dated 05.06.2017, has been concealed in the advancement application, this Court cannot subscribe to the said view, for the reason bank had no occasion to mention anything about the order of this Court made in W.P.No.7700 of 2017, dated 05.06.2017 in the memo dated 13.04.2017 and the application filed 23.05.2017 and both were filed much earlier to order of this Court.

62. During the course of hearing of the instant petitions in W.P.No.7700 of 2017 and C.R.P.(PD).No.3239 of 2017, it is admitted by all the learned counsel that on 05.06.2017, when the Hon'ble Division Bench of this Court, passed orders in W.P.No.7700 of 2017, learned counsel who appeared for the bank in the High Court in W.P.No.7700 of 2017 and before the Tribunal in O.A.No.208 of 2015 on 14.06.2017, was one and the same. He was aware of the order of this Court dated 05.06.2017, argued in the Tribunal, in O.A.No.208 of 2015 and thus the bank has obtained an order for return of document.

63. Thus, when this Court on 05.06.2017, directed the bank not to take any coercive steps, and permitted the writ petitioner to pay the amount calculated as per the OTS scheme on or before 10.08.2017, unfortunately, neither the learned counsel for the bank nor the bank officials have brought to the notice of the DRT-III, Chennai, about the order of this Court, but pursued the prayer sought for, in the memo dated 10.03.2017 and application in I.A.No.798 of 2017. Taking note of the same, Tribunal vide order dated 14.06.2017, directed return of title deed marked as Ex.A22.

64. Mr.OM.Prakash, learned Senior Counsel for the bank made submissions to justify the action of the bank in bringing the property

for sale on 18.01.2017, and realisation of the sale amount towards discharge of the debt, and prayed that for the inadvertent mistake of the bank officials, in not bringing it to the notice of the Tribunal, about the order of this Court dated 05.06.2017, adverse observations against the officials does not warrant. City Case Officer, Stressed Assets Recovery Branch, Chennai, has filed an affidavit dated 15.03.2018, as hereunder:-

> "I, NAGARANJINI, wife of S Subramani, Hindu aged about 56 years and working at State Bank of India, Stressed Assets Recovery Branch, Red Cross Buildings II floor, No.32, Montieth Road, Egmore, Chennai - 600 008 do hereby solemnly affirm and sincerely state as follows:
>
> "*1. I am the City Case Officer of the applicant, State Bank of India, a statutory corporation constituted by and under the State Bank of India act, having its Corporate Centre at Madame Cama Road, Nariman Point, Mumbai - 400 021. The City Case Officer of the SARB represents the applicant being the competent officer to verify, sign and institute the above proceedings and file and swear the proof affidavit and give evidence in view of Regulations 76 & 77 of the State Bank of India General Regulations, 1955, which are statutory.*

2. That I deeply regret and most humbly tender my unconditional and unqualified apology to this Hon'ble Court for not bringing the order dated 05.06.2017 to the notice of Debts Recovery Tribunal - III, Chennai 14.06.2017, when, an application for return of documents was taken up for enquiry.

3. The mistake in not bringing the order dated 05.06.2017 passed by this Honourable Court was neither willful nor wanton / non-deliberate, when the application in O.A. No. 208 of 2015 was heard by the Debts Recovery Tribunal on that day. The DRT had passed the impugned order placing reliance on my Affidavit filed before the Tribunal. The said Affidavit was sworned by me and filed before the Tribunal earlier to the order dated 05.06.2017.

4. It was an inadvertent and a bonafide mistake without property appreciating the probable consequences, in allowing the application by the Debts Recovery Tribunal affecting the import of the order passed by this Honourable Court on 05.06.2017. I feel for my mistake, and tender an open and unconditional apology to this Honourable Court and undertake that no such mistake would recur in future.

5. I respectfully submit that I have utmost respect and regard for the Court of Law and its Majesty. I submit that I have never flouted any order passed by any Court of *law nor any intention to flout any order passed by this Honourable Court. I submit that in any view of the matter, I hereby tender unconditionally my sincere apologies.*

I therefore pray that this Honourable Court may be pleased to accept my apology and pass such further or other orders as it may deem fit and proper in the facts and circumstances of the case and thus render justice."

65. Similarly, learned counsel for the respondents 1 and 2 in W.P.No.7700 of 2017, has filed an affidavit, dated 15.03.2018, is extracted hereunder:-

"2.That I deeply regret and most humbly tender my unconditional and unqualified apology to this Hon'ble Court for not bringing the order dated 05.06.2017 to the notice of Honourable Debts Recovery Tribunal - III, Chennai on 14.06.2017, when, an application for return of the documents was taken up for enquiry.

3. The mistake in not bringing the order dated 05.06.2017 passed by this Honourable Court was neither willful nor wanton / non-deliberate, when the application in O.A.No.208 of 2015 was heard by the Honourable Debts Recovery Tribunal on that day.

4. It was an inadvertent and a bonafide mistake without properly appreciating the probable consequences, in allowing the application by the Debts Recovery Tribunal affecting the import of the order passed by this Honourable Court on 05.06.2017. I feel for my mistake, and tender an open and unconditional apology to this Honourable Court and undertake that no such mistake would recur in furture.

5. I respectfully submitted that I have utmost respect and regard for the Court of law and its Majesty. I submit that I have never flouted any order passed by any Court of law nor any intention to flout any order passed by this Honourable Court. I submit that in any view of the matter, I hereby tender unconditionally my sincere apologies.

I therefore pray that this Honourable Court may be pleased to accept my apology and pass such further or other orders as it may deem fit and proper in the facts and circumstances of the case and thus render justice."

66. As per Clause IV of the letter dated 10.02.2017 of the bank, on 09.08.2017, the writ petitioner/M/s.Madhavi Food Products, Dharmapuri District, has paid a sum of Rs.24 lakhs under OTS Scheme and on the same day the writ petitioner has made a further payment

of Rs.1,54,200/- towards full and final payment under the OTS. At the risk of the repetition, Clause IV of the letter dated 10.02.2017 of the bank, is reproduced. The balance amount can be paid within 6 months from the date of this letter i.e.10.08.2017 (the validity period) together with interest at the rate of 7.95% (documented rate/MCLR, whichever is lower) for 6 months, failing which the OTS sanction will be rendered infructuous.

67. On 16.03.2018, when the W.P.No.7700 of 2017 and C.R.P.No.3239 of 2017, were heard together, Mr.OM.Prakash, learned Senior counsel appearing on behalf of the bank, submitted that the entire amount of Rs.56,86,424/- the total amount payable under the OTS scheme, has been paid by the writ petitioner M/s.Maadhavi Food Products, Dharmapuri, before the cut of date, as stated supra and the last payment was made on 09.08.2017.

68. Learned counsel for the Auction Purchaser submitted that in the auction, payment of Rs.20 lakhs, was made, and the auction purchaser has been issued with a sale certificate, and therefore his rights have to be protected. According to him, but for the auction, the auction purchaser would not ventured to purchase the property and incur huge expenses for registration of the document with the

Registration Department.

69. Learned counsel for the auction purchaser further submitted that if this Court is inclined to grant any declaration holding that the auction dated 18.01.2017, as null and void, then the auction purchaser should be paid the suitable compensation, besides the expenses incurred. In the foregoing paragraphs, we have extensively considered as to how, on the one hand bank had been receiving payments under the one time settlement, as agreed upon, Vide letter dated 10.02.2017, and simultaneously sought for return of the title deed marked as Ex.A22 from the DRT-III, Chennai, stating that the same was required to be handed over to the investigation agency, against the objection made by the mortgagor/auction purchaser to handover physical possession.

70. In the letter dated 27.07.2017, bank has stated that payment received was without prejudice to the bank's rights and claims. As stated supra, that on 05.06.2017, a Hon'ble Division Bench of this Court, has already directed the bank should not take any coercive steps, but it was unfortunate that the bank insisted for an order for return of the document before the DRT-III, Chennai.

Attempt to get the document released, and advice to the writ petitioner to withdraw the W.P.No.7700 of 2017, or else the settlement would not be processed are certainly coercive steps taken by the bank and it is in contravention of this Court's order. Fortunate, for the writ petitioner that DRT-III, Chennai, vide proceedings dated 04.07.2017, directed to withhold the document. Auction purchaser, does not have any preferential right over the mortgagor, to the property. Right of the mortgagor has been recognised, even under the SARFAESI Act, 2002. At the same time, as rightly contended, auction purchaser has to be paid the auction amount and the expenses incurred towards registration of the sale certificate.

71. Contention of the bank that before 18.01.2017, writ petitioner has not come out with any consent, for accepting the OTS proposal, dated 09.01.2017 and therefore, bank was constrained to proceed with the sale, on 18.01.2017 as per the terms and conditions of the scheme, which permits SARFAESI action, without prejudice to the rights and claims of the parties under the OTS scheme, is not accepted for the reason that the very expression one time settlement of the amounts due and payable to the bank, would be redundant and defeated, if the bank can proceed to sell the property, and invite an

auction purchaser. On one hand, bank has agreed for settlement of the dues of the borrower, but on the other hand simultaneously, brought the property for sale, and invited a third party.

72. Bank has extended the time for consent to be offered by the writ petitioner and till the completion of the said period, stated in the foregoing paragraphs, bank ought not to have brought the property for sale. For the reasons stated supra, we hold that auction conducted by the bank is contrary to the OTS agreed upon between the parties. Writ petitioner has made out a strong case for issuance of writ of declaration, as prayed for, in W.P.No.7700 of 2017. Auction dated 18.01.2017 is declared as null and void.

73. The next issue is whether auction purchaser has to be paid compensation or interest for the payment made and expenses incurred. In M/s.Oasis Dealcom Pvt. Ltd. Vs. Khazana Dealcomm Pvt. Ltd. & Ors, reported in 2017 SAR (Civil) 204, taking note of the litigation faced by the auction purchaser therein, at paragraphs 25 and 26 of the judgment, the Hon'ble Supreme Court directed that the auction amount has to be repaid with simple interest at the rate of 10%, till the said amount is paid. Following the decision in M/s.Oasis

Dealcom Pvt. Ltd. Vs. Khazana Dealcomm Pvt. Ltd. & Ors, we direct the bank, to repay the auction bid amount with interest 10% simple interest, within one month from the date of receipt of a copy of this order.

74. We also direct the bank to pay the actual registration charges and stamp duty, paid by the auction purchaser, for registering the sale certificate, dated 06.02.2017, within one month from the date of receipt of a copy of this Order.

75. M/s.Madhavi Food Products, writ petitioner herein, has been made to litigate and incur litigation expenses. Though we accept the apology of the bank officials/learned counsel for the bank, as per the supporting affidavits dated 15.03.2018, revision petitioner/bank is directed to pay the litigation expenses of Rs.25,000/- to the writ petitioner, within one month from date of receipt of a copy of this order. Bank is directed to file a petition, for return of documents to the borrower/writ petitioner, and that the Tribunal is directed to pass appropriate orders.

76. Bank is also directed to place the order made in W.P.No.7700 of 2017 and C.R.P.(PD).No.3239 of 2017, before the DRT-

III, Chennai, for disposal of the O.A.No.208 of 2015, as per the terms and conditions, in the letter dated 10.02.2017 for a decree.

77. Accordingly, W.P.No.7700 of 2017 is allowed. Accepting the affidavits of the City Case Officer, Stressed Assets Recovery Branch, State Bank of India, Chennai, apology dated 15.03.2018, and the learned counsel, C.R.P.(PD).No.3239 of 2017 is disposed of. No Costs. Consequently, connected Civil Miscellaneous Petition is closed.

(S.M.K., J.) (V.B.S., J.)
19.03.2018

Index: Yes
Internet: Yes
Speaking/Non speaking

dm

To

Debts Recovery Tribunal-III,
Chennai.

S.MANIKUMAR, J.
AND
V.BHAVANI SUBBAROYAN, J.

dm

C.R.P.(PD).No.3239 of 2017
and
W.P.No.7700 of 2017
and
C.M.P.No.15161 of 2017

19.03.2018