IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE M.DURAISWAMY

C.R.P(PD).No.2558 of 2018 and
C.M.P.No.15470 of 2018

M/s.Supreme Sizing Industries,
rep by its Proprietor R.Gopalsamy
419-1A-1C, Vadugapalayam Road,
Thekalur Post, Avinashi Road,
Coimbatore. .. Petitioner

Vs.

The Authorized Officer,
State Bank of India,
Stressed Assets Management Branch,
1112, Raja Plaza, Avinashi Road,
Coimbatore. .. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order passed in I.A.No.485 of 2018 in S.A.No.325 of 2017 on the file of the Debts Recovery Tribunal, Coimbatore dated 11.05.2018 and to set aside the same.

For Petitioner : Mr.G.Sudhakar

For Respondent : Mr.G.Senthil Kumar
for Mr.S.Sethuraman

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O R D E R

(Order of the Court made by M.DURAISWAMY,J.)

Challenging the order passed in I.A.No.485 of 2018 in S.A.No.325 of 2017 on the file of the Debts Recovery Tribunal, Coimbatore, the petitioner has filed the above Civil Revision Petition under Article 227 of the Constitution of India.

2.The petitioner has filed an application in I.A.No.485 of 2018 in S.A.No.325 of 2017 to order restoration of status-quo ante as on 08.11.2017 till the disposal of the main application.

3.It is the case of the petitioner that on 17.02.2016, the respondent – Bank issued a notice under Section 13(2) of the SARFAESI Act. By E-auction sale notice dated 05.10.2017, the mortgaged property was brought to sale by the respondent – Bank. Challenging the E-auction sale notice, the petitioner filed an appeal before the Debts Recovery Tribunal, Coimbatore in S.A.No.325 of 2017 along with an interim application.

4.By order dated 08.11.2017, the Debts Recovery Tribunal granted an order of interim injunction against the respondent – Bank not to confirm the

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sale till 09.01.2018 subject to payment of Rs.11 lakhs on or before 08.12.2017 as 1st installment and another sum of Rs.11 lakhs on or before 08.01.2018 as 2nd installment.

5.Challenging the order passed by the Debts Recovery Tribunal, the respondent – Bank filed an appeal in M.A.(S.A.)No.216 of 2017 on the file of the Debt Recovery Appellate Tribunal, Chennai. By order dated 13.12.2017, the Debt Recovery Appellate Tribunal modified the order passed by the Debts Recovery Tribunal, Coimbatore by granting an order of interim stay on condition the petitioner/borrower depositing Rs.63.43 lakhs within one week. The Appellate Tribunal also made it clear that in the case of failure to deposit the amount within the stipulated time, the Bank will be entitled to confirm the sale.

6.As against the order passed by the Debt Recovery Appellate Tribunal, the petitioner filed a Writ Petition in W.P.No.33557 of 2017. During the pendency of the Writ Petition, on 21.12.2017, the respondent – Bank issued a sale certificate and sale confirmation in favour of the auction purchaser. By order dated 21.12.2017, the Division Bench of this Court in W.P.No.33557 of 2017, set aside the order passed by the Debt Recovery Appellate Tribunal in M.A.(S.A.)No.216 of 2017 and restored the order dated

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08.11.2017 made in I.A.No.2166 of 2017 in S.A.No.325 of 2017 on the file of the Debts Recovery Tribunal, Coimbatore. The petitioner has also complied with the conditional order passed in S.A.No.325 of 2017. The petitioner filed I.A.No.485 of 2018 in S.A.No.325 of 2017 to order restoration of status-quo ante as on 08.11.2017. By order dated 11.05.2018, the Debts Recovery Tribunal, Coimbatore dismissed the application finding that the Division Bench of this Court has not set aside the sale.

7.The learned counsel appearing for the petitioner submitted that under Section 144 of the Civil Procedure Code, when a decree or an order is varied or reversed or set aside or modified, the Court which passed the decree or order shall, on the application of any party which is entitled to the benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed or set aside of modified.

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8.Further the learned counsel submitted that since this Court had set aside the order passed by the Debt Recovery Appellate Tribunal in M.A.(S.A.)No.216 of 2017 and restored the order passed by the Debts Recovery Tribunal, therefore, the property sold to a 3rd party during the

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pendency of the Writ Petition shall not have any legal validity. Further, the learned counsel submitted that when the order of the Debt Recovery Appellate Tribunal has been set aside by this Court, the sale made in favour of the 3rd party in the interregnum period would get set aside automatically.

9.In support of his contention the learned counsel relied upon a judgment reported in ***2004 (1) MLJ 296 [Kandan (Died) and others vs. K.Periaswamy]*** wherein this Court held that if a decree is set aside by the Appellate Court in such a case the Court has the duty to enforce its obligation to restitute the property to the applicant who was deprived of his possession based on such decree.

10.It is pertinent to note that restitution under Section 144 can be made by the Competent Court only on an application filed by the aggrieved party. Even if the order passed by the Debt Recovery Appellate Tribunal is set aside by this Court, the sale made by the respondent – Bank in favour of the 3rd party shall not get set aside automatically. The petitioner should have filed appropriate application to get the sale set aside.

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11.It is also pertinent to note that it is mandatory that the auction purchaser should also be made a party in the said application and the sale can be set aside only in his presence. The petitioner cannot seek to set aside the sale behind the back of the auction purchaser. The Debts Recovery Tribunal has rightly dismissed the application to grant an order of status-quo ante.

12.Apart from the reasons stated above, the petitioner has filed the Civil Revision Petition under Article 227 of the Constitution of India without exhausting the Appellate remedy available under Section 18 of the SARFAESI Act.

13.The Hon'ble Supreme Court of India in the judgments reported in ***(2018) 3 Supreme Court Cases 85 [Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.]*** and ***(2018) 1 Supreme Court Cases 626 [Agarwal Tracom Private Limited Vs. Punjab National Bank and others]*** held that the aggrieved party cannot challenge the SARFAESI proceedings directly by filing a Writ Petition under Article 226 of the Constitution of India without exhausting the remedy available to them.

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14.The ratio laid down by the Apex Court in the above referred judgments is applicable to the present case.

15.For the reasons stated above, the Civil Revision Petition is devoid of merits and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

(V.K.T., CJ.) **(M.D., J.)**
26.09.2018

Index : Yes/No
Internet : Yes
Speaking /Non Speaking Order
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To

The Authorized Officer,
State Bank of India,
Stressed Assets Management Branch,
1112, Raja Plaza, Avinashi Road,
Coimbatore.

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THE HON'BLE CHIEF JUSTICE
AND
M. DURAISWAMY,J.

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