

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2018

CORAM :

The Hon'ble MR.JUSTICE HULUVADI G.RAMESH

AND

The Hon'ble MR.JUSTICE K.KALYANASUNDARAM

W.P.No.24799 of 2018
and W.M.P.No.28824 of 2018

1.M/s.A.P.Travels and Tours (I) Pvt. Ltd.,
rep. by its Managing Director Anand Palanisamy,
A.P. Towers,
No.374, 100 Feet Road,
Gandhipuram, Coimbatore.

2.Anand Palanisamy

3.Kamal Palanisamy

.. Petitioners

-vs-

M/s.Indian Overseas Bank,
rep. by its Authorised Officer,
Peelamedu Branch,
1433, Avinashi Road,
Peelamedu,
Coimbatore - 641 004.

... Respondent

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of E-auction notice dated 27.8.2018 issued by the respondent on the petitioners, to auction the property of the second petitioner situated at T.S.No.11/647/2 part, Sanganoor Village, Gandhipuram, Coimbatore, measuring an extent of 4196 sq. ft. and quash the same.

For Petitioners : Mr.M.Santhanaraman

For Respondents : Mr.F.B.Benjamin George

ORDER

(Judgment of the Court was made by Huluvadi G.Ramesh, J.)

Mr.F.B.Benjamin George, learned counsel accepts notice on behalf of the respondent Bank.

2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent Bank.

3. The petitioners have filed the writ petition seeking a Writ of Certiorari calling for the records of E-auction notice dated 27.8.2018 issued by the respondent on the petitioners to auction the property of the second petitioner situated at T.S.No.11/647/2Part, Sanganoor Village, Gandhipuram, Coimbatore, measuring an extent of 4196 square feet and quash the same

4. The learned counsel for the petitioners submitted earlier the petitioners have filed S.A.No.119 of 2018 before the Debts Recovery Tribunal, Coimbatore, challenging the E-auction notice dated 14.3.2018 for sale of the property of the second petitioner scheduled to be held on 31.3.2018 on the ground that the amount due to the respondent Bank was less than 20% of the principal amount. Along with S.A.No.119 of 2018, the petitioners have filed I.A.No.739 of 2018 seeking an interim order. By an order dated 28.3.2018, the Debts Recovery Tribunal has granted interim injunction restraining the respondent Bank from initiating sale proceedings, on condition to pay a sum of Rs.27.00 lakhs by the first petitioner on or before 30.4.2018 as first instalment and another Rs.27.00 lakhs by the first petitioner on or before 28.5.2018 as second instalment. Since the first petitioner was not complied with the conditional order, the respondent Bank proceeded to conduct the auction. Hence, the petitioners have filed I.A.No.1230 of 2018 in S.A.No.119 of 2018 seeking to decide the maintainability of the proceedings of the respondent Bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, 'SARFAESI Act') and the said application is still pending before the Debts Recovery Tribunal, Coimbatore. While so, on 27.8.2018, the respondent Bank issued E-auction notice for sale of the property of the second petitioner. The learned counsel for the petitioners further submitted that the E-auction scheduled to be held today (19.9.2018) between 12.00 noon to 1.00 P.M.

5. On taking notice, the learned counsel for the respondent Bank submitted that no bidders turned up to the auction scheduled to be held today.

6. It appears that earlier, challenging the E-auction notice dated 14.3.2018, the petitioners have filed S.A.No.119 of 2018 before the Debts Recovery Tribunal, Coimbatore and they have also took out an application being I.A.No.739 of 2018 for interim injunction. By an order dated 28.3.2018, the Debts Recovery Tribunal, Coimbatore has granted interim injunction on condition to pay a sum of Rs.27.00 lakhs by the first petitioner

on or before 30.4.2018 as first instalment and a sum of Rs.27.00 lakhs by the first petitioner on or before 28.5.2018 as second instalment and the said conditional order has not been complied with by the first petitioner. It also appears that when the respondent Bank has taken steps to conduct auction, the petitioners have filed I.A.No.1230 of 2018 in S.A.No.119 of 2018 seeking to decide the maintainability of the proceedings of the respondent Bank under SARFAESI Act and the same is pending before the Debts Recovery Tribunal, Coimbatore.

7. The petitioners have filed the present writ petition under Article 226 of the Constitution of India without exhausting the alternative remedy available to them before the Debts Recovery Tribunal, Coimbatore.

8. It is settled that 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 before the Debts Recovery Tribunal of Debt Recovery Appellate Tribunal, as the case may be.

9. Since no bidders turned up to take part in the E-auction scheduled to be held today (19.9.2018) as submitted by the learned counsel for the respondent Bank, nothing survives for consideration in this writ petition and the writ petition has become infructuous.

10. The writ petition is dismissed as infructuous. However, it is needless to say that it is open to the petitioners to challenge the E-Auction sale notice dated 27.08.2018 before the Debts Recovery Tribunal in accordance with the provisions of the SARFAESI Act. No costs. Consequently, W.M.P.No.28824 of 2018 is closed.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

The Authorised Officer,
M/s.Indian Overseas Bank,
Peelamedu Branch,
1433, Avinashi Road,
Peelamedu, Coimbatore - 641 004.

+1cc to Mr.M.Santhanaraman, Advocate SR.No.65598

W.P.No.24799 of 2018

GMV (08/10/2018)