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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04 /07/2018

Pronounced on : 10/09/2018

C O R A M

The Honourable Mr.Justice S.Manikumar
a n d
The Honourable Mr.Justice Subramonium Prasad

Writ Petition Nos.21831, 31090 and 34813 of 2013
and MP Nos.1 and 2 of 2013

W.P.No.21831 of 2013

M/s. Scope International Pvt Ltd
A subsidiary Company
owned by Standard Chartered Bank
Cards Building
I Floor
No.11 Haddows Road
Chennai 600 006.

... Petitioner

Vs

1. M.M.Gupta
2. M/s. Industrial Development Bank of India Ltd
rep. By its Authorised Officer
115 Anna Salai
Saidapet
Chennai 600 015.
3. M/s. Stressed Assets Stabilisation Fund
rep. By its Deputy General Manager
115 Anna Salai, Saidapet,
Chennai 600 015.
4. M/s. Maars Software International Ltd
rep. By its Managing Director
II Floor East Coast Chamber
92 G.N.Chetty Road
T Nagar
Chennai 600 017.

... Respondents



W.P.No.31090 of 2013

The Stressed Assets Stabilization Funds (SASF)
IDBI Tower
WTC Complex
Cuffe Parade
Mumbai 400 005.

... Petitioner

Vs

1. M/s.Maars Software International Ltd
92 II Floor, East Coast Chambers
G.N.Chetty Road
T. Nagar
Chennai 600 017.

2. M/s. Scope International Pvt Ltd
Cards Buildings, I Floor
No.11 Haddows Road
Chennai 600 006.

3. M.M.Gupta.

... Respondents

Writ Petition No.34813 of 2013

M/s. Maars Software International Limited
rep. By its Director Shri Harshvardhan Rathore
Habibullah Road, T. Nagar
Chennai 600 017.

... Petitioner

Vs

1. Industrial Development Bank of India Ltd
rep. By its Authorised Officer
No.115 Anna Salai
Saidapet
Chennai 600 015.

2. M/s. Stressed Assets Stabilisation Fund
rep. By its Deputy General Manager
No.115 Anna Salai
Saidapet
Chennai 600 015.



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3. M/s. Scope International Private Limited
A subsidiary Company owned by
Standard Chartered Bank
Cards Building
New Europe Building
I Floor, No.1 Haddows Road
Chennai 600 006.

... Respondents

Prayer in W.P.No.21831 of 2013: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records and quash the order dated 14/6/2013 in R.A.(SA) No.64 of 2011 on the file of the Hon'ble DRAT, Chennai.

Prayer in W.P.No.31090 of 2013: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records and quash the order dated 14/6/2013 in R.A.(SA) No.64 of 2011 on the file of the Hon'ble DRAT, Chennai.

Prayer in W.P.No.34813 of 2013: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the first and second respondents to release the property situated at Second Floor, admeasuring 3403 sq.ft including common area and easements situated at Habibullah Road, R.S.No.30, T.S.No.8053, Block No.107, T. Nagar, Chennai 600 017, belonging to the petitioner Company herein and consequently direct the first and second respondents to handover the title deeds in respect of the above property to the petitioner Company.

For petitioners ... M/s.N.V.Srinivasan
(W.P.No.21831 of 2013) Varun Srinivasan
for M/s.N.V.S.Associates

(W.P.No.31090 of 2013) ... M/s.M.Balachandar
Guru Dhananjay

(W.P.No.34813 of 2013) ... Mr.Krishna Ravindran

For respondents ... Mr.AR.L.Sundaresan
(W.P.No.21831 of 2013) for Mr.T.Sai Krishnan
for R.1



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W.P.No.31090 of 2013

Mr.Krishna Ravindran
for
Maars Software International
Private Limited for R4

... Mr.Krishna Ravindran
for R.1

M/s.N.V.Srinivasan
Varun Srinivasan
for M/s. N.V.S.Associates
for R.2.

Mr.AR.L.Sundaresan
for Mr.T.Sai Krishnan
for R.3.

W.P.No.34813 of 2013

... M/s.M.Balachander
Guru Dhananjay
for R.2.

C O M M O N J U D G M E N T

(Judgment of the Court was made by Subramonium Prasad,J)

Writ Petition Nos.31090 and 21831 of 2013, have been filed against the order, dated 14/6/2013, in R.A.(SA) No.64 of 2011, on the file of the Debts Recovery Appellate Tribunal, Chennai.

2. Writ Petition No.34813 of 2013 has been filed, to direct the first and second respondents herein, to release the property, situated at Second Floor, admeasuring 3403 sq.ft, including common area and easements, situated at Habibullah Road, R.S.No.30, T.S.No.8053, Block No.107, T. Nagar, Chennai 600 017, belonging to the petitioner Company herein and consequently, direct the first and second respondents, to handover the title deeds, in respect of the subject property, to the Maars Software International Limited.

3. The three writ petitions are being taken up together because they arise from the same set of facts and disposed of by a common order.

4. Petitioner in W.P.No.21831 of 2013, Scope International Private Ltd., Chennai, is the tenant of the premises, belonging to a petitioner M/s.Maars Software International Limited, in W.P.No.34813 of 2013, who is the original borrower. Parties are referred to as tenant/auction purchaser and borrower for the sake of convenience.



shall determine and will be entitled to recover/reimburse itself the amount of the deposit, together with interest thereon calculated at the rate of 24% per annum for the period of the default.

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Provided that the lessee shall give a 15 days written notice of their intention to sub-lease the said demised premises and that the lessor has not set right the default and provided further that once the lessee has recovered the amount of the deposit and the interest as under these presents, and other costs in respect of the lease, the lessee shall hand over the entire surplus, if any, to the lessor, after deducting there from all costs, charges and expenses incurred by the lessee in respect of the sub-lease.

(iv). If the default continues to persist on the part of the lessor, the lessor will deposit the title deeds relating to the demised premises, subject to the existing charge only with IDBI, with the lessee for the purpose of creating equitable mortgage in favour of the lessee as security for the due repayment of the deposit together with interest @ 24% per annum till realisation by the lessee. In case the lessor or any one claiming title under the lessor, chooses to sell the demised premises, the lessee will have and may choose to exercise their first option to buy the demised premises, and the lessor undertakes to obtain necessary permissions and approvals from all concerned parties to sell the demised premises to the lessee within a period of 45 days from the date of receipt of notice from the lessor intimating their intention to sell and further in case the lessee chooses not to exercise the option to buy the demised premises within the abovesaid period, the lessor hereby agrees to enter into a covenant with the prospective buyer requiring the buyer to primarily refund the deposit amount of Rs.90 lakhs by an escrow arrangement till realisation by the lessee. Till such time the escrow arrangement is upto the satisfaction of the lessee by way of refund of the deposit amount as mentioned above, the lessor hereby agrees not to go through the final formalities of sale."

7. A reading of the said clauses would show that tenant would pay a sum of Rs.90 lakhs, as interest free refundable security deposit. The amount was to be paid by the tenant/auction purchaser when the borrower was able to obtain documents evidencing appropriate permission, from the statutory authorities for conversion of user of land to industrial/commercial purpose.



8. It further provided that if the borrower failed to get the permission, then this would amount to default and if the default continued, then the borrower would deposit the title deeds, relating to the premises, subject to the existing charge only with IDBI with the tenant/auction purchaser, who will have the right to exercise the first option to buy the premises from the borrower.

9. The borrower tried to sell the property, resulting in filing of C.S.No.307 of 2004, by the tenant/auction purchaser, on the original side of the High Court of Madras. The suit was one for permanent injunction, restraining the borrower from alienating the property, by way of sale, lease, mortgage or assignment or in any form or from encumbering or creating any charge over the property. Vide, order, dated 1/4/2004, temporary injunction was granted.

10. The borrower entered into an agreement dated 26.03.2004 to sell the property with one M.M.Gupta. This led to filing of O.S.No.497 of 2004, by the tenant/auction purchaser for a direction to the borrower to specifically perform their part of the obligation, under the lease deed, dated 9/1/2004, and for a declaration that Memorandum of Understanding, dated 26/3/2004, between the borrower and M.M.Gupta is null and void ab initio.

11. The said M.M.Gupta filed a suit, in Civil Suit No.444/2006, against the borrower and others, for specific performance of the agreement to sell dated 26.03.2004 and for a consequential relief of injunction, restraining other defendants, from making transfer of title to the suit property or to part away with the documents thereof.

12. Injunction was initially granted by an order, dated 18/9/2006, reported in AIR 2007 Madras 5 (M.M.Gupta Vs. M/s. Maars Software International Ltd and Others). This order was taken up on appeal and the Appellate Court disposed of the appeal, on the ground that since the recovery proceedings had been initiated, by IDBI Bank under the Recovery of Debts Due To Banks And Financial Institutions Act, 1993 these matters should be decided by the Debts Recovery Tribunal.

13. On the failure of the borrower to repay money, IDBI bought the property in dispute to sale. IDBI sold the property, by way of private sale to the tenant/auction purchaser which is permissible under Rule 8 of the Security Interest (Enforcement) Rules, 2002 and the sale certificate, dated 10/8/2006, was issued in favour of the tenant/auction purchaser. S.A.No.53 of 2006 had been filed by the borrower challenging the sale proceedings.



14. M.M.Gupta, who had entered into a Memorandum of Understanding with the borrower, filed S.A.No.113 of 2007 challenging the sale certificate. S.A.Nos.53 and 113 of 2007 were taken up for hearing together and disposed of by a common order, by the Debts Recovery Tribunal - II, Chennai. The Tribunal upheld the sale by private treaty in favour of the tenant/auction purchaser. It also directed the Asset Reconstruction Company (assignee of Debt from IDBI) to return the sum of Rs.1 crore to M.M.Gupta and another sum of Rs.5.40 crores to the borrower which was the difference between the amount due and the amount for which the property was sold.

15. Order of the Debts Recovery Tribunal - II, Chennai, was challenged only by Mr.Gupta, agreement holder, in R.A.(SA) No.64 of 2011. The Debt Recovery Appellate Tribunal, by the impugned judgment, allowed the appeal. Tribunal held as under:-

a. The Authorised Officer of the M/s.Stressed Assets Stabilisation Fund has played fraud on the borrower, since the owner/borrower did not know about the existence of the private treaty. The borrower had nowhere stated that it knew of the private treaty.

16. Order in R.A.(S.A.).No.64 of 2011 dated is challenged by the tenant/auction purchaser, in W.P.No.21831 of 2013 and by the authorised officer of the Asset Reconstruction Company in W.P.No.31090 of 2013.

17. Owner has also filed the writ petition No.34813 of 2013, directing the respondents, to lease any property, situated at second floor, admeasuring 340 sq.ft, at Habibullah Road, T.Nagar, Chennai.

18. The short issue which arises for consideration is "Whether the sale of the property to M/s. Scope International Private Limited, (tenant/auction purchaser) by the assignee of IDBI Bank is in accordance with the provisions of the SARFAESI Act."

19. Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002 are extracted hereunder:-

"8. Sale of immovable secured assets:

(1) Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at



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(d) By private treaty.

6) The authorised officer shall serve to the borrower a notice of 30 days for sale of the immovable secured assets, under sub-rule (5):

Provide that if the sale of the such secured asset is being effected either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading newspapers one in vernacular language having sufficient circulation in the locality by setting out the terms of sale, which shall include:

(a) The description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) The secured debt for recovery of which the property is to be sold.

(c) Reserve price, below which the property may not be sold.

(d) Time and place of public auction or the time after which sale by any other mode shall be completed.

(e) Depositing earnest money as may be stipulated by the secured creditor.

(f) Any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of the property.

9. Time of sale, issues of sale certificate and delivery of possession, etc.-

(1) No sale of immovable property under these rules shall take place before the expiry of 30 days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) or notice of sale has been



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served to the borrower.

(2) The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the Authorised Officer and shall be subject to confirmation by the secured creditor. Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of Rule 9.

Provided further that if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.

(3) On every sale of immovable property, the purchaser shall immediately pay a deposit of 25 percent of the amount of the sale price, to the property shall forthwith be sold again. (4) The balance amount of purchase price payable shall paid by the purchaser to the Authorised Officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agree upon in writing between the parties.

(4). The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period (as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months).

(5) In default of payment within the period mentioned in sub- rule (4), the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the Authorised Officer exercising the power of sale shall issue a certificate of sale of the immovable



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you as per the OTS proposal dated 1st January 2004 approved by IDBI, though there has been temporary set back in honouring payments strictly as per terms of settlement which was entirely on account of extraneous factors beyond control of the company and the same have been explained to you in detail during discussion and amply clarified in our earlier letters on the subject.

You may be aware that we have already complied with part of the said proposal by making payment of Rs.110 lakhs and allotment of Cumulative Redeemable Preference shares (CRPS) for aggregate amount of Rs.354 lakhs against the total payment of Rs.1159 lakhs payable as per the terms of approved OTS.

As you are aware, down payment of Rs.110/- was made by Mr.M.M.Gupta directly to IDBI, as part of consideration for purchase of the above mentioned property at Padur by Mr.Gupta. Major part of the OTS amount was to be paid out of sale proceeds to be received from Mr.Gupta. Unfortunately, the sale transaction could not be fully concluded due to various litigations leading to the present situation and ongoing hardships to the Company. The situation has been explained to you in detail in our earlier letters on the subject. As you may observe there from, the Company has all along been serious about settling the dues at the earliest but badly constrained due to the extraneous circumstances created by Shri Gupta and M/s. Scope International to whom the property has been leased.

To fully resolve the issue amicably as already communicated to you we are agreeable to handover the property at Padur to you under Securitisation Act and jointly sell the same through bid/treaty with a strategic buyer. The said proceeds, left after payment of Rs.110 lakh back to Mr.Gupta, have to be adjusted against the balance payment under the OTS approved vide your letter dated 27th May 2004. Deficit in meeting the payments envisaged under the approved OTS, even after retaining CRPS already allotted and appropriating the left out sale proceeds as above towards OTS amount, would be made good by the promoters out of their own sources. However, surplus amount of sale proceeds, if any, after meeting the balance payment under OTS including redemption of CRPS already allotted (Rs.354 lakh), may kindly be paid back to the Company. It may be



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reiterated here that the company needs to refund back Rs.110 lakhs to Mr.Gupta who had paid equivalent amount to IDBI out of the sale proceeds. Further, the title deed of the property at Habibullah Road mortgaged to you and CPRS may be handed over to the company, after due cancellation to facilitate restructuring of the business operations of the company.

Taking into account our concerned effort to revive the company's operations in the interest of various stakeholders, employees and other creditors, we solicit your positive consideration and approval of the above proposal towards full and final settlement of the entire dues payable to you."

21. In continuation of the talks of settlement, one more letter was sent on 15/6/2006 by the borrower which reads as under:-

"SASF has taken the symbolic possession of the property at Padur, but the company vide its letter as mentioned above has clearly indicated that the said symbolic possession of the property was handed over subject to the acceptance of the terms and conditions stipulated therein stating the acceptance of the OTS proposal envisaging payment of Rs.11.60 crores towards full and final settlement of our dues payable to IDBI (SASF).

M/s. Scope International Private Ltd., vide its letter dated 14th June 2006 have submitted a proposal for purchase of our property situated at 1/364, Old Mahabalipuram, Padur near Kelampakkam, under private treaty for a sale consideration of Rs.17 crores.

In this connection thereof, we hereby inform you that the company is required to pay various statutory liabilities such as salary settlement of employees and creditors dues aggregating Rs.7 crores. These apart, the company also has to make the payment to other banks such as Bank of India and UTI Bank Ltd aggregating Rs.18 crores.

As discussed at the meeting we have had on 9th June 2006 with the Executive Trustee of SASF in his office wherein the concerned GMs and DGMs were also present and under the above circumstances, you are kindly requested to approve the OTS proposal submitted by us



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aggregating Rs.11.60 crores and the surplus (amounting to Rs.5.40 crores) after appropriating the sale proceeds to be received from M/s. Scope International Ltd., may be kindly refunded to us to enable us to liquidate the liabilities as mentioned above."

22. On 28/7/2006, the borrower has agreed for sale of the property to Scope International Limited. Entire letter is extracted, hereunder:-

"Further to your letter as referred above and the discussion had with you on the captioned subject we submit the following to settle the dues payable to IDBI.

As you may aware, we have already reiterated our desire to pay the balance amount payable to you as per the OTS proposal dated 1st January 2004. You may also aware that we have already complied part of the said proposal by payment of Rs.110 lakhs and allotment of Cumulative Redeemable Preference Shares (CRPS) worth of Rs.354 lakhs.

As you may aware the majority portion of the OTS amount should have to be settled through sale proceeds of our premises at Padur, which unfortunately not materialised. As indicated in our letters, dated 24th January 2006, 10th March 2006, 22nd April 2006, 5th June 2006 and 15th June 2006, we have requested you to consider and approve the total OTS payable as Rs.11.59 crore as full and final settlement, which was discussed and agreed during the meeting held in your office dated 9th June 2006, wherein the possibility of private treaty arrangement with one of the identified party M/s. Scope International Limited was discussed and agreed upon for a consideration of Rs.17.00 crore.

We once again reiterate that though you have taken possession of the said property, it is pertinent to note that we have every right to be consulted by you before deciding on the price at which the said property shall have to be sold in the larger interest of the company and IDBI.

In this connection, we invite your attention that our Company is a public limited company wherein majority of the stake holders are General public and it has the liability to pay various statutory and other dues as follows:-



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1. Settlement of past employees	...	Rs. 400 lakhs
2. Creditors	...	Rs. 300 lakhs
3. Bank of India	...	Rs.1400 lakhs
4. UTI Bank	...	Rs. 400 lakhs

Rs.2500 lakhs

In this connection, we desire to settle all the dues as above out of the sale proceeds of the captioned property.

In this scenario, we would like to reiterate that in case IDBI/SASF arrange for a sale of the said property, by way of private treaty arrangement as mentioned above, we are agreeable for the same provided out of the consideration, we expect that after deduction of the balance dues payable to IDBI under OTS, the surplus amount shall have to be paid to the company to meet the aforesaid liabilities in the interest of our company as discussed and agreed in the meeting held at your office on 9th June 2006 wherein yourself (Executive Trustee) along with the concerned GMs and DGMs were also present.

Taking into account our concerted effort to revive the company in the interest of various stake holders, employees and other lending banks and creditors, we expect your positive response on the above matters towards full and final settlement of the entire dues payable to you.

Awaiting your earlier reply in this regard."

23. Thereafter, the tenant/auction purchaser wrote a letter, dated 10/8/2008, to Stressed Assets Stabilisation Fund, Standard Chartered Bank, which is the holding Company of Maars Software International Limited, accepting the offer to purchase the property and the same is extracted hereunder:-

"We refer to your letter dated above and our acceptance of your offer to purchase the immovable property together with appurtenances (movable assets) owned by Maars Software International Limited, situated at No.1/364, Old Mahabalipuram Road, Padur, Kelambakkam, in the State of Tamil Nadu, taken over by you under SARFAESI Act. We are please to enclose our Banker's Cashier Order No.042051 dated 10th August 2006 for Rs.Seventeen Crores, drawn in favour of IDBI Bank A/c.No.126102000000055.



Kindly acknowledge receipt of the above payment and urgently issue us a sale certificate as per the SARFAESI Act and Rules."

24. These correspondences between the borrower and the tenant/auction purchaser, demonstrate that the findings of the Debts Recovery Appellate Tribunal, that private treaty was entered into without the knowledge of the borrower, is erroneous. The entire judgment of the Appellate Tribunal which proceeds on the basis that the borrower was kept in dark, about the sale by private treaty cannot be sustained, and the judgement deserves to be set aside, on the ground said above.

25. A Hon'ble Division Bench of this Court in J.Rajiv Subramanian and Mrs.Nirmala Jayabalan Vs. Pandiyas and another, reported in AIR 2012 Madras - 12, has discussed in detail, about the procedure and availability of sale of mortgaged property by private treaties. Paragraph Nos.30 to 33 of the said judgment, as reported in Manu/TN/2717/2011, reads as under:-

"30 The next incidental question arising for consideration is whether the third respondent bank has adopted the proper procedure at the time of negotiating private sale by invoking S.8(8) of the SARFAESI Rules.

31. In this connection, it would be worthwhile to refer to Rule 8 of the Security Interest (Enforcement) Rules, 2002, which deals with sale of immovable secured assets and sub-rule (8) of Rule 8 which stipulates that sale by any method other than public auction or public tender, shall be on such terms as may be settled between the parties in writing.

32 Now, it has to be seen whether the order dated 08.12.2006 passed by the third respondent bank is in order. The relevant portion of the said order, reads as under:

"Referring to the above in the presence of the undersigned it has been decided to effect the sale to M/s. Susee Automobiles Pvt. Ltd., Madurai and Smt. Nirmala Jeyabalan, W/o. Shri Jayabalan, No.4, S.V. Nagar, S.S. Colony, Madurai for a consideration of Rs.123.10 lakhs (Rupees one crore twenty three lakhs and ten thousand only) against the reserve price of Rs.123 lakhs and issue Sale Certificate for registration under private treaty."

It is seen that as per the private treaty only, the



sale certificate has been issued and the properties of the writ petitioners have been declared in favour of the appellants.

33. The first question for our consideration is as to what are the formalities to be adopted when invoking private treaty and effecting a sale on that basis. In this connection, it would be worthwhile to refer to Rule 8(5) of the Security Interest (Enforcement) Rules, 2000 which reads thus:

"5. Before effecting the sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:

- a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or
- b) by inviting tenders from the public;
- c) by holding public auction; or
- d) by private treaty."

As per the private treaty, other than public auction or public tender, it can be settled between the parties invoking as per Rule 8(8) of the Security Interest (Enforcement) Rules, 2002. The sale of properties by private treaty is also permissible in law. The only condition is that it shall be on such terms as settled between all the parties in writing. From this, it is clear that the presence of debtor and his willingness in writing are essential. But, in this case, availability of such a document is neither forthcoming nor produced before this Court by the appellants or bank officials. Therefore, from this, it could be safely concluded that the procedure as contemplated under the Security Interest (Enforcement) Rules, 2002, has neither been followed nor been attempted to be followed. Also, in this case, incidentally, they have mentioned as if the writ petitioners have been represented by their agents viz., GE-WINN MANAGEMENT & CO. and it is one of the partner's signature also has been affixed. Even though



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the said document carries the signature of one GE-WINN MANAGEMENT & CO., he is neither connected with the case nor with the writ petitioners. The bank authorities have miserably failed to prove as to how GE-WINN MANAGEMENT & CO. is connected with the debtors / writ petitioners. From the document produced by the bank authorities, it is seen that on 08.12.2006, the writ petitioners themselves had appeared before the bank authorities. After mentioning so in that letter by the third respondent-bank itself, we are at a loss to understand as to how and why the bank authorities have relied on GE-WINN MANAGEMENT & CO. to represent the writ petitioners and this has also not been properly explained either by the appellants or by the third respondent bank. Further this aspect is silent in the counter statement also. Even the writ petitioners are represented through their agent, it is not valid in the eye of the law. Therefore, we are of the considered view that in this regard, proper procedure has not been followed by the third respondent bank and this deviation from the procedure, undoubtedly, goes to the root of the matter. It is very painful to note that the writ petitioners have given a letter for private negotiation. Under such circumstance, a Nationalised Bank sold one's property under the guise of treaty without any written treaty from the debtors. It is also not known under what authority the Bank Manager has sold the mortgaged property just for Rs.10,000/- higher than the upset price to satisfy Section 9(2) of the Act believing that this Court will not generally interfere in the DRT cases. The Bank Manager has exceeded his authority for the reasons best known to him. Hence, in this case, the third respondent bank, a quasi judicial authority, has miserably failed to exercise the powers as contemplated under the SARFAESI Act as expected by the law. When such is the case, the Writ Court has every jurisdiction to exercise its power under Article 226 of the Constitution of India. In such view of that matter, we are of the considered view that the Writ Court has the power to deal with this matter and the same has been rightly exercised by learned Single Judge. Hence, we have no hesitation to hold that the ground agitated by the learned Senior Counsel for the appellants that the writ petitioners cannot invoke Article 226 of the Constitution of India challenging the sale certificate inasmuch as there is an alternative remedy available, has no force and accordingly, this contention of the learned Senior Counsel for the appellants/Auction Purchasers is



rejected.

26. The said judgment covers the case on hand and the sale, in favour of the tenant/auction purchaser has to be upheld. It is further relevant to note that Mr.Gupta, who has a Memorandum of Understanding in his favour, which is an unregistered document has no legs to challenge the sale certificate, which had been issued, in favour of the tenant/auction purchaser by the Bank. As per Section 13(13) of the SARFAESI Act 2005, "No borrower shall, after the receipt of notice referred to in Sub-Section(2), transfer by way of sale, lease or otherwise (other than in the ordinary of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

27. Proceedings, initiated under SARFAESI Act would over rule all the contracts/agreements entered into between a borrower and a third party. Possession of the property had been taken over by the Bank under Section 13(4) of the SARFAESI Act and Bank had sold the property, under the provisions of SARFAESI Act. The agreement to sell entered into by Mr.M.M.Gupta with the borrower is of no significance and in the light of Section 13 (13) of the Act, the same cannot be enforced under the SARFAESI Act. Challenge by the Bank against the direction by the Debts Recovery Tribunal, to return the sum of Rs.1 crore to Mr.Gupta and a sum of Rs.5.7 crores, to the borrower also cannot be found fault with. Amount was paid by Mr.Gupta, in compliance of the OTS and therefore, had to be returned and cannot be appropriated by the Bank towards the debt. Directions by the Debts Recovery Tribunal - II, to refund a sum of Rs.5.74 crores is also correct. After selling the property to the tenant/auction purchaser for Rs.17 crores and after appropriating the settlement amount of Rs.11.6 crores, the balance of Rs.5.4 crores has to be refunded to the borrower. Bank cannot keep 5.4 crores in its hand. Writ petition by the owner has to be dismissed. Owner has not challenged the order of Debts Recovery Tribunal, which held the sale to the tenant/auction purchaser to be valid. It had accepted the order of the Debts Recovery Tribunal and cannot challenge the sale.

28. For return of any other property which had been given by the borrower, correct procedure is to approach the appropriate forum, which is the Debts Recovery Tribunal. Writ is not the appropriate remedy for the relief of releasing the property from attachment. Resultantly, order, dated 14/6/2013, passed by the Debts Recovery Appellate Tribunal, Chennai, in R.A.(SA) No.64 of 2011, is set aside. W.P.No.21831 of 2013 filed by Scope International Private Limited is allowed. W.P.No.34813 of 2013 by M/s.Stressed Assets Stabilisation Fund challenging the portion of the Debt Recovery Tribunal to refund



of the amount of Mr.M.M.Gupta and Maars Software International Limited is rejected and writ petition is dismissed. W.P.No.31090 of 2013 filed by the borrower is also dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mvs/pkn

To

1. The Debts Recovery Appellate Tribunal, Chennai.
2. The Authorised Officer
M/s. Industrial Development Bank of India Ltd
115 Anna Salai, Saidapet, Chennai 600 015.
3. The Deputy General Manager
M/s. Stressed Assets Stabilisation Fund
115 Anna Salai, Saidapet, Chennai 600 015.
4. The Managing Director,
M/s. Maars Software International Ltd.,
II Floor East Coast Chamber,
92 G.N.Chetty Road, T Nagar, Chennai 600 017.

+3 cc to M/s.N.V.S.Associates, Advocate Sr.Nos.63361,63362,63363
+2 cc's to Mr.M.Balachandar, Advocate Sr.Nos.62323
+1 cc to Mr.K.S.Natarajan, Advocate Sr.No.62386

Order
Writ Petition Nos.
21831, 31090 and 34813 of 2013

SSD(CO)
CSL/08.02.2019