IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/6/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.16132 of 2018

M/s. Jai Mata Agro Industries
rep. By its Partner
Mr.Ashok Kumar Bharadwaj
No.28 A & B, L.G.Nagar
Meena Estate, Coimbatore 600 091. ... Petitioner

Vs

1. The Governor
Reserve Bank of India
Fort 21st Floor
Central office Building
Shahid Bhagat Singh Marg
Mumbai 400 001.

2. State Bank of India
rep. By its Manager
Nagar Branch Perutti
Coimbatore 641 001.

3. M/s. UV Asset Reconstruction Company Ltd
rep. By its Authorised officer
1304, 13th Floor
Chirajiv Tower
43 Nahru Place
New Delhi 110 019.

4. The National Highways Authority of India
rep. By its Secretary
Ministry of Road Transport and
Highways Department
New Delhi. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorarified mandamus to call for the records relating to third respondent letter, bearing Ref.No.UVARCL/2018-19,/JMAI/0555 dated 19/5/2018 and consequential letter Ref.No.UVARCL/2018-19/JMAI/0570 dated

31/5/2018 and quash the same as illegal and arbitrary, consequently direct the third respondent not to deal with the property which under Land Acquisition proceedings and to set aside the sale by private treaty in any and to proceed fresh if required in accordance with law.

For petitioner ... Mr.K.V.Dhanapalan

O R D E R

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

Material on record discloses that earlier, when M/s. Jai Mata Agro Industries, represented by its Partner and others challenged sale notice, dated 23/6/2017, issued by UV Asset Reconstruction Company Limited, in W.P.No.17816 of 2017, as not sustainable, as per Securitisation Act, 2002 and Rule 8(8) of the Security Interest (Enforcement) Rules, 2002, this Court, vide order in W.P.No.17816 of 2017, dated 13.04.2018, declined to quash the said notice, by observing that since the provisions relied on, by the petitioners therein have been amended, way back, on 3rd November, 2016 and while doing so, also observed that the decision of this Court, in Justice Rajeev Subramani Vs. Pandias, reported in 2011 (3) L.W - 808, relied on by the petitioner therein, rendered prior to the amendment as not applicable.

2. Pursuant to the dismissal of the Writ Petition No.17816 of 2017, M/s. U.V.Asset Reconstruction Company Ltd., vide, letter, dated 19/5/2018, has informed, to Mr.Ashok Kumar Bharadwaj, Partner, M/s. Jai Mata Agro Industries, Coimbatore, that sale of the secured assets, situated at SF.No.141/1 and 142/2 in Myleripalayam Village, Madukarrai Taluk, Coimbatore, together with all the building and structures and Plant and Machinery, etc., under private treaty have been sold for Rs.6,01,00,000/-. Sale certificate has also been issued, in favour of the buyer, on 18/5/2018. Asset Reconstruction Company has also intimated the partner to remove/take out house hold items/ articles such as bed, cloths, utensils lying at the secured assets, within a period of 10 days i.e., before 30/5/2018, failing which UV Asset Reconstruction Company Limited would be compelled to dispose them of.

3. On receipt of the said letter, Mr.Ashok Kumar Bharadwaj, Partner of M/s.Jai Mata Agro Industries, has sent a letter, dated 25/5/2018, to M/s. Kovilpatti Lakshmi Roller Flour Mills, giving their consent to sell the properties through Kovilpatti Lakshmi roller flour mills. Thereafter, Bank, vide letter, dated 31/5/2018, has reiterated that sale had already been

effected and requested M/s. Jai Mata Agro Industries, to remove the articles within a period of 10 days i.e., 11/6/2018, failing which, they would be sold and appropriated, as per law.

4. Responding to the above, Jai Mata Agro Industries, petitioner herein has sent an e-mail, dated 23/6/2018, which is reproduced, hereunder:-

> "We have received your mail, dated 31st May 2018. To my utter shock and surprise you have informed that sale has been effected by way of private treaty.
>
> I am not aware of any transaction between yourself and the purchaser. You have also not informed me regarding the purchase and the particulars of the purchaser and all of a sudden you are informing that purchase has already been effected.
>
> It is against the Court order, the Court has not confirmed any sale as stated by you. Further, since I have not been informed about the private treaty, it will not have any binding effect on me.
>
> It is also to be noted that the subject property is under the land appreciation act proceedings.
>
> Hence, no sale can be effected to the third party. Therefore, I kindly request you not to issue sale certificate and not to indulge in any of the development activities in the scheduled property."

5. Inviting the attention of this Court to Rule 8 (8) of the Security Interest (Enforcement) Rules, 2002, Mr.K.V.Dhanapalan, learned counsel for the petitioner submitted that private treaty is in violation of statutory provision. He further submitted that though the petitioner has made arrangements for sale of the secured asset for Rs.7.5 crores, de hors, the said arrangement, Bank, in a hurried manner, appears to have entered into a private treaty, for Rs.6.1 crores and that there is a gross reduction in the value of the property, causing hardship to the borrower.

6. He further submitted that the entire extent of land is now sought to be acquired by the National Highways Authority of India and that the tentative value of compensation would be Rs.14 crores. Thus, the market value of the property said to have been determined between the Bank and the private treaty is very low, causing prejudice to the interest of the borrower.

7. Learned counsel for the petitioner further submitted that no notice/information was given to the borrower, before the alleged sale, by private treaty and even the name of the purchaser is not mentioned in the impugned letter. He further submitted that within few days from the date of alleged sale, about 100 trees have been cut and removed.

8. On the above said grounds, learned counsel for the petitioner submitted that there is a violation of the constitutional right to property as well as principles of natural justice and therefore, the petitioner has made out an exceptional case, for interference, under Article 226 of the Constitution of India, de hors the statutory remedy available, under the SARFAESI Act, 2002 to challenge the alleged sale and sale certificate.

Heard the learned counsel for the petitioner and perused the materials available on record.

9. Question is as to whether Bank can exercise right, to enter into private sale, and as to whether Bank has adhered to the procedure set out in the statute and the rules framed thereunder. Infraction, if any, as to the procedure and principles of natural justice can always be gone into, by the forum. Letter, dated 19/5/2018, of U.V.Asset Reconstruction Company Limited intimated one of the partners of M/s.Jai Mata Agro Industries is reproduced:-

> "Pursuant to the sale notice No.UVARCL/2017-18/JMAI/06128, dated June 23, 2017 and order by the Hon'ble High Court of Madras, we have confirmed the sale of the secured assets situated at SF.No.141/1 and 142/2 in Myleripalayam Village, Madukarrai Taluk, Coimbatore, together with all buildings & structures and plant & machinery, etc., under private treaty as per the provision of SARFAESI Act, 2002 against the total sale consideration of Rs.6,01,00,000/-. Accordingly, the sale certificate has been issued in favour of the buyer on 18/5/2018.
>
> As there are certain household items/articles such as bed, cloths, utensils, etc., lying at the secured assets, we request you to remove/take out the same within a period of 10 days i.e., 30/5/2018 failing which we shall be compelled to dispose them off.
>
> You are requested to please inform your visit for the above purpose in advance so that necessary arrangements can be made."

10. Reading of the same shows that secured assets have been sold for Rs.6,01,00,000/-. Sale certificate has been issued, in favour of the buyer, on 18/5/2018. Partners of Jai Mata Agro Industries, seemed to have written a letter, to Kovilpatti Flour Mills, dated 25/5/2018, giving their consent to sell the properties, through Kovilpatti Lakshmi roller flour mills.

11. Subsequently, responding to the e-mail dated 29th May 2018, of the writ petitioners, on the caption "sale of secured assets under SARFAESI Act, 2002", UV Asset Reconstruction Company Limited, third respondent, has written a letter, dated 31/5/2018, which is as follows:-

> "This has reference to our letter, dated May 19, 2018 (not may 29, 2018 as mentioned in your e-mail dated May 29, 2018) and your email dated May 29, 2018 on the captioned subject.
>
> It has already been informed to your goodself vide letter referred above that we have already sold the secured assets on May 18, 2018.
>
> Please also refer to our letter wherein it was informed that there are certain household article/items lying at factory premises. You were requested to lift/remove these articles by 30/5/2018, however, no such communication has been received.
>
> You may kindly appreciate that these items cannot be kept much longer as cost of keeping these items are more than the value of these articles. We therefore, provide you a last and final opportunity to remove these articles withing a period of 10 days i.e. 171/6/2018 failing which these articles will be sold and amount will be appropriated as per law after appropriating expenses towards watch & ward."

12. Subsequently it is followed by another e-mail of the petitioner, dated 23rd June, 2018, which is extracted supra.

13. Procedural violations, under valuation, violation of principles of natural justice are all matters which can be canvassed before the Tribunal. Repeatedly, the Hon'ble Supreme Court has held that when there is an efficacious and alternate remedy, under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or Securitisation And Reconstructions of Financial Assets Act, 2002, as the case may be, writ petition is not maintainable. We deem it fit to consider the following decisions.

(i) In Precision Fastenings v. State Bank of Mysore, reported in 2010(2) LW 86, this Court held as follows:

> "This Court has repeatedly held in a number of decisions right from the decision in Division Electronics Ltd. v. Indian Bank (DB) Markandey Katju, C.J., (2005 (3) C.T.C., 513), that the remedy of the aggrieved party as against the notice issued under Section 13(4) of SARFAESI Act is to approach the appropriate Tribunal and the writ petition is not maintainable. The same position has been succinctly stated by the Hon'ble the Supreme Court in Transcore v. Union Of India (2006 (5) C.T.C. 753) in paragraph No. 26 wherein the Supreme Court has held as under:
>
> > "The Tribunal under the DRT Act is also the Tribunal under the NPA Act. Under Section 19 of the DRT Act read with Rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993 (1993 Rules), the applicant bank or FI has to pay fees for filing such application to DRT under the DRT Act and, similarly, a borrower, aggrieved by an action under Section 13(4) of NPA Act was entitled to prefer an Application to the DRT under Section 17 of NPA." (Emphasis added) "

(ii) In Union Bank of India v. Satyawati Tondon, reported in 2010 (5) LW 193 (SC), the Hon'ble Apex Court has held as follows:

> "16. The facts of the present case show that even after receipt of notices under Section 13(2) and (4) and order passed under Section 14 of the SARFAESI Act, respondent Nos. 1 and 2 did not bother to pay the outstanding dues. Only a paltry amount of Rs. 50,000/- was paid by respondent No. 1 on 29.10.2007. She did give an undertaking to pay the balance amount in installments but did not honour her commitment. Therefore, the action taken by the appellant for recovery of its dues by issuing notices under Section 13(2) and 13(4) and by filing an application under Section 14 cannot be faulted on any legally permissible ground and, in our view, the Division Bench of the High Court committed serious error by entertaining the writ petition of respondent No. 1.
>
> 17. There is another reason why the impugned order should be set aside. If respondent No. 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression

'any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of

compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for re-dressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad AIR 1969 SC 556, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1=1999-2-L.W. 200 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order.

27. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.

28. Insofar as this case is concerned, we are convinced that the High Court was not at all justified in injuncting the appellant from taking action in furtherance of notice issued under

Section 13(4) of the Act.

29. In the result, the appeal is allowed and the impugned order is set aside. Since the respondent has not appeared to contest the appeal, the costs are made easy."

(iii) In Saraspathy Sundararaj v. Authorised Officer and Assistant General Manager, State Bank of India, reported in (2010) 5 LW 560, the Court held as follows:

"The petitioner has filed this writ petition praying for a Writ of Certiorarified Mandamus calling for the records relating to the possession notice dated 16.09.2004 issued by the respondent under the SARFAESI Act and consequently direct the respondent to effect the settlement in accordance with the SBI OTS-SME 2010 Scheme as contained in its letter dated 18.03.2010 and unconditionally restore physical possession of the six rooms taken physical possession by it at No. 29, Sarojini Street, T. Nagar, Chennai - 17 with such damages.

... When a specific forum has been created which enables the borrower to challenge the action of the financial institution by filing necessary petition under Section 17, the petitioner is not entitled to invoke the writ jurisdiction of this Court. What could not be achieved by the petitioner by filing a petition before the appropriate Forum, which is at present barred by period of limitation, could not be permitted to be achieved by extending the jurisdiction conferred to this Court under Article 226 of The Constitution of India. Above all, since the petitioner has violated the terms and conditions of the loan by transferring the property in favour of her son, this Court is not inclined to entertain the petition.

7. In this connection, we are fortified by the decision of the Honourable Supreme Court reported in (United Bank of India v. Satyawati Tondon and others) III (2010) BC 495 (SC) = 2010-5-L.W. 193, wherein in para Nos. 17 and 18, it was held thus:—

"17. …Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them

from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad AIR 1969 SC 556, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order, (underlining added).

9. In the light of the above decision of the Honourable Supreme Court, the writ petition filed by the petitioner seeking to set aside the possession notice issued to her long back is legally not sustainable. We are of the considered view that this petition has been filed only to drag on the proceedings and to evade repayment of the loan. That be so, the petitioner has no legal right to compel the bank to accept the one time settlement offer made by her.

13. The present case is identical in nature and it is covered by the judgment of the Supreme Court mentioned supra. In this case, the petitioner has violated the condition of mortgage by transferring the secured asset in favour of her son and therefore, as per clause 1.7 of the OTS Scheme offered by the bank, the petitioner has to be excluded from extending the benefits of the scheme which was rightly done by the bank. In any event, without exhausting the alternative remedy, the relief sought for by the petitioner by invoking the discretionary remedy under Article 226 of The Constitution of India cannot be granted."

14. Even sale certificate issued can be challenged by the person aggrieved. Reference can be made to Simon's Foot Wear Pvt. Ltd. v. Indian Bank, reported in (2015) 2 MLJ 166, whereien a Hon'ble Division Bench of this court held as follows:

"9.As against the confirmation of sale and issuance of the sale certificate, the writ petitioners did have their remedy of filing an appeal under Section 18 of the SARFAESI Act before the Debts Recovery Appellate Tribunal. The appeal remedy is an effective and efficacious remedy. When such an effective and efficacious remedy is available, this court will decline exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. ....

10.So far as the challenge made to the order dated 24.06.2013 is concerned, since an appeal remedy is available the writ petitioners ought to have exhausted the appeal remedy before approaching this Court with this writ petition. ...."

15. Thus, when the petitioner can avail the alternative remedy, rasing all tenable grounds, for challenging sale/sale certificate, in the manner known to law and in the light of the decisions of the Hon'ble Supreme Court, we are not inclined to entertain the instant writ petition.

16. Though the learned counsel for the petitioner sought for an interim prospective orders, till the filing of an appeal, this Court is not inclined to accede to the request, for the reason that once the writ petition is held as not maintainable, no interim order can be granted. We make it clear that it is always open to the petitioner, to question the sale/sale certificate, before the appropriate forum and seek for appropriate interim orders. Time, if any spent, in litigating before this Court, be excluded.

17. From the perusal of the letters, we are not able to deduce the name/address of the purchaser, details of the transaction. Copy of the sale certificate has also not been enclosed. U.V.Asset Reconstruction Company Ltd., is directed to furnish the same forthwith. Limitation will start only from the date of issuance of the sale certificate.

18. Hence, this writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Governor
   Reserve Bank of India
   Fort 21st Floor
   Central office Building
   Shahid Bhagat Singh Marg
   Mumbai 400 001.

2. The Manager
   State Bank of India
   Nagar Branch Perutti
   Coimbatore 641 001.

3. The Authorised officer
   M/s. UV Asset Reconstruction Company Ltd
   1304, 13th Floor
   Chirajiv Tower
   43 Nahru Place
   New Delhi 110 019.

4. The Secretary
   National Highways Authority of India
   Ministry of Road Transport and Highways Department
   New Delhi.

+1cc to M/s.S.R.Sumathy, Advocate, S.R.No.42667 (09.07.18)
+1cc to M/s.T.Fennwalter Associates, Advocate, S.R.No.41952

W.P.No.16132 of 2018

CA(CO)
CS/05/07/18