IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2018

CORAM:

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

W.P.No.16222 of 2018
and WMP No.19316 of 2018

M/s.Thilak International,
Rep. by its Partner,
D.Joseph Raja. ... Petitioner

vs.

1. The Debts Recovery Appellate Tribunal,
55, Ethiraj Saalai, Chennai.

2. UCO Bank,
Rep. by the Authorised Officer,
Regional Office,
Chennai - 600 024.

3. UCO Bank,
Tuticorin Branch,
Rep. by its Branch Manager,
208, C.D., V.E., Road,
Tuticorin - 628 003.

4. Mr.G.Saravanan. ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari, calling for the records and order dated 23.4.2018 in I.A.No.415 of 2018 in RA (SA) No.62 of 2018, on the file of the Debts Recovery Appellate Tribunal, Chennai and quash the same as illegal.

For Petitioner : Mr.J.Antony Jesus

ORDER

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

Being aggrieved by the order made in IA No.415 of 2018 in RA (SA) No.62 of 2018, on the file of Debts Recovery Appellate

Tribunal, Chennai, dated 23.04.2018, impleading the auction purchaser, instant writ petition is filed to quash the said order.

2. Facts deduced from the supporting affidavit and material on record are that pursuant to the demand notice dated 14.06.2005 issued under Section 13(2) of the SARFAESI Act, for Rs.27,80,962/- with applied interest, as applicable along with other costs and charges thereon, to be paid within 60 days from the date of receipt of the said notice, bank has issued a possession notice dated 10.03.2006 under Section 13(4) of the Act, for taking symbolic possession.

3. Bank also issued a sale notice dated 10.03.2006, which came to be challenged in W.P.No.3550 of 2006. Petitioner has averred that W.P.No.3500 of 2006, has been dismissed with liberty to file an appeal before the Debts Recovery Tribunal. Subsequently, the petitioner filed TSA No.60 of 2007, challenging the entire proceedings initiated under the SARFAESI Act, 2002, including the demand notice dated 14.06.2005, issued under Section 13(2). Publication was made on 20.01.2007 for sale of the property on 01.02.2007. Vide order dated 31.01.2007, by this Court there was a stay of the auction for two weeks. According to the petitioner, contrary to interim stay, on 01.12.2007, bank conducted auction. Ultimately, on 12.12.2007, W.P.No.3318 of 2007, has been dismissed. Sale certificate has been issued by the bank to the successful bidder.

4. TSA No.60 of 2007, filed under Section 17(1) of the SARFAESI Act, 2002, to quash the proceedings initiated by the bank ie., demand notice issued under Section 13(2) dated 14.06.2005 and possession notice issued under Section 13(4), dated 10.03.2006, was dismissed on 17.11.2017 by the Debts Recovery Tribunal, Madurai.

5. Going through the said order it could be seen that though, the petitioner has made submissions, assailing the correctness of the sale notice dated 20.01.2007, by observing that the said notice was not challenged in TSA No.60 of 2007, Debts Recovery Tribunal, Madurai, vide said order dated 17.11.2017, held TSA No.60 of 2007, as not maintainable. For brevity paragraph No.13 of the order made in TSA No.60 of 2007 dated 17.11.2017, is reproduced.

> "13. Above all, subsequently the sale notice dated 20.01.2007 was issued by the 1st respondent and that secured asset was brought for sale. It cannot be disputed that the applicant firm has not challenged the above said sale notice. Therefore, on this ground alone, this SARFAESI Application filed by the Applicant firm, challenging the impugned notice dated 10.03.2016, is not

maintainable.

In view of the foregoing reasons and discussions this Tribunal hold that the Applicant not entitled to get the reliefs as prayed. Thus this point is answered.

In the result the TSA No.60/07 is dismissed. No costs."

6. Being aggrieved, petitioner has filed RA SA No.111 of 2018, on the file of Debts Recovery Appellate Tribunal, Chennai. Pending disposal of the said application, auction purchaser, G.Saravanan, has filed I.A.No.415 of 2018, to implead himself as one of the respondents in R.A.SA.No.62 of 2018, on the file of Debts Recovery Appellate Tribunal, Chennai.

7. In the supporting affidavit to I.A.No.415 of 2018 in RA SA No.62 of 2018, auction purchaser has contended that in the auction conducted on 01.02.2007, he alongwith Dr.J.Saravanan, were declared as the successful bidders and that after depositing the entire bid amount, sale certificate issued was registered, in their names on 11.02.2018.

8. Mr.G.Saravanan, one of the auction purchasers, who had filed IA No.415 of 2018, has also contended that inspite of request, bank is yet to deliver actual physical possession. Applicant therein has further contended that auction notice dated 20.01.2007 and the subsequent auction conducted on 01.02.2007, were valid and consequent to issuance of sale certificate, possession has to be handed over. Thus, for the above reasons, Mr.G.Saravanan, has sought for impleadment.

9. In IA No.415 of 2018, petitioner has filed, a counter affidavit, stating that auction and issue of sale certificate, have been done, without authority of law, and in violation of the orders of this Court and therefore, the auction purchaser has no right. Though, the sale certificate has been issued in the name of two persons, only one has filed petition for impleading and therefore, attributed motive. Further contention has been made that when the Debts Recovery Tribunal, Madurai, set aside possession notice dated 10.03.2006, issuance of sale certificate and its registration in favour of the auction purchaser on 11.02.2018 is illegal.

10. On the above pleadings and submissions, Debts Recovery Appellate Tribunal, Chennai, vide order dated 23.04.2018 in IA No.415 of 2018 in RA (SA) No.62 of 2018, allowed the impleading petition, which is impugned in this writ petition. Order reads thus:

"Ld. Counsel Mr.Antony Jesus for Appellant present.

None for R1, 2 though name of Ld. Counel

Mr.V.Suthakar appears in the cause list.

Ld. Counsel Mr.N.Alagu Narayanan for proposed 3rd Respondent present.

Appellant counsel files counter affidavit in IA today.

Heard IA 415/2018, which is an application filed by petitioner for impleadment as one of the Respondent, because he is the purchaser of the property from the auction sale.

Impleadment is opposed on the grounds that sale was conducted in violation of stay order granted by Hon'ble High Court, Sale Certificate was issued while PO has already quashed the possession notice. Further this property was purchased by two persons and impleadment is only by one of them.

On the other hand Ld. Counsel for impleader submits that 2nd purchaser is on the way to give instructions at any point of time and he may also join the proceedings.

Whatever has been averred by the parties will be a point of debate in this case, thereby parties should be heard without expressing any opinion and legality of the transactions. In view of the fact that impleader appears to be proper party in this case, hence IA is allowed and disposed of.

Appellant counsel is directed to carry out amendment in cause title in appeal memo within a week and file clean copy.

Appellant counsel is directed to serve copy of paper book and typed set of documents to impleaded Respondent.

List for final hearing in the matter of 28.06.2018."

11. Being aggrieved by the impleadment of Mr.G.Saravanan, one of the auction purchasers in RA SA No.62 of 2018, instant writ petition is filed.

12. On the above averments, Mr.Antony, Jesus, learned counsel for the borrower/petitioner reiterated that the sale, in contravention of the High Court's order, is invalid. Major thrust of the submission is on ground No.6 of the supporting affidavit to the writ petition, which is as follows:

"6. The Debts Recovery Tribunal at Madurai, by its order dated 17.11.2017, dismissed TSA No.60/2017 filed by the petitioner without considering all the grounds raised by the petitioner as directed by the High Court, Madras. The Debts Recovery Tribunal without considering the facts and circumstances and the grounds raised by the petitioner, dismissed the appeal. The order of the Debts Recovery Tribunal is contrary to law and the same is liable to be set aside. The tribunal failed to advert to that the action of the respondent in issuing the possession notice is contrary to the provisions envisaged under Sec.13(4)(a),(b) (c) & (d) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The Tribunal erred in law in not considering the specific ground that the respondent Bank failed to credit payment made by the petitioner and took measures under Securitisation and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002, bypassing the mandatory provisions envisaged under the Act. The Tribunal failed to advert to the fact that the respondent Bank caused publication in newspapers on 24.5.2006 cautioning general public and borrowers in particular that the Bank has taken possession of the mortgaged property on 10.3.2006 and if that be the case, it is only a possession notice dated 10.3.2006, but not Sale Notice. The Tribunal failed to consider that if the possession notice is termed as Sale Notice dated 10.3.2006, there is no Sale Notice given to the petitioner as per the mandatory provisions in the usual course of the enforcement of the security. The Tribunal failed to consider that in the publication for tender-cum-auction notice of the property on 15.9.2006, fixing the auction-cum-sale on 30.10.2006, the Bank is silent about the Sale Notice. The Tribunal failed to consider the fact that for the 2nd sale notice 30 clear days notice was not given and copy of sale notice was not served on the petitioner. The Tribunal failed to consider the fact that in the notice dated 10.3.2006, there is no mention as to whether it is a possession notice or a sale notice and hence the whole proceedings are contrary to the specific provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The Tribunal failed to consider the fact that in spite of communication of copy of interim stay granted by the Hon'ble Madurai Bench of Madras High Court to the respondent on 1.2.2007 at 11.30 a.m., the mortgaged property was sold on the same day itself and hence the whole proceedings are vitiated and contrary to law. The tribunal failed to consider the fact that the sale notice dated 10.3.2006 is not in conformity with Rule 8(1) of Security Interest (Enforcement) Rules and hence the same is liable to be set aside."

13. Apprehension of the petitioner that merely because the property had already been sold to a third party, consequent to which, sale certificate dated 08.01.2018 has been issued and that by impleading a third party to the proceedings, the Debts Recovery Appellate Tribunal, Chennai, would be swayed away, while deciding the appeal on merits, is only unjustified and unfounded.

14. In the case on hand, sale notice issued has not been challenged. However, as stated supra, going through the order made in TSA No.60 of 2007 dated 17.11.2017 on the file of Debts Recovery Tribunal, Madurai, it is apparent that the petitioner had indirectly questioned the correctness of the sale dated 01.02.2007 and issuance of the sale certificate dated 08.01.2008, to the auction purchasers, which Debts Recovery Tribunal, Madurai vide order dated 17.11.2017 in TSA No.60 of 2007, has rejected and the relevant paragraph, has been extracted, in the aforementioned paragaraphs.

15. Being aggrieved by the decision in TSA No.60 of 2007 dated 17.11.2017, on the file of Debts Recovery Tribunal, Madurai, appeal has been filed in RA(SA) No.62 of 2018, before the Debts Recovery Appellate Tribunal, Chennai. When the petitioner has chosen to challenge the sale notice and the consequent sale certificate, in RA(SA) No.62 of 2018 also, at this juncture, this Court is of the view that it is for the appellate tribunal, to consider as to whether the same requires, adjudication, in the absence of any challenge to sale and sale certificate. However, we may only observe that no collateral challenge to sale or issuance of sale certificate is ordinarily permissible. If the appellate tribunal, choses to delve into the aspect of the correctness of the sale and the consequent issuance of sale certificate dated 08.01.2008 and ultimately comes to any conclusion, on the above aspect, then it would certainly affect the interest of the auction purchaser, and in such circumstances should provide an opportunity of hearing.

16. Viewed in such angle, when one of the auction purchasers has filed an application in IA No.415 of 2018 to implead himself in RA (SA) No.62 of 2018, after considering the rival contentions, the Debts Recovery Appellate Tribunal, Chennai, by observing that "whatever has been averred by the parties will be a point of debate in this case, thereby parties should be heard without expressing any opinion and legality of the transactions. In view of the fact that impleader appears to be proper party in this case", allowed IA No.415 of 2018.

17. Considering the facts and circumstances of this case, we are of the view that the auction purchaser is one of the proper and necessary party for effective adjudication of the point in

issue viz., challenge to sale notice dated 20.01.2007 and the sale certificate dated 08.01.2008. We find no manifest illegality in the order impugned. Hence, Writ petition is dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Debts Recovery Appellate Tribunal,
55, Ethiraj Saalai, Chennai.

2. The Authorised Officer,
UCO Bank,
Regional Office,
Chennai - 600 024.

3. The Branch Manager,
UCO Bank,
Tuticorin Branch,
208, C.D., V.E., Road,
Tuticorin - 628 003.

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