IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2018

CORAM:

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

W.P.No.18592 of 2018
and WMP No.21937 of 2018

The Authorized Officer,
Central Bank of India,
Cross Cut Road Branch,
No.387, Cross Cut Road, Gandhipuram,
Coimbatore - 641 012. ... Petitioner

vs.

1. The Presiding Officer,
Debts Recovery Tribunal,
Coimbatore.

2. M/s.Professional Educational Trust,
rep. by its Managing Trustee cum Chairman,
Dr.C.Subramaniam,
Door No.167, Professional Nagar,
Trichy Road, K.N.Puram Post,
Palladam, Tirupur Distrcit - 641 662. ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari, to call for the records on the file of 1st respondent and consequently quash the order dated 18.06.2018 passed in S.A.No.251 of 2017.

For Petitioner : Mr.M.L.Ganesh

ORDER

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

Conditional order dated 18.06.2018 made in IA No.1376 of 2018 in SA No.251 of 2017 (Amendment Petition), on the file of the Debts Recovery Tribunal, Coimbatore, is impugned in the present writ petition.

2. Material on record discloses that after issuance of demand notice under Section 13(2) of the SARFAESI Act, 2002 dated 02.01.2017 and possession notice dated 18.07.2017, issued under Section 13(4) of the said Act dated 18.07.2017, borrower

viz., M/s.Professional Educational Trust, represented by its Managing Trustee cum Chairman, Dr.C.Subramaniam, Tirupur District filed S.A.No.251 of 2017, for the following reliefs.

> (a) Declaring that the Possession Notice dated 18.07.2017 issued by the Defendant under Sec.13(4) of the SARFAESI Act in respect of the mortgaged properties is void, defective and unenforceable;
>
> (b) Declaring that the entire proceedings initiated by the Defendant against the secured assets under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 is void, defective and unenforceable

3. In IA No.1677 of 2017 in SA No.251 of 2017, borrower prayed to stay all further proceedings pursuant to the possession notice dated 18.07.2017. After hearing the learned counsel for the parties, vide order dated 09.11.2017 in IA No.1677 of 2017 in SA No.251 of 2017, Debts Recovery Tribunal, Coimbatore, granted Ad-Interim Injunction against the Authorized Officer, M/s.Central Bank of India, Coimbatore, 1st respondent therein, till 10.01.2018, subject to payment of Rs.5.17 Lakhs directly before the respondent bank on or before 11.12.2017 as first instalment and another sum of Rs.5.17 Lakhs directly before the respondent bank on or before 09.01.2018 as second instalment. Debts Recovery Tribunal, Coimbatore in its order dated 09.11.2017 has made it clear that in the event of failure to pay even a single instalment, as stated supra, the Ad Interim Injunction granted till 10.01.2018, would stand vacated automatically and thereafter, respondent bank is at liberty to proceed against the secured assets as per law.

4. Subsequently, bank has issued an e-auction sale notice dated 04.05.2018, fixing the auction of the secured assets on 19.06.2018. Having regard to the subsequent event, contending inter alia that sale notice was only a continuance of the SARFAESI proceedings already initiated by the bank, borrower has filed IA No.1376 of 2018, in SA No.251 of 2017 to amend the prayer.

Details of the amendment sought for are as hereunder.

DETAILS OF PROPOSED AMENDMENTS

> (i) Add a new para 11-A as follows:
>
> "The Applicant originally filed the above securitisation application challenging the possession notice dated 18.07.2017. The Defendant entered appearance through their Counsel in the above proceedings and are defending the proceedings. However, even during pendency of the proceedings, the Defendant has issued an E-Auction Sale Notice dated 04.05.2018 under which he has purported to bring the secured assets for sale of on 19.06.2018. The

Defendant has grossly undervalued the property and has fixed the reserve price at Rs.3417.50 Lakhs which is not even 50% of the prevailing market price of the properties. Even when the possession notice is under challenge, the defendant, in utter haste, has issued the E-Auction Sale Notice by grossly undervaluing the property. No proper valuation has been done by the Defendant before issuing the impugned auction notice. The act of the Defendant in issuing the Auction Sale Notice even during pendency of the present SA smacks of malafides and is only intended to harass the applicants. The applicants submit that the subsequent sale notice is only a continuation of the earlier proceedings under the SARFAESI Act. The Defendant has not followed any of the mandatory procedures as stipulated under the Act and the Rules framed thereunder and has issued the sale notice in utter haste and ignoring the pendency of the above S.A."

(ii) In the relief column, after prayer (a), add the following:
"(b) Declaring that the E-Auction Sale notice dated 04.05.2018 issued by the Defendant in respect of the Scheduled properties is void, defective and unenforceable"
(iii). In the relief column, renumber the existing columns (b), (c), (d) as (c), (d) and (e)"

5. In IA No.1377 of 2018 in SA.No.251 of 2017, borrower viz., M/s.Professional Educational Trust, represented by its Managing Trustee cum Chairman, Dr.C.Subramaniam, Tirupur District, has sought for stay of all further proceedings of the respondent under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 in respect of the Scheduled property in pursuant of the impugned E-Auction Sale Notice dated 04.05.2018.

6. After hearing the learned counsel for the parties, vide order dated 18.06.2018 in SA No.251 of 2017, Debts Recovery Tribunal, Coimbatore, ordered amendment, as hereunder.

"IA No.1376/18 (Amendment Petition). This petition has been filed by the petitioner / applicant to amend the main SA, as detailed in the petition.

The original SA has been filed challenging the Possession Notice, issued under S.13(4) of the SARFAESI Act, dated 18.7.2017. The Ld. Counsel for the Petitioner / Applicant would submit that pending proceedings, the R/Bank has issued the impugned auction sale notice dated 04.5.2018, fixing the sale on 19.6.2018, which warrants amendment of the original application.

The Ld. counsel for the R/Bank submitted that the proposed sale is arising out of a different cause of action and the proceedings are not in continuation with the earlier proceedings. The Ld. Counsel further submitted that the Petitioner/Applicant with a view to procrastinate the proceedings, filed the present application.

However, taking into consideration of the facts and circumstances of this case, this Tribunal is of the view that the proposed amendment is arising out of and in continuation of the earlier proceedings, which has been challenged in the original SA and the proposed amendment sought for, would not in any way change the character of the proceedings. Hence, this petition is allowed. No costs."

7. In so far as stay of all further proceedings and the sale fixed on 19.06.2018, is concerned though the learned counsel for the bank strenuously objected to the prayer sought for and further submitted that when the conditional order in IA No.1677 of 2017 in SA No.251 of 2017 dated 09.11.2017, has not been complied with, and therefore for the abovesaid reasons, prayed for dismissal of IA No.1377 of 2018 in SA No.251 of 2017, Debts Recovery Tribunal, Coimbatore, ordered as hereunder.

"Admittedly, it is an interim order passed while challenging the Possession Notice. Pending proceedings, the R/Bank has issued the impugned e-auction sale notice, which is now under challenge.

Therefore, having taken into consideration of the rival contentions and the materials available on record, this Tribunal is of the view that without going into the merits of the matter, as on interim measure, and to prove their bona fides, if a limited conditional order is passed, it would meet the interest of justice and natural justice. Accordingly, Ad interim injunction is granted against the Respondent Bank, not to confirm the sale till 20.8.2018, subject to payment of Rs.5,34,00,000/- directly before the respondent bank, on or before 18.7.2018, as 1st installment and another sum of Rs.5,34,00,000/- directly before the respondent bank, on or before 18.08.2018, as 2nd installment. However, in the event of failure to pay even a single installment, as ordered above, the Ad Interim Injunction granted not to confirm the sale, shall stand vacated automatically and thereafter, the respondent bank is at liberty to proceed against the secured assets, as per law. It is also made specifically clear that the Respondent Bank is at liberty to proceed with the proposed sale fixed on 19.6.2018, subject to the above conditions.

To carry out amendment, APC, counter and R/S by 20.8.2018. PP also by then. The R/Bank is also directed to furnish to details of 'Critical Amount due and Outstanding' also by then. Call on 20.8.2018."

8. Being aggrieved by the conditional order of stay made in IA No.1377 of 2018 dated 18.06.2018, instant writ petition has been filed, on the following grounds.

"i. The tribunal ought not to have entertained an amendment application in I.A.No.1376 of 2018 in S.A.No.251 of 2017 filed by the 2nd respondent instead of filing separate S.A. for challenging the sale notice dated 04/05/2018 issued by the Petitioner Bank.

ii. The tribunal ought not to have granted an interim injunction in I.A.No.1377 of 2018 dated 18/06/2018 since the 2nd respondent had already failed to comply with the conditional order passed in I.A.No.1677 of 2017 dated 09.11.2017.

iii. The tribunal ought not to have shown indulgence by granting long time for payment that too after the auction dated 19.06.2018, fixed by the petitioner bank.

iv. The tribunal ought to have observed the fact that the S.A. is originally filed for challenging the possession notice dated 18.07.2017 but the petitioner has travelled beyond the scope of prayer by filing an amendment application to challenge the sale notice dated 04/05/2018 issued by the petitioner bank.

v. The tribunal ought to have taken into consideration of the fact while passing interim order that the outstanding loan amount of more than Rs.36 Crores is recoverable by the Petitioner Bank from the 2nd Respondent herein.

vi. The tribunal ought to have taken into consideration of the fact that the 2nd respondent has been successfully dragging on the S.A. for more than one year without paying any amount in terms of conditional order dated 09.11.2017 and 18.06.2018.

9. Though Mr.M.L.Ganesh, learned counsel for the petitioner reiterated the abovesaid grounds and sought for reversal of the order impugned, we are not inclined to accept the said

contentions for the reason that, earlier when possession notice was challenged, Debts Recovery Tribunal, Coimbatore, in IA No.1677 of 2017 in SA No.251 of 2017, dated 09.11.2017, has granted an order of interim injunction till 10.01.2018, subject to payment of Rs.5.17 Lakhs directly before the respondent bank on or before 11.12.2017 as first instalment and another sum of Rs.5.17 Lakhs directly before the respondent bank on or before 09.01.2018 as second instalment. Debts Recovery Tribunal, Coimbatore in its order dated 09.11.2017 has made it clear that in the event of failure to pay even a single instalment, as stated supra, the ad interim injunction granted till 10.01.2018, would stand vacated automatically and that thereafter, respondent bank is at liberty to proceed against the secured assets as per law.

10. Conditional order has not been complied with, in which it is always open to the bank to seek for assistance from the District Magistrate cum District Collector for taking actual possession or to bring the secured assets for auction, which the bank has taken recourse by issuing sale auction notice dated 04.05.2018, fixing the auction on 19.06.2018. Even as per the decision of the Hon'ble Supreme Court in Vasu P. Shetty Vs. Hotel Vandana Palace and others, reported in (2014) 5 SCC 660, each measure of the bank under Section 13(4) of the SARFAESI Act, 2002, viz., actual physical possession under Section 14 of the Act, sale of the property under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002, etc., as provided therefor under section 13(4) of the SARFAESI Act, 2002, is a separate cause by itself and that it is always open to the borrowers/guarantors/aggrieved person to challenge the same by filing separate application under Section 17(1) of the SARFAESI Act, 2002.

11. Amendment ordered in SA No.251 of 2017, has not been challenged. Sale has been fixed on 19.06.2018. During the course of hearing Mr.M.L.Ganesh, learned counsel for the petitioner submitted that e-auction sale fixed on 19.06.2018, has not taken place. Merely because, the conditional order imposed in IA No.1677 of 2017 in SA No.251 of 2017 dated 09.11.2017, has not been complied with, that would not foreclose the right of the borrower/guarantor to seek for stay of auction. Request of the petitioner/borrower has been considered by Debts Recovery Tribunal, Coimbatore, by imposing condition of payment of Rs.5.17 Lakhs directly before the respondent bank on or before 11.12.2017 as first instalment and another sum of Rs.5.17 Lakhs directly before the respondent bank on or before 09.01.2018 as second instalment, vide order dated 09.11.2017, in IA No.1677 of 2017 in SA No.251 of 2017.

12. When sale notice was challenged, by way of an amendment, Debts Recovery Tribunal, Coimbatore has imposed a condition to

pay sum of Rs.5,34,00,000/- directly before the respondent bank, on or before 18.7.2018, as 1st installment and another sum of Rs.5,34,00,000/- directly before the respondent bank, on or before 18.08.2018, as 2nd installment vide order dated 18.06.2018 in IA No.1377 of 2017 in S.A.No.251 of 2017.

13. Both the conditional orders are separate and distinct. One at the time when the possession notice dated 18.07.2017 was challenged and other when sale notice dated 04.05.2018, was challenged by way of amendment. Petitioner bank cannot be said to be prejudiced on account of the conditional order. We do not find any manifest illegality in the order impugned, warranting interference. Hence, instant writ petition is dismissed. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

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To

The Presiding Officer,
Debts Recovery Tribunal,
Coimbatore.

+1 CC to Mr.M.L.Ganesh, Advocate sr 48781

W.P.No.18592 of 2018
and WMP No.21937 of 2018

SSI(CO)
GSP(10/08/2018)