

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.19354 of 2018
and
W.M.P.No.22751 of 2018

M/s.Sreenivas Buildtech Pvt. Ltd.,
Represented by its Director,
Mr.P.Venugopal, having its Regd.
Office at 193, Rangapillai Street,
Pondicherry. ... Petitioner

Vs.

State Bank of India,
Stressed Assessment Management Branch,
2nd floor Red Cross Buildings
32 Red Cross Road, Egmore,
Chennai - 600008. ... Respondent

Prayer: Writ petition is filed under Article 226 of the
Constitution of India, to issue a Writ of Certiorarified
Mandamus, calling for the records of the respondent with
respect to E-Auction sale notice SAMB/CLO II/2018-19/576 dated
02.07.2018, quash the same.

For Petitioner : Mr.Srenik S.Jain

ORDER

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

Instant writ petition is filed to call for the records,
of the respondent, with respect to E-Auction sale notice
SAMB/CLO II/2018-19/576 dated 02.07.2018 and to quash the
same.

2. It is the case of the petitioner that he is the
Managing Director of M/s.Sreenivas Buildtech Pvt. Ltd.,
carrying out development business and borrowed a loan of Rs.25
crores, from the respondent bank and promptly paying the
principal and interest amount, without any default, upto mid
of 2016. But the petitioner was unable to make payment of
interest and principal amount, due to huge financial crunches
caused due to wrongful attachment of all the properties by the
Sales Tax Department and other subsidiary reasons such as;
demonetization, Goods and Services Tax and downfall in the
real estate market. Hence, the petitioner company was not able
to pay due amount, from May 2017, as there was no income from
the business of the petitioner company.

3. The Petitioner, in the affidavit has stated that due to certain proceedings with the Sales Tax Department, arising out of this company, Sales Tax Department has unlawfully attached, all the properties of the petitioner company, inclusive of the properties and the project done by the petitioner company. Due to the above reasons, the petitioner company was not able to sell flats and projects, and thus, suffered heavy loss.

4. As regards sales tax issue, the petitioner has already filed an undertaking affidavit, before this Court in W.P.No.4650 of 2018, seeking for a direction as against the Sales Tax Department, to release petitioner company properties, out of the sales tax attachment, and that the same is pending for disposal. Thus, it is only because of the sales tax issue, petitioner company was unable to generate any income, and suffering huge loss, in the account of the interest amount, salaries and other overhead charges.

5. In order to revive the business of the company and to infuse funds from third parties, the petitioner has been negotiating for the past five months, with several financiers and financing companies, and other developers. However, now one or two companies, have agreed to infuse money in the company, subject to the terms and conditions to be entered into. Petitioner has further stated that funds to the tune of Rs.50 to Rs.60 crores will be infused in the petitioner company, which would help to revive the business activities and to clear the dues of the respondent bank, as well as the other dues.

6. The petitioner has further stated that, in fact third parties have already inspected the property and are, now under the process of scrutinizing the title deeds and other documents of the properties and thereafter, an agreement would be entered into between the parties, within a period of 60 days.

7. The petitioner has further stated that, while matter stood thus, the respondent bank has issued notice, to bring the Schedule mentioned properties, for a claim of Rs.11,83,92,073.27/- whereas, the actual principal amount is only Rs.9 Crores. Further, the schedule mentioned properties, are worth more than Rs.30 crores. The respondent bank has also merged the properties of petitioner's partnership company, which is highly improper and illegal. The petitioner has further contended that the respondent bank is bringing all the schedule mentioned properties, as mentioned in the sale notice, for auction on 27.07.2018. The respondent bank has planned to sell the properties, at a very low price, which is evident from the value fixed, as reserve price. It is further emphasized that the properties have been valued by respondent bank and lent loan, for a value which is more than that of reserve price, now fixed. Further the respondent bank, without

any authority and rights, are plotting out the vacant lands and trying to sell them which is out of the scope of the Act.

8. The petitioner has further stated that, one of the properties i.e. Flat No.B001 in the project, namely Srinivas Towers HAC Circle, has been sold for a consideration of Rs.16 lakhs to a third party, who is now in possession and enjoyment of the apartment, whereas, now the respondent bank is trying to sell the same flat, for a sum of Rs.8 lakhs.

9. The petitioner has further stated that, for the aforesaid sale to third party, the respondent bank has sanctioned a loan, in favour of the said third party, and the respondent has even executed a tripartite agreement, along with the petitioner and the third party purchaser, and the sale amount is Rs.16 lakhs. Thus, it is evident that the respondent bank is well aware of the prevailing market price of the said project, and in spite of the same, the respondent has fixed the reserve price at a low rate, which is against the law.

10. The petitioner has further stated that the properties are brought for auction on 27.07.2018, and if the auction is conducted, he would be put to great loss and inconvenience. The respondent bank brought the property for auction without due process of law and such proceedings are against law, in particular, the rate fixed by the bank. Hence, in the interest of justice and equity, the auction proceedings initiated by the bank, have to be stayed immediately.

11. The petitioner has reiterated that he was negotiating with the third parties to infuse funds into the company to revive the business activities of the company, which would be concluded within 60 days. Hence, without prejudice to his right, some more time is required to complete the agreement, so that he could infuse funds and revive the business of his company, and thereby settle the amount due to the respondent bank.

12. The petitioner has further stated that, apart from the activities stated above, the respondent bank in the earlier proceedings before DRT-I, Chennai, in O.A.No.290 of 2016, has already sold three properties of petitioner company and realised a sum of Rs.2,63,00,000/- towards the outstanding amount. The original amount claimed by the respondent bank in the year 2016 was Rs.21,16,68,543/-, whereas, after sale of the properties and after realising the amount thereby, the debt amount had been reduced to Rs.19 crores and accordingly, a settlement was arrived in O.A.No.290 of 2016 and in accordance of the said settlement, he has paid a sum of Rs.10 crores on 13.04.2017, by way of sale of flats in Chennai. As per the agreed settlement, he was liable to pay the balance amount of Rs.9 Crores on or before 30.09.2017. However, due to tax and other issues, he was unable to pay the said sum of

Rs.9 crores and the respondent bank, taking advantage of the situation is claiming a sum of Rs.11 crores and trying to bring his properties, which is worth about Rs.30 crores, for sale, for a meager disputed sum of Rs.11 crores.

13. The petitioner has further stated that, payment of Rs.13 crores made in the Original application proceedings would show the bonafides, towards his intention to settle the bank account. Even today, his intention is only to settle the bank account, at the earliest time and at the same time to protect his properties. Hence, the petitioner has prayed for stay of all further proceedings under sale notice, dated 02.07.2018.

14. Vide order, dated 07.06.2017 in O.A.No.290 of 2016, DRT-I, Chennai, held as follows:-

"3. Heard the counsel for both sides. Perused the memo. Memo is signed by the Asst. General Manager of the applicant bank and the defendants 1 and 2.

4. In view of the compromise entered between the parties, memo is taken on record and OA is disposed of as per the terms and conditions of the joint compromise memo. Copy of the Joint Compromise Memo shall form part of this order. Registry is directed to issue Recovery Certificate against the defendants in case of default in complying with the terms and conditions agreed to in the joint compromise memo.

5. Communicate copy of the order to the parties."

15. Being aggrieved by the E-Auction Sale Notice dated 02.07.2018, the petitioner company has filed the instant writ petition, on the following grounds:-

"1) Petitioner has been a very prominent builder in Pondicherry and has completed successfully several project.

2) Petitioner has availed loans from respondent by providing security worth several times more than the debt.

3) Petitioner had been paying regular installments till 2016.

4) Petitioner has fully repaid loans of Rs.5 crores, Rs.7.5 crores and Rs.12 crores to the respondent bank on earlier occasions showing his bonafide.

5) Petitioner has suffered due to a sudden and colossal demand made by the sales tax department for several assessment years together.

6) Auction notice of respondent is very much prejudicial to rights of petitioner as the reserve price fixed is very low.

7) Respondents are trying to make undue profit from the difficult situation petitioner is stuck in at the moment and are only trying to further make it difficult for petitioner to even survive.

8) The auction is a indirect method through which respondent are trying to sell away valuable properties for a very marginal and meager amount."

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

17. Violation of the statutory provisions, regarding notice, can always be urged before the Tribunal and the petitioner has an effective and alternative remedy. Time and again, the Courts have consistently held that when there is an effective and alternative remedy, provided under the Statute, Writ should not be entertained. Reference can be made to the few 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, at Paragraphs 16 to 18 and 27 to 29, held as follows:

"16. The facts of the present case show that even after receipt of notices under Sections 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) The above judgment has been followed in *Saraspathy Sundararaj v. Authorised Officer and Assistant General Manager, State Bank of India*, reported in (2010) 5 LW 560.

18. In the light of the above decisions, we are not inclined to entertain the instant writ petition. Accordingly, Writ Petition is dismissed. No Costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

dm

+ 1 cc to Mr.P. Subba Reddy, Advocate Sr.51482

W.P.No.19354 of 2018 and W.M.P.No.22751 of 2018

(CS-DR)

EU(11/08/2018)