IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 28.04.2018

CORAM
THE HON'BLE MR.JUSTICE S.MANI KUMAR
&
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.18590 of 2017
and
W.M.P.Nos.20135 & 20177 of 2017

M/s.Sri Selliamman Blue Metals
Rep. by its Proprietor,
Mrs.Pushpavalli,
1/1-81, Rana Nagar,
Kuruppanaickanpalayam,
Bhavani - 638 301. ... Petitioner

Vs.

1. The Branch Manager / Authorised Officer,
   Canara Bank,
   Bhavani Branch, Rajalakshmi Complex,
   Mettur Main Road, Bhavani – 638 301.

2. The Divisional Manager
   Canara Bank,
   Circle Office,
   No.524, Old No.563/1,
   Anna Salai, Teynampet
   Chennai – 600 018. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the order of the first respondent made in e-auction notice dated 22.06.2017 insofar as the items of movable and immovable properties mentioned therein under item 7 of the said impugned order and quash the same.

For Petitioner : Mr.Silambanan
Senior Counsel
For M/s.Kaavya Silambanan Associates

For Respondents: Mr.Raghunathan
For M/s.T.S.Gopalan & Co

O R D E R

This Writ petition has been filed challenging e-auction notice dated 22.06.2017 issued by the first respondent regarding the items of movable and immovable properties mentioned therein under item 7 of the said impugned order and quash the same.

2. The brief facts of the case are that the petitioner is doing a business of manufacture of blue metals, and had approached the Canara bank i.e., the first respondent herein, for financial assistance. As per request, the first respondent sanctioned 3 term loan in the year 2013 and one term loan in the year 2015 to the petitioner for purchasing machineries and accessories like lorry, conveyor belt, crusher machine etc., to run the quarry. The total term loan sanctioned and availed by the petitioner was Rs.93,03,250/-, for which, the petitioner had mortgaged her agricultural property by way of Memorandum of Title Deeds registered on 03.09.2013 and her husband stood, as a guarantor for the above said loan.

3. The petitioner would submit that when she was doing her business in a profitable manner and had been paying the installments without any default, the Chief Manager of the first respondent bank, instigated her to avail further loan to expand her business, and further promised that all the necessary assistance will be extended without any delay. Believing the manager's words, the petitioner has also applied for additional cash credit facility by producing all the relevant documents. Thereafter, the respondent bank, after scrutinizing all the documents, informed the petitioner by letter dated 05.05.2015 that they have provisionally sanctioned a sum of Rs.65,00,000/- under MSE and requested the petitioner to register the MODTD (Memorandum of deposit of Title Deeds) on the documents mortgaged by them. On such sanction, the manager of the respondent bank directed the petitioner to execute the Memorandum of Title Deeds of her agricultural land, immediately, in favour of the respondent bank. The petitioner had registered the same on 06.05.2015 as Document No.1589 of 2015 at the office of the Sub-Registrar, Anthiyur.

4. The petitioner would further submit that though the additional cash credit was provisionally sanctioned on 05.05.2015 and the petitioner had executed the Memorandum of Title Deeds on the very next day itself, the respondent failed to credit the additional cash credit to the petitioner's account even after several requests and remainders sent by the petitioner. Since the petitioner did not receive the money and any proper response from the respondent bank, she was put in a very difficult situation at the end. It is further submitted by the petitioner that at one point of time, she had informed the Chief Manager of the first respondent bank that she would be

compelled to take the matter to the higher authorities and inform them regarding the attitude of the Bank officials that inspite of deposit of the title deeds of her agricultural property, the bank has not sanctioned the cash credit loan to the petitioner and because of this, she was put into deep trouble in the business. Further, the petitioner submitted, that the Chief Manager of the respondent bank, compelled her to settle the dues and immediately sent a notice under Section 13 (2) of the SARFAESI Act, 2002 stating that from 30.04.2016, the account of the petitioner has become irregular and the liability as on 15.07.2016 towards the Cash Credit limit was Rs.95,58,137/-. But in the said notice, the exact date, when the petitioner's account has become NPA was left without being filled up.

5. It is further submitted by the petitioner that after receipt of the said notice, immediately she approached the Chief Manager to question as to why they have not sanctioned the loan as promised. The Chief Manager, again gave a evasive reply and promised that the said notice was sent only as a formality so not to worry about the same and further promised that the loan sanctioned will be credited immediately to the petitioner's account. Thereafter, when the petitioner was expecting a fair response, to her shock and surprise, she received an another notice dated 19.08.2016 under Section 13(2) of the SARFAESI Act, stating that as on 02.08.2016, the outstanding amount of Rs.1,71,44,809.08 was said to be paid by the petitioner and this time, the Chief Manager has stated in the notice that, from 29.07.2016 the petitioner's account has become NPA.

6. The petitioner further submitted that the respondent bank has also issued a separate notice through their counsel on 21.09.2016 calling upon the petitioner to settle the 4 term loans. Immediately, the petitioner approached the Chief Manager of the respondent bank, and the petitioner was directed to deposit a sum of Rs.10,00,000/- in the Cash Credit account to reconsider the above issue. However, the first respondent bank has issued possession notice on 05.11.2016 under Section 13(4) of the SARFAESI Act and published the same on 19.11.2016. Thereafter, the respondent bank issued paper publication on 25.11.2016 by setting out the details of Section 13(2) notice dated 19.08.2016 and also setting out the two properties which were mortgaged to the respondent bank.

7. The main grievance of the petitioner as stated in the affidavit is that the due of the two immovable properties, which were mortgaged as mentioned in Section 13(4) notice, wherein, one property in S.No.101/3, 103/2B of about 3.11 acres of agricultural land was in relation to the Cash Credit for Rs.85,00,000/- which was sanctioned in the year 2013 and availed by the petitioner. However, the second property mortgaged in S.No.103/2A of about 1 acre of agricultural land with reference

to the Cash Credit account for Rs.65,00,000/- which was sanctioned but not credited to the account of the petitioner. Hence, the petitioner has alleged that the respondent bank played fraud on her, despite she had paid a sum of Rs.10,00,000/- on 12.12.2016, Rs.1,50,000/- on 18.01.2017, Rs.1,50,000/- on 21.01.2017, Rs.1,00,000/- on 28.03.2017 and Rs.50,000/- on 31.03.2017. Totally, the petitioner has paid a sum of Rs.14,50,000/- with regard to Cash Credit account even after 13(2) notice dated 19.08.2016 issued by the respondent bank.

8. It is further submitted by the petitioner that she again approached the Chief Manager with regard to the fraud played on her by the bank and again the Manager gave false promises, and directed the petitioner to leave the office. However, the respondent bank, on 27.03.2017, pasted a notice on the property of the petitioner, stating that the property has been seized by the bank under SARFAESI Act, since the loan was not repaid, and has also appointed security guards around the property to prevent the petitioner from carrying on her business. The petitioner further submits that though the entire dues against the 4 term loan and 1 Cash Credit limit was covered under the notice dated 19.08.2016, the respondent bank, issued a notice on 27.03.2017 with regard to financial assistance of Rs.15,04,219/- for purchase of vehicle calling upon the petitioner to repay a sum of Rs.9,37,544/- as on 01.08.2016.

9. The petitioner further submits that she made a representation on 14.06.2017 to the Divisional Manager/Ombudsman Canara Bank by setting out her grievances, to direct the first respondent to permit the petitioner to continue her business and sought for credit of the sanctioned loan amount, and also for adequate compensation for the sufferings caused by the first respondent bank. The petitioner's representation was redirected to Bhavani Branch which falls within the jurisdiction of Chennai circle. While that being the status, when the petitioner was expecting a response from Chennai branch, she was shocked to receive a notice under Section 13(4) of the SARFAESI Act read with Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 dated 22.06.2017 i.e. after 3 months of having illegally seized the premises, in the said notice, the respondent had stated that they would proceed for e-auction of the petitioner's property for having committed default in repaying the loan amount. On the very same day, the respondent bank had issued another e-auction notice for various properties of the petitioner including movable and immovable properties which have not even mortgaged by the petitioner on 03.09.2013 and 06.05.2015 while executing the Memorandum of Title Deeds, and further stated that the e-auction would be held on 26.07.2017. Hence, the petitioner had approached this Court seeking to quash e-auction notice on various grounds, alleging irregularities against the respondents.

10. This Court, at the time of admission on 21st July 2017, had ordered notice of motion returnable by 18.08.2017 and granted an interim stay on condition that the petitioner shall deposit 25% of the outstanding amount to the respondent bank within a period of six weeks from the date of receipt of a copy of the order and further posted the matter on 18.08.2017. When the matter was listed on the said date i.e., 18.08.2017, the learned Senior Counsel Mr.S.Silambanannan, appearing for the petitioner, requested the case to be posted on 05.09.2017 to comply with the conditional order passed while granting an interim stay. However, the learned counsel Mr.P.Raghunathan, appearing for the respondent bank, submitted that, though possession was taken by the bank without recourse under Section 14 of the SARFAESI Act, 2002, after the interim order passed on 21.07.2017, the Writ petitioner has trespassed into the Crusher unit site forcefully, by showing the stay order and took away the jally materials loaded and tipper lorry hypothecated to them by manhandling the security guards posted over there, for which, the bank officials have lodged a complaint to Vellithirupur Police Station and another complaint was given to the Superintendent of Police, Erode District. Thereafter, the learned Senior Counsel appearing for the petitioner sought time to get instructions regarding the above issue and the case was adjourned to 23.08.2017 by this Court.

11. It is seen from the records that on 23.08.2017, the respondent bank has filed their counter to the affidavit filed in support of the Writ petition. On perusal of the counter affidavit filed by the respondent bank, through its Chief Manager the first respondent herein, it is stated that the credit facilities were secured inter alia by hypothecation of entire current assets of the petitioner including stocks of Blue Metal, Work in process, Book debts, machinery etc. The respondent bank has also contended that the credit facilities were also secured by mortgage of properties being stone quarry and factory therein, and the hypothecation deeds of the petitioner forms part of Annexure - A. The respondent bank further contended that when the petitioner defaulted in payment, the bank classified the petitioner's account as NPA with effect from 29.07.2016. Pursuant to which, the first respondent had issued demand notice dated 02.08.2016, since the petitioner did not respond or object or even comply with the demand, the respondent had taken symbolic possession of the immovable property on 09.11.2016 and further effected publication of notice in two leading newspapers. However, the petitioner has not challenged 13(2) and 13(4) notice at any point of time.

12. The respondent had further alleged that they took physical possession of the property such as land, building and machineries from the petitioner on 23.07.2017, and also appointed Security Guards to prevent the petitioner from carrying on her business. The "Panchnama" dated 23.07.2017 was also said to be recorded by the respondent bank. It is further stated by the respondent bank that In fact when the bank officials took possession of the property, the petitioner did not object for the same and at the time of acquiring physical possession, there were two tipper trucks, with Registration Nos.TN36AW4945 and TN36AY9419 and loads of granite gravel hypothecated to the bank under the Hypothecation deed.

13. The respondent bank further alleged that they sent a notice to the petitioner on 22.06.2017 regarding the proposed auction sale on 26.07.2017. The said auction sale notice was also published in two leading newspapers i.e., Tamil and English dailies. Further, the respondent bank alleged that on 10.07.2017, the petitioner along with her son trespassed into the Crusher unit, created ruckus with the watch and ward staff by manhandling them and drove them away inspite of their plea to contact the bank's officials and took away the granite gravel loaded tipper trucks. Thereafter, The bank lodged a complaint with the Station Inspector, at Vellithiruppur, on the same day i.e. on 10.07.2017 and subsequent to that, they received a letter from the learned Senior Counsel for the petitioner on 24.07.2017 informing about the order dated 21.07.2017 granting stay of auction by this Court. It is alleged that, on 25.07.2017 the petitioner and her son along with some unruly elements once again trespassed into the Crusher unit site forcibly, showed the High Court order manhandle the security guards and took away the granite gravel and tipper lorry hypothecated to the bank, which made the respondent bank to lodge an another complaint on 25.07.2017 to the District Superintendent of Police by Registered Post, seeking action. Thus, the respondent bank refuted the allegations set out in the Writ Petition filed by the petitioner.

14. Apart from narrating the incidents took place after 21.07.2017 on which day the interim stay was granted, the petitioner has also filed a detailed reply to the counter, denying all these allegations set out in the counter affidavit, and would submit that, the document filed by the respondent bank showing the inventory of immovables that was taken possession on 27.03.2017, in the said list, there is no reference to not even one tipper lorry. Hence, from the records available before this Court, it has to be decided whether the action of the respondent issuing the impugned e-auction notice is sustainable or not.

15. The learned Senior Counsel for the petitioner would contend that the respondent bank initially granted the Cash Credit in the year 2013 to the tune of Rs.93.03,250/- by

accepting the hypothecation deed dated 03.09.2013 with regard to the agricultural property in R.S.No:101/3 and 103/2B, Old S.F.No.16/5, 17 & 16/3, Pudur Village and Panchayat, Sub-Registrar, Anthiyur, Erode District, to an extent of 3.11 acres which were mortgaged as early as, 2013. However, the respondent bank who have promised and provisionally sanctioned the loan for a limit of Rs.65,00,000/- by its letter dated 05.05.2015, to which, a separate deposit of title deed was effected on 06.05.2015 by registered Document No.1589 of 2015 pertaining to the land in R.S.No.103/2A to an extent of 1 acres. However, the respondent bank, having accepted the said deposit of title deed for a limit of Rs.65,00,000/-, has not credited the same into the petitioner's account, which is an illegal Act committed on the part of the respondent, and therefore, the action taken by the respondent bank under SARFAESI Act, instead of crediting the sanctioned loan is illegal.

16. The learned Senior Counsel for the petitioner further pointed out that in the 13(2) notice sent on 15.07.2016, wherein, the date on which the petitioner's account became NPA, was not even filled up and hence, the 13(2) notice lacks necessary particulars pertaining to the date on which the account become NPA as per the SARFAESI Act. The learned Senior Counsel would also argue that the respondent bank has also committed various irregularities by not crediting the additional Cash Credit facility of Rs.65,00,000/- which was sanctioned preferentially and giving a false promise to the petitioner to deposit her title deeds and classifying the petitioner's account as NPA, further made the petitioner to deposit a sum of Rs.14,50,000/- under false promise. Thereafter, received the land and seized the property whereby, the respondent bank, prevented the petitioner from doing any business, and brought the property for auction.

17. The learned Senior Counsel for the petitioner, further argued that there cannot be an auction insofar as the agricultural properties are concerned, as the same are exempted from SARFAESI Act. Thus, the e-auction notice dated 22.06.2017 is without any jurisdiction and arbitrarily issued against the petitioner's property. The respondent counsel refuted the arguments put forth by the learned Senior Counsel appeared for the petitioner.

18. It is seen from the records that the respondent bank has issued notice under Section 13(2) as early as on 15.07.2016 and 19.08.2016, followed by a lawyer notice on 21.09.2016. Further, the bank, after waiting for three months from 13(2) notice, issued possession notice under Section 13(4) on 19.11.2016, and paper publication of 13(4) notice had also been effected as contemplated under SARFAESI Act on 25.11.2016. Thereafter, the respondent bank has served e-auction notice to the petitioner informing the auction initiated by the bank. Only at this stage,

the petitioner has approached this Court, challenging the e-auction notice claiming several irregularities committed by the respondent bank. The conduct of the petitioner, who has not taken any steps to challenge the action initiated by the respondent bank, wherein, the bank has issued 13(2) notice as early as on 19.08.2016 and having kept quiet without approaching the DRT, challenging the e-auction notice before this Court, is only to protract the proceedings. Meanwhile, the respondent bank, has completed the entire proceedings as contemplated under the Act and only after issuance of e-auction notice, the petitioner has approached this Court. Though this Court on appreciation of fact, especially when the Senior Counsel pointed out that the agricultural land sought to be auctioned, had granted an interim stay of the e-auction sale on condition that the petitioner has to deposit 25% of the outstanding amount with the bank within a period of six weeks, the same was not complied with by the petitioner. Further, having secured an interim order in their favour, the petitioner has also indulged in trespassing into the mortgaged property, factory and seems to have taken away the granite gravel loaded along with the tipper trucks as alleged by the respondent bank.

19. When the counter affidavit was filed by the respondent, alleging misuse of the orders passed by this Court by an order dated 21.07.2017, this Court directed the District Superintendent of Police, to render assistance by conducting a detailed enquiry and to submit a report with regard to allegations made by the bank, regarding the misuse of orders passed by this Court, by the petitioner. On 31.08.2017, this Court also directed the learned Additional Public Prosecutor to communicate the copy of the order dated 23.08.2017 to the District Superintendent of Police, Erode. The Superintendent of Police, has conducted an enquiry and submitted a report on 04.09.2017 before this Court. From the report, it is seen that the Superintendent of police when he arrived at the Petitioner's property, there was no Watchman or Guard in the said place and no quarry work was going on, at the time of his visit. It could be seen from the report that the possession of the property, which was hypothecated in favour of the bank, has been taken as early as on 19.11.2016. On 12.07.2017, It is seen that the petitioner has entered into the premises and carried away the Jally materials from the site through a tipper lorry and minidor vehicle from the factory.

20. The respondent counsel contended that lorries bearing Registration Nos.TN36AW4945 and TN36AY9419 hypothecated with this bank, were taken away by the petitioner on 25.07.2017 along with her son by trespassing into the property and further, took away the granite gravel loaded along with tipper trucks. But, in the report submitted by the Superintendent of Police, Erode District, it is found that the incident occurred on 12.07.2017 was true, since the jally was loaded in the tipper lorry and

minidor vehicle and unloaded at Mylambadi and Reddypalayam respectively by the petitioner's husband, which act is not warranted, when the entire property has been taken possession by the bank. With regard to the incident occurred on 25.07.2017 as stated by the respondent bank, is contradictory, since the petitioner herein had entered into the quarry only on 26.07.2017. The statement recorded by the Superintendent of Police during his enquiry from Tr.Raman and Tr.Chinnasamy would clearly show that the petitioner has trespassed into the property after being taken possession by the respondent bank under Section 13(4). However, it is not clear from the report submitted by the police that the petitioner and her son had trespassed into the mortgaged property on 25.07.2017.

21. This Court on appreciating the initial submissions made by the Senior Counsel, granted an interim stay on condition, by directing the petitioner to deposit 25% of the outstanding amount due to the respondent bank within a period of six weeks. Even till date, the petitioner has not complied with the order, and sought for further time even today, when there is default. However, the petitioner has successfully stalled the e-auction by the interim order passed by this Court and after securing the interim order that too a conditional order. It could be inferred from the conduct of the petitioner that the petitioner's had only an intention of stalling the e-auction. The action of the petitioner after getting the interim order is highly condemnable.

22. The learned Senior Counsel for the petitioner argued on the irregularity in payment, committed by the bank, but, there is no answer from the petitioner as to why she has not chosen to challenge neither 13(2) notice nor the possession notice under Section 13(4) of the SARFAESI Act which was invoked by the respondent bank. The petitioner having not challenged the initial proceedings, cannot set her foot in the property, by challenging the e-auction notice. In similar circumstances, this Court as well as the Honorable Supreme Court, on many occasions laid down the law, in the matter pertaining to action under SARFAESI Act, cannot be set aside under Article 226, when there is a remedy available to them to approach Debt Recovery Tribunal.

23. The petitioner having failed to challenge any of the banks' proceedings before the appropriate forum, and at the appropriate time, cannot be permitted to allege irregularities which are factual aspects against the bank, that too at the time of e-auction stage. The petitioner ought to have approached the DRT at the initial stage itself. The petitioner who has not chosen to challenge neither 13(2) nor 13(4) notices before the appropriate forum, has no right to approach this Court under Article 226 when there is an alternative remedy. Though the first hypothecation deed states only 3.11 acres and the second hypothecation deed states only 1 acre and sale deed documents are mortgaged, but the said sale deed copies are not produced

before this Court. As pointed out by the Senior Counsel Mr.Silambanan, learned counsel for the petitioner and from the perusal of the hypothecation deed produced by the bank, it is seen that 18 movable properties (Machineries and Vehicles) have also been brought for auction which were not mortgaged by the petitioner to the respondent bank. Hence, if the petitioner is aggrieved by the sale notice issued regarding movable properties which are not alleged to have been mortgaged to the respondent bank, they can approach the concern bank authority.

24. Under these circumstances, the petitioner has not made out any case for interference from this Court against the impugned order and hence, the Writ petition deserves to be dismissed. The petitioner having secured the interim order against the e-auction notice dated 26.06.2017 by way of conditional order, successfully stalled the e-auction proceedings scheduled on 26.07.2017, failed to comply with the conditional order passed by this Court on 21.07.2017, and behaved in an irresponsible manner, had approached this Court with unclean hands. Hence, this Court feels, it is a fit case to impose cost of Rs.50,000/- as against the petitioner for indulging in such kind of activities. Accordingly, the Writ Petition is dismissed, directing the petitioner to pay a cost of Rs.50,000/- to the Hon'ble Chief Justice Relief fund within a period of three weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

raja

To

1.The Branch Manager
Authorised Officer, Canara Bank,
Bhavani Branch, Rajalakshmi Complex,
Mettur Main Road, Bhavani - 638 301.

2.The Divisional Manager
Canara Bank, Circle Office,
No.524, Old No.563/1,
Anna Salai, Teynampet
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Copy To:
The Sub Assistant Registrar,
Accounts Section,
High Court, Madras.

+1cc to Mr.Kaavya Silambanan Associates, Advocate, S.R.No.32395
+1cc to Mr.T.S.Gopalan and Co, Advocate, S.R.No.32081

W.P.No.18590 of 2017
and
W.M.P.Nos.20135 & 20177 of 2017

RJ(CO)

rrs 29/11/2018