BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

RESERVED ON : 30.10.2018

DATE OF DECISION : 12.12.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.(MD)No.3486 of 2018

M/s Ashok Saw Mill
rep.by its Partnership
Mr.Harish N.Patel
46/4A, Chennai Bye Pass Road
Ariamangalam
Trichy 620 010 .. Petitioner

-vs-

1. The Authorised Officer
Indian Overseas Bank
Trichy Main Branch
Trichy

2. M/s Vasantha Teleservices Ltd.,
12, 4th Main Road, Kottur Gardens
Kottur, Chennai 600 085

3. The Debt Recovery Tribunal
Madurai

4. The Debt Recovery Appellate Tribunal
Chennai .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the order dated 16.01.2018 in the RA(SA) No.14 of 2011 on the file of the Debts Recovery Appellate Tribunal, Chennai, confirming the order dated 13.10.2010 in S.A.No.104 of 2007 passed by the Debts Recovery Tribunal, Madurai and quash the same and consequently set aside the sale notice dated 26.7.2007 and sale certificate registered as Document No.3004 of 2009 dated 24.10.2009.

For Petitioner :Mr.S.Sethuraman for Mr.V.Karthikeyan

For Respondents :Mr.F.B.Benjamin George for R1
Mr.C.Mahadevan for
Mrs.AL.Ganthimathi for R2

ORDER

T.RAJA, J.

M/s Ashok Saw Mill, Tiruchirappalli, a borrower under the first respondent-Indian Overseas Bank, Tiruchirappalli, has filed the present writ petition challenging the impugned order dated 16.01.2018 in the RA(SA) No.14 of 2011 on the file of the Debts Recovery Appellate Tribunal, Chennai, confirming the order dated 13.10.2010 made in S.A.No.104 of 2008 passed by the Debts Recovery Tribunal, Madurai, quash the same and consequently set aside the sale notice dated 26.7.2007 and the sale certificate registered as Document No.3004 of 2009 dated 24.10.2009.

2. Learned counsel for the petitioner submitted that the petitioner-partnership firm availed credit facilities from Indian Overseas Bank, Tiruchirappalli in the year 1998 by pledging the properties, namely, (a) Plot Nos.16 and 17, Lakshmipuram Village, Tiruchirappalli, (b) factory land and building, machinery situate at S.No.46/4A measuring about 1 acre and 3 cents at bye-pass road, Ariyamangalam, (c) industrial plot at Sidco, Tiruvarrumboor and (d) 1.30 acres of land at Agaram, Tiruchirappalli, as security. The partners of the petitioner firm also formed yet another partnership firm in the name and style of M/s Ashok Wood Works and availed credit limits of Rs.70 lakhs from Indian Overseas Bank, Tiruchirappalli, the first respondent herein and the property given as collateral to Ashok Saw Mills was also extended as continuity of security to the limits availed by Ashok Wood Works. Due to the bank's false promise and non-cooperation in releasing the amount, the petitioner suffered business loss that finally led to the account of the petitioner classified as 'NPA'. Hence, the respondent-Bank issued notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') to both the firms claiming a sum of Rs.1,40,18,468.36 from M/s Ashok Saw Mill and a sum of Rs.1,56,46,638 from M/s Ashok Wood Works on 17.9.2002 and 21.9.2002 respectively. Continuing his arguments, the learned counsel submitted that as per the demand made by the respondent Bank, the bank issued possession notice under Section 13 (4). But, in the meanwhile, the respondent Bank filed O.A.No.423 of 2003 for recovery of a sum of Rs.3,64,41,844/- against both the firms, as the security being common. The respondent bank, by abandoning its claim under the SARFAESI Act, did not rescue its right to proceed under the SARFAESI Act in the O.A. filed before the Debts Recovery Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act. In the meanwhile, the respondent Bank agreed for OTS proposal with Ashok Saw Mill and Ashok Wood Works. But the OTS proposal did not materialise, as a result the respondent-Bank prosecuted the O.A., before the Debts Recovery Tribunal. However, all of a sudden, the respondent bank issued the sale notice dated 26.7.2007 for recovery of dues by bringing the secured assets (mortgaged properties) for sale, fixing the date of

opening the bid on 7.9.2007. Aggrieved by the sale notice, the petitioner challenged the same in W.P.No.27472 of 2007 on the file of this Court. However, when no interim order was granted, S.A.No.704 of 2007 was filed on the file of the Debts Recovery Tribunal, Madurai challenging the sale notice and the Debts Recovery Tribunal also, by order dated 7.9.2007, observed that the sale has to be deferred until further orders and also granted liberty to the bank to issue fresh publication and conduct fresh sale. In the meanwhile, the writ petition filed by the petitioner was dismissed with liberty to the petitioner to approach the Debts Recovery Tribunal. Aggrieved by the liberty granted to the petitioner, the respondent bank filed a review application before the Debts Recovery Tribunal and in the said review application, one I.A., was filed to stay the order of dismissal. At the time of hearing, the respondent bank managed to obtain an order for opening of the tender under the pretext that the participants are pressurising the bank to open the tenders. This Court also by order dated 6.10.2007 permitted the bank to open the tenders, but the confirmation of bids shall await the further orders in the review application.

3. Continuing his arguments, the learned counsel for the petitioner submitted that contrary to the direction, the bank by letter dated 8.10.2007 informed the second respondent M/s Vasantha Telecommunication Private Limited that their tender for Rs.179.48 lakhs is the highest bid in respect of the land in Tharanallur village, Ariyamangalam, Tiruchirappalli and two other persons were also informed about their highest bid in respect of two other properties in Agaram Papakurichi village, Roshan Nagar, Tiruchirappalli. The learned counsel for the petitioner again submitted that when this Court permitted the respondent only to open the tender and not the acceptance of the bid, more particularly, with an observation that the confirmation of sale was subject to the outcome of the order in S.A.No.104 of 2007, the respondent bank has to proceed with the sale only under the supervision of the Court and not on its own whims and fancies. When the review application was dismissed, the respondent bank wrote a letter to the second respondent demanding the payment of the balance bid amount, which is contrary to the order passed by this Court in permitting the bank to open the tender. Moreover, it also noticed that the respondent bank was showing keen interest to confirm the sale in favour of the single tenderer even after one year from the date of auction.

4. Adding further, it was contended that before the tenderer could deposit the balance amount, the writ appeal was dismissed upholding the order in the review application and the bank did not participate in the S.A. Instead it took up the matter to the Supreme Court by filing Special Leave Petition. The Special Leave Petition was also dismissed by the Supreme Court on 16.7.2009. In the meanwhile, apprehending that the respondent bank is trying to issue the sale certificate and dispossess the petitioner from the secured asset, the petitioner requested the Debts Recovery Tribunal to hear the restoration application and also requested for interim

protection restraining the bank from issuing the sale certificate. The Debts Recovery Tribunal also, by order dated 20.10.2009, directed the respondent bank not to precipitate the matter. Contrary thereto, the respondent bank, in collusion with the auction purchaser, fabricated the record to the effect that the sale certificate was issued on 15.10.2009 and the respondent bank also received the balance amount on 16.10.2009 and registered the sale certificate on 20.10.2009. This conduct of the respondent bank is against the direction issued by the Debts Recovery Tribunal not to precipitate the matter. However, the petitioner with great difficulty, obtained an order for restoration of the S.A., that was dismissed for default. By that time, the respondent bank executed the sale certificate. Aggrieved by the issuance of sale certificate, the petitioner filed I.A.No.1557 of 2009 for cancellation of the sale certificate and another I.A.No.1550 of 2009 for an order of injunction as well I.A.Nos.1591 and 1592 of 2009 for impleading the auction purchasers. But the Presiding Officer of the Debts Recovery Tribunal was acting in a biased manner showing some favour to the respondent bank and auction purchaser. Therefore, the petitioner was forced to file a transfer application before the Debts Recovery Appellate Tribunal requesting to transfer the pending S.A., from Debts Recovery Tribunal, Madurai to any other Tribunal. But the Debts Recovery Tribunal, Madurai closed all the interlocutory applications and proceeded with the S.A., and also reserved orders. The Debts Recovery Appellate Tribunal also dismissed the transfer application on 11.10.2010, as a result the Debts Recovery Tribunal also pronounced its order on 13.10.2010 dismissing the S.A. Aggrieved thereby, an appeal was filed before the Debts Recovery Appellate Tribunal raising various issues including the validity of the sale. The Debts Recovery Appellate Tribunal also dismissed the appeal on the ground that the petitioner had adopted dilatory tactics and utilised the opportunity for arguing the case before the Debts Recovery Tribunal.

5. Aggrieved by the said order, the present writ petition has been filed mainly focussing on the following issues:-

(i) Whether the respondent bank was right in receiving 75% of the amount and confirming the sale when the Supreme Court as well as this Court have directed that the confirmation of sale is subject to the result of S.A.No.104 of 2007?

(ii) Whether the respondent bank was right in receiving the 75% amount after a period of two years when rule 9(4) of the Security (Enforcement) Rules envisage within 15 days from the date of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the parties?

(iii) Whether the sale notice can be issued after a period of 5 years from the date of demand notice and the same is not barred by limitation?

6. Arguing further on the issue as to whether the respondent bank was right in receiving 75% of the amount and confirming the sale when the Supreme Court as well as this Court have directed that

the confirmation of sale is subject to the result of S.A.No.104 of 2007, more particularly, after a period of two years when rule 9(4) of the Security (Enforcement) Rules envisage within 15 days for receipt of the balance amount of 75% from the date of confirmation of sale, taking support from the judgment of the Apex Court in **Sidheswara Cooperative Bank Ltd., v. Ikbal, 2013 (6) MLJ 571**, the learned counsel for the petitioner submitted that the respondent bank had received 75% of the amount on 16.10.2009 after a period of two years from the date of opening the tenders. That shows that the bank has acted against rule 9(4) to oblige the auction purchaser who was not even a participant in the auction sale. But this has not been considered both by the Debts Recovery Appellate Tribunal and the Debts Recovery Tribunal in their orders. The learned counsel further submitted that while selling the property of the petitioner, the respondent bank completely failed to apply the settled legal position that the bank should make all endeavour to get the maximum price for the property sold in public auction, as it would be beneficial for the bank as well as the borrower, as per the ratio laid down by the Apex Court in **Karnataka State Financial Corporation v. N.Narasimhiah and others, (2008) 5 SCC 176.**

7. Moving to the next contention whether the bank has followed the procedure established by law in sale of the property and whether the SARFAESI Act and the Security (Enforcement) Rules are mandatory in nature, taking support from the judgment of the Apex Court in **Mathew Varghese v. Amrithakumar, CDJ 2014 SC 428**, he has pleaded that the Apex Court, quoting with approval the judgment in **Ram Kishun and others v. State of Uttar Pradesh and others (2012) 11 SCC 511**, has held clearly that undoubtedly, public money should be recovered and the recovery should be made expeditiously. But it does not mean that the financial institutions which are concerned only with the recovery of their loans, may be permitted to behave like property dealers and be permitted further to dispose of the secured assets in an unreasonable or arbitrary manner in flagrant violation of the statutory provisions, inasmuch as the right to hold property is a constitutional right as well as a human right. Therefore, a person cannot be deprived of his property except in accordance with the provisions of a statute. Again explaining that the respondent bank has not followed the procedure, further stated that the non-publication of the sale notice in vernacular language vitiates the sale proceedings, as observed by the Debts Recovery Tribunal in its order dated 7.9.2007 in S.A.No.74 of 2007. The prime intention of the legislature for publication of notice in the vernacular newspaper was considered vital and crucial, since such paper publication in the vernacular language having circulation in the locality is only to give wide publicity so as to reach the borrower/mortgagor regarding the proposed auction sale of his property on a particular date and also to give the borrower/guarantor an opportunity to redeem the property, if by any means the borrower is unaware of the action taken by the respondent bank. Such a beneficial procedure for all purposes had been flagrantly overlooked by the respondent bank to aid only the second

respondent/auction purchaser. This aspect also was completely overlooked, hence, the impugned order is liable to go.

8. Arguing on the plea of limitation against the respondent bank, the learned counsel for the petitioner contended that the sale notice issued by the respondent bank after a period of five years from the date of demand notice is wholly barred by limitation and this also has been completely and deliberately overlooked by the Debts Recovery Appellate Tribunal and the Debts Recovery Tribunal. Explaining further, the learned counsel submitted that when the demand notice was issued by the respondent bank on 17.9.2002 under Section 13(2), the sale notice was issued only on 26.7.2007 after a period of nearly five years from the date of demand. When the demand notice issued under Section 13(2) was within the period of limitation, the respondent bank cannot issue the sale notice after nearly five years. Pointing out the time granted by the SARFAESI Act to challenge the possession notice under Section 13(4) within a period of 45 days as per Section 17(1), he submitted that when the Act contemplates only a period of 45 days for the aggrieved person to challenge the possession notice under Section 13(4), it goes without saying that the respondent bank cannot take five years to issue the sale notice. Since the respondent bank has slept over the matter after issuance of the demand notice under Section 13(2) on 17.9.2002 and the possession notice under Section 13(4) on 4.12.2002, cannot issue the sale notice after nearly five years which is beyond the period of limitation. Therefore, the petitioner who is prepared to pay the entire dues should be allowed to pay the amount and redeem the property.

9. A detailed counter affidavit has been filed by the respondent bank. Mr.F.B.Benjamin George, learned counsel for the first respondent, urging this Court to dismiss the writ petition, since the petitioner has no locus to maintain the same, as the petitioner cannot question the notice issued in respect of the property of M/s Ashok Wood Works. Drawing the notice of this Court to the O.A.No.423 of 2003 filed by the respondent bank on the file of the Debts Recovery Tribunal, Coimbatore for recovery of a sum of Rs.1,72,50,910/- in the petitioner's account and Rs.1,91,90,934/- in the account of M/s Ashok Wood Works, thus totalling to Rs.3,64,41,844/-, in the light of Section 67-A of the Transfer of Property Act, on the filing of a single application, a reply statement was filed by the petitioner questioning the maintainability of the single O.A., on the ground that the petitioner and M/s Ashok Wood Works are separate legal entities. Again arguing that the O.A.No.423 of 2003 filed before the Debts Recovery Tribunal, Coimbatore has been transferred on the formation of the Debts Recovery Tribunal, Madurai and renumbered as T.A.No.688 of 2007, which is now pending, he submitted that when the respondent bank decided to bring the secured assets for sale under the SARFAESI Act taking separate measures under Sections 13(2) and 13(4) of the Act in respect of the above accounts, although common securities were involved, a combined sale notice dated 26.7.2007 was issued

separately mentioning the dues recoverable from the petitioner-M/s Ashok Saw Mill and M/s Ashok Wood Works indicating the last date for receiving the tenders on 6.9.2007 and the opening of the sealed tenders on 7.9.2007. The petitioner also challenged the said sale notice by filing W.P.No.27472 of 2007 on the ground that the bank's action was barred by limitation, therefore, they cannot bring the property for sale in view of the alleged counter claim pending against the respondent bank. During the pendency of the said writ petition, the petitioner and M/s Ashok Wood Works filed S.A.No.74 of 2007 before the Debts Recovery Tribunal, Madurai and challenged the sale notice dated 26.7.2007. When the respondent bank reported before the Tribunal that three tenders were received by them, the Debts Recovery Tribunal, Madurai, by order dated 7.9.2007, directed the respondent to defer the sale. The respondent bank also challenged the maintainability of the S.A.No.74 of 2007 by filing C.R.P.No.1392 of 2007 before this Court and obtained an order of interim stay on 21.9.2007 staying the entire proceedings in S.A.No.74 of 2007 and thereafter, the respondent bank proceeded to open the sealed tenders received pursuant to the sale notice dated 26.7.2007 and informed the same to the bidders and borrowers. In view of the said development, W.P.No.27472 of 2007 was disposed of on 18.9.2007 granting liberty to the petitioner to file an application under Section 17 of the SARFAESI Act within three weeks time. Aggrieved by the liberty granted to the petitioner to approach the Debts Recovery Tribunal, review application No.165 of 2007 was filed and this Court has granted an interim order on 6.10.2007 permitting the respondent bank to open the sealed tenders on condition that the confirmation of sale shall await further orders from this Court. On the basis of the liberty granted, the respondent bank opened the sealed tenders on 8.10.2007. This was reported to the Debts Recovery Tribunal by way of a memo filed in S.A.No.74 of 2007 on 10.10.2007. After taking note of the memo, both M/s Ashok Saw Mill and M/s Ashok Wood Works have chosen to withdraw the S.A.No.74 of 2007 unconditionally. Only thereafter, the petitioner alone has filed a fresh application in S.A.No.104 of 2007 challenging the same sale notice dated 26.7.2007. Therefore, when M/s Ashok Wood Works has already withdrawn S.A.No.74 of 2007 challenging the sale notice dated 26.7.2007 to bring the property belonging to M/s Ashok Wood Works, the petitioner cannot maintain the present writ petition. Therefore, he contended that the petitioner is a rank stranger and has no legal right to question the sale. Again it was argued that M/s Ashok Wood Works did not challenge the SARFAESI proceedings initiated by the petitioner and abandoned the challenge to their property and consequently the SARFAESI measures initiated against the said firm became final. Hence the subsequent single S.A.No.104 of 2007 filed by M/s Ashok Saw Mill alone by paying the court fee only for the dues in its account and not paying the court fee on the account of M/s Ashok Wood Works indicates that the petitioner is a stranger.

10. While replying to the limitation point, the learned counsel for the first respondent submitted that the sale notice

dated 26.7.2007 was issued within 12 years from the date of mortgage during which period the security interest can be enforced at any time. When the demand notice issued under Section 13(2) of the Act on 17.9.2002 demanding a sum of Rs.1,37,68,468.36 together with accrued and subsequent interest and costs in the petitioner's account was not honoured, the possession notice under Section 13(4) was issued on 4.12.2002. Thereafter, the sale notice dated 26.7.2007 was issued and the petitioner obtained an order of stay from this Court and the order of stay was in force between 27.12.2002 and 23.4.2004. Later on, the petitioner initiated settlement talks, as a result the SARFAESI proceedings were delayed. Hence the sale notice issued by the respondent bank is well within the period of limitation and at no stretch of imagination it can be contended that it is barred by limitation, he pleaded.

11. Heard learned counsel for the parties.

12. It is not in dispute that the petitioner firm M/s Ashok Saw Mill and another firm M/s Ashok Wood Works had availed credit facilities from the first respondent bank by furnishing various securities in the form of movable and immovable properties. The property belonging to M/s Ashok Wood Works was furnished as security to the loan by way of mortgage of deposit of title deeds created on 27.2.95. Thereafter, on 22.4.97, another mortgage was created over the said property to secure the loans availed by the petitioner from the first respondent herein. However, since the said borrowers violated the terms and conditions and diverted the loan amount to other business, as a result the loan accounts of both the firms became 'NPA' and that the borrowers admitted the said diversion of funds in writing. Hence the first respondent bank initiated proceedings under the SARFAESI Act by issuing a demand notice under Section 13(2) on 17.9.2002 in the petitioner's account demanding a sum of Rs.1,37,68,468.36 together with accrued and subsequent interest and costs. Later on, the possession notice dated 4.12.2002 was issued and thereafter similar action was also taken in the account of M/s Ashok Wood Works by issuing a demand notice on 21.9.2002 for recovery of a sum of Rs.1,56,47,638/- together with accrued and subsequent interest and costs and symbolic possession of the secured assets in the said account was also taken over on 4.12.2002 by issuing the notice under Section 13(4). The possession notice was questioned by both the petitioner and M/s Ashok Wood Works in W.P.Nos.46328 and 46329 of 2002 and in the said writ petitions, an order of interim stay was granted on 27.12.2002. However, these two writ petitions were finally disposed of on 23.4.2004 and the said interim order was vacated. Only then, both the petitioner and M/s Ashok Wood Works approached the respondent bank seeking one time settlement on furnishing letters dated 9.3.2005, 27.7.2005, 16.8.2005 and 25.10.2006 etc. However, the settlement talks ended in failure. Therefore, in a bid to recover the money, the respondent bank filed O.A.No.423 of 2003 on the file of the Debts Recovery Tribunal, Coimbatore for recovery of Rs.1,72,50,910/- in the petitioner's account and Rs.1,91,90,934/- in

the account of M/s Ashok Wood Works, totalling a sum of Rs.3,64,41,844/-, as it is permissible under Section 67-A of the Transfer of Property Act enabling a single application to be filed by the respondent bank.

13. As highlighted above, M/s Ashok Saw Mill filed a detailed reply statement in O.A.No.423 of 2003 originally filed on the file of the Debts Recovery Tribunal, Coimbatore, which is now transferred and pending on the file of the Debts Recovery Tribunal, Madurai and renumbered as T.A.No.688 of 2007, taking a stand that M/s Ashok Saw Mill and M/s Ashok Wood Works are separate legal entities. The relevant paragraph-3 of the reply statement filed by the petitioner is extracted hereunder:-

> "3....Even assuming the defendants 3 to 10 are either liable as partner or guarantor to both the firms, the firms are distinct & different entitles and it cannot be made liable to the claim against each other. Therefore before going into the merits of the case the above issue has to be decided as a preliminary issue. It is also pertinent to point out that the first and second defendants are two different legal and business entities and the partners if not all, some are different. Whereas the applicant bank has projected as if the partners in both the firm are one and the same and each firm has guaranteed the repayment of the loan of the other. However no guarantee agreement has been produced to that effect, therefore both the claims cannot be clubbed together and a comprehensive relief cannot be claimed against the defendants 1&2 jointly or severally. On this ground alone the O.A., has to be dismissed and the applicant has to be directed to file a separate claim for each one of the firm. The defendants are reserving their right to file a separate application in this regard if required at a later stage."

Having taken a stand that M/s Ashok Wood Works is a separate legal entity, it is not known how the present writ petition can be filed in respect of the property mortgaged by M/s Ashok Wood Works as security for their loan.

14. Secondly, when both M/s Ashok Saw Mill, the petitioner herein and M/s Ashok Wood Works jointly filed S.A.No.74 of 2007 before the Debts Recovery Tribunal, Madurai, the same came up for hearing on 10.10.2007. Challenging the sale notice dated 26.7.2007, on the report given by the respondent bank before the Debts Recovery Tribunal that there were three tenderers ready to take part in the auction, the Debts Recovery Tribunal, Madurai, by its order dated 7.9.2007, directed the respondent bank to defer the same. Aggrieved by the same, the respondent bank challenged the maintainability of the S.A.No.74 of 2007 by filing C.R.P.No.1392 of 2007 on the file of

this Court and obtained an order of stay on 21.9.2007 staying the entire proceedings in the pending S.A.No.74 of 2007. Thereafter the respondent bank proposed to open the sealed tenders pursuant to the sale notice dated 26.7.2007 and this was also informed to the bidders and borrowers. On receipt of the communication from the respondent bank, Writ Petition No.27472 of 2007 was filed by the petitioner on the ground that the action taken by the bank was barred by limitation, inasmuch as the sale notice cannot be issued after a period of five years from the date of issuance of possession notice. Thereafter, the said writ petition was disposed of granting liberty to the petitioner to approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. Aggrieved by the said liberty, the respondent bank filed review application No.165 of 2007 apprising this Court that three tenderers were available to take part in the auction. Taking note of the said fact, this Court by an interim order dated 6.10.2007 permitted the respondent bank to open the sealed tenders on condition that the confirmation of sale shall await further orders. Accordingly, the respondent bank also opened the tenders on 8.10.2007. The order passed by this Court was brought to the notice of the Debts Recovery Tribunal by way of a memo filed in S.A.No.74 of 2007 on 10.10.2007 after serving a copy of the same to the counsel for the applicant. In spite of the above fact, both the petitioner and M/s Ashok Wood Works have chosen to withdraw the said S.A.No.74 of 2007 unconditionally. Thereafter, on 15.10.2007, the petitioner alone filed fresh S.A.No.104 of 2007 on the file of the Debts Recovery Tribunal, Madurai and challenged the sale notice dated 26.7.2007. However, the sale held in favour of the second respondent was not questioned. As the petitioner has not paid the court fee in respect of the property mortgaged by M/s Ashok Wood Works, the petitioner is a stranger in respect of the property mortgaged by M/s Ashok Wood Works. This is evidenced from the record of proceedings passed by the Debts Recovery Tribunal, Madurai in Sr.No.2328 dated 15.10.2007 as to the return of the application to the petitioner for compliance of the defects, which reads as follows:-

> "Following defects have been observed in the S.A.:-
>
> (1) Possession notice in respect of "M/s Ashok Wood Works" is produced at page nos.14-15. Possession notice in respect of "M/s Ashok Saw Mill" is not produced.
>
> (2) cover in respect "emergent petition" SR 1329 requires to be neatly typed, as the same is handwritten.
>
> Hence, returned along with the IA's filed vide SR Nos.2329 & 2330. Time for curing the defects - 15 days."

Thereafter, the petitioner, on compliance of the defects, has re-presented the petition and by order dated 18.10.2007, the Debts

Recovery Tribunal passed the following order:-

"Reference proceeding notes.

2. The case is re-presented in time ad the defects stated vide note 1 ante have been duly rectified. This S.A., is filed within the period stipulated in the order of Hon'ble High Court of Madras (Madurai Bench), placed at page no.53. Application fees of Rs.37,750/- paid is sufficient for the outstanding loan amount of Rs.1,37,68,468.36 as stated in the possession notice dated at page no.14. All the documents mentioned in the index have been duly produced. The S.A., is in order and if approved, we may number this S.A.
3. An emergent petition and a stay petition have also been filed with this S.A.
4. Submitted for orders, please.
Registrar's endorsement – This SA may be numbered."

Hence, on the ground of locus, the writ petition has to fail, as the petitioner is seeking to set aside the sale in the account of M/s Ashok Wood Works which cannot be countenanced.

15. Thirdly, when the petitioner also filed I.A.No.1723 of 2010 to implead the purchasers of fourth item of property in the sale notice, surprisingly, the petitioner did not prosecute the said application and it was also clsoed. Moreover, in the present writ petition also, he has not chosen to implead them as parties. When the sale of different items of property have taken place by virtue of the sale notice dated 26.7.2007, the ground taken by the petitioner against the second respondent herein is very much available to the sale held in respect of S.Subramanian and R.Baskaran over the said fourth item of property. Hence the petitioner cannot claim that one sale is valid and the other sale held based on the very same sale notice is invalid.

16. The learned counsel for the petitioner repeatedly questioned whether the respondent bank was right in receiving 75% of the purchase price after 15 days from the date of confirmation of sale. To answer this argument, it is necessary to extract sub-rules (3), (4) & (5) of Rule 9 of the Security Interest (Enforcement) Rules, 2002, which read as follows:-

"9(3). On every sale of immovable property, the purchaser shall immediately, i.e., on the same day or not later than next working day, as the case may be, pay a deposit of twenty-five per cent of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorised officer conducting the sale and in default of such deposit, the property shall be sold again.

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months.

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit to the secured creditor all claim to the property or to any part of the sum for which it may be subsequently sold."

17. A careful reading of Rule 9(3) vividly indicates that the auction purchaser shall pay a deposit of twenty five per cent of the amount of sale price which is inclusive of earnest money deposited, if any, to the authorised officer conducting the sale on the same day or not later than next working day. Admittedly, in this case, the auction purchaser has paid twenty five per cent of the amount as per sub-rule (3) of Rule 9. However, the auction purchaser has to pay the balance amount of purchase price to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months. Since the petitioner's Writ Petition No.27472 of 2007 challenging the sale notice dated 26.7.2007 was dismissed granting liberty to approach the Debts Recovery Tribunal, Madurai, the respondent bank, aggrieved by the liberty granted to the petitioner to approach the Debts Recovery Tribunal, filed Review Application No.165 of 2007 along with M.P.No.1 of 2007 before this Court on the ground that since the borrower has not taken any steps to prefer appeal under Section 17 of the SARFAESI Act at the time of possession, they should not be allowed to approach the Debts Recovery Tribunal under Section 17 of the Act. Finally, when the review application came up for hearing on 23.6.2008, this Court, dismissing the review application, confirming the liberty granted to the borrower to approach the Debts Recovery Tribunal, although the borrower withdrew the earlier S.A.No.74 of 2007, made it clear that the borrower can file a fresh application with a further direction to the Debts Recovery Tribunal to dispose of the S.A.No.104 of 2007 expeditiously, preferably within two months from the date of receipt of a copy of the order and the confirmation of sale was subject to the outcome of the S.A.No.104 of 2007 before the Debts Recovery Tribunal. As against that order, the respondent bank preferred Writ Appeal No.926 of 2008, which came to be dismissed on 1.9.2008. Against the said order, the bank also unsuccessfully preferred special leave petition, as the same was dismissed by the Supreme Court on 16.7.2009. Thereafter, by a letter dated 15.10.2009, the bank has confirmed the sale and also requested the auction purchaser/second respondent to pay the balance amount of Rs.131.48 lakhs within 15 days from the said date. When the balance amount

was also paid by the second respondent, the sale certificate has been issued in their favour on 16.10.2009 in respect of the property owned by M/s Ashok Wood Works at Tharanallur Village, Ariyamangalam. Therefore, when the bank confirmed the auction on 15.10.2009 and gave 15 days time from the date of confirmation of sale for payment of the balance 75% of the purchase price, we do not find any infirmity in the action of the respondent bank, as the petitioner has been dragging on the matter before the Debts Recovery Tribunal on one pretext or the other and on one occasion, the S.A.No.104 of 2007 was also dismissed for non-prosecution on 2.4.2009. Even on the issue as to whether the sale notice can be issued after a period of five years from the date of demand notice, the same has to be answered holding that since action has been taken by the respondent bank within 12 years from the date of mortgage during which period the security interest can be enforced at any time, we hold that the bank was well within its power to recover the amount and at no stretch of imagination, it can be said that the action of the respondent in issuing the sale notice on 26.7.2007 is barred by limitation. Finally, the Debts Recovery Tribunal has also dismissed the S.A.No.104 of 2007 holding that the petitioner has not produced any material to show that the respondent bank has violated any statutory provision or the procedural requirement as per the rules made under the Security Interest (Enforcement) Rules, 2002, which order has also been confirmed by the Debts Recovery Appellate Tribunal. Accordingly, issue nos.(i), (ii) & (iii) are answered against the petitioner.

18. It may be mentioned herein that the petitioner was also given the option for one time settlement during the pendency of the matter. Unfortunately, they have not made use of the same. Besides, the petitioner has not even mentioned why they were unable to avail the one time settlement proposal.

19. For all the aforementioned reasons, this Court is not inclined to interfere with the order passed by the Debts Recovery Appellate Tribunal, Chennai confirming the order passed by the Debts Recovery Tribunal, Madurai as well as the sale notice and the consequent sale certificate, which are impugned in the writ petition. Accordingly, the writ petition fails and it is dismissed. Consequently, W.M.P.(MD) No.20029 of 2018 is also dismissed. No costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(cS-II)

To

1. The Authorised Officer
Indian Overseas Bank
Trichy Main Branch
Trichy

2. The Debt Recovery Tribunal
   Madurai

3. The Debt Recovery Appellate Tribunal
   Chennai

+1cc to Mr.V.Karthikeyan, Advocate Sr.No.99890
+2cc to Mr.Benjamin George, Advocate Sr.No.100076

SS

KM/PM/SAR2/20.12.2018/14P/7C

Order in
W.P.(MD)No.3486 of 2018
12.12.2018