



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.12.2018

DELIVERED ON : 13.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.P (MD) No.24044 of 2018

and

W.M.P (MD) Nos.21750 and 21751 of 2018

D.Ramanathan

... Petitioner

Vs.

1.The District Collector,
Ramanathapuram District,
Ramanathapuram.

2.The Tahsildar,
Paramakudi Taluk,
Ramanathapuram District.

3.The Authorised Officer,
City Union Bank Limited,
24-B, Gandhi Nagar,
Kumbakonam - 612 001.

4.The Manager,
City Union Bank Limited,
Paramakudi,
Ramanathapuram District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for the records relating to the impugned notice issued by the second respondent in Na.Ka.A1/6663/2018, dated 01.12.2018 and quash the same as illegal and consequently, direct the respondents not to evict the petitioner and his family members from the house property situated at Paramakudi Town, Old Ward No.7, New Ward No.1, Present Ward No.1, Vaigai nagar, 2nd Main Road, T.S.Nos.6/3-35b, Ward B, Block 4, Old Survey No.110/C, Door No.7/200, 7/200-13, Plot No.134.

For Petitioner : Mr.K.Mahendran

For Respondents : Mr.VR.Shanmuganathan
Special Government Pleader for R.1 & R.2
Mr.R.Pandivel for R.3 & R.4



ORDER

R.SUBBIAH, J.

This writ petition has been filed seeking a writ of Certiorarified Mandamus to call for the records relating to the impugned notice issued by the second respondent in Na.Ka.A1/6663/2018, dated 01.12.2018 and quash the same as illegal and consequently, direct the respondents not to evict the petitioner and his family members from the house property situated at Paramakudi Town, Old Ward No.7, New Ward No.1, Present Ward No.1, Vaigai nagar, 2nd Main Road, T.S.Nos.6/3-35b, Ward B, Block 4, Old Survey No.110/C, Door No.7/200, 7/200-13, Plot No.134.

2. According to the petitioner, he is a proprietor of Gowtham Stores, Paramakudi and he approached the fourth respondent bank for Over Draft facility and availed credit facility of Rs.10,00,000/- (Rupees Ten Lakhs only) under the loan account OLCC A/c.5120 2001 0008 140 and he also mortgaged his house property as security in favour of the fourth respondent bank by way of executing the Memorandum of Deposit of title deeds on 17.02.2015. The petitioner was regular in paying the EMI to the fourth respondent bank, however, due to financial crisis, he could not repay the installments regularly. Thus, the respondents 3 and 4 classified his loan account as Non-Performing Asset and initiated proceedings under the SARFAESI Act and the third respondent issued a demand notice dated 10.11.2016 under Section 13(2) of the SARFAESI Act. Though the petitioner sought for six months time to settle the entire dues and also prayed for One Time Settlement, the same did not evoke any positive response.

3. It is the further case of the petitioner that the respondents 3 and 4, turning deaf-ears to the procedures contemplated under the SARFAESI Act, issued a re-tender cum auction sale notice dated 02.06.2017, in respect of the house property of the petitioner, informing that the petitioner has to pay a sum of Rs.9,87,218/- (Rupees Nine Lakhs Eighty Seven Thousand Two Hundred and Eighteen only) and the last date for submitting the tenders was fixed on 28.06.2017 at 12.00 noon and the opening of the tenders was at 01.00 p.m., on that date. Thereafter, the third respondent issued a letter dated 28.06.2017 stating that the property was sold for a sum of Rs.43,00,000/- (Rupees Forty Three Lakhs only) and 25% of the bid amount was paid and thus, requested to hand over the possession of the property in question. Hence, the petitioner filed S.A.No.264 of 2017 before the Debts Recovery Tribunal, Madurai, impugning the sale notice dated 02.06.2017 and also filed I.A.No.1331 of 2017 for stay of further proceedings of the impugned sale notice, however, the said application was dismissed on 28.07.2017.

4. Further, the petitioner stated that the respondents 3 and 4 filed an application before the first respondent under Section 14 of the SARFAESI Act and the first respondent passed an order on



09.07.2018. Challenging the same, the petitioner filed W.P(MD) No.16325 of 2018 before this Court and the same was also dismissed on 25.07.2018. Thereafter, the petitioner filed M.A(SR)No.--- of 2018 along with an application in I.A.(SA)No.954 of 2018 seeking to condone the delay of 372 days in filing the appeal before the Debts Recovery Appellate Tribunal and the same was also dismissed. The petitioner is preparing to file a Civil Revision Petition before this Court after obtaining the copy of the dismissal order passed by the Debts Recovery Appellate Tribunal. While so, the second respondent affixed the impugned notice dated 01.12.2018 on the doors of the house of the petitioner, stating that the petitioner has to hand over the possession of the house property to the second respondent on or before 05.12.2018, in default, they will take possession by evicting them and hand over the same to the third respondent. In these circumstances, the present writ petition came to be filed.

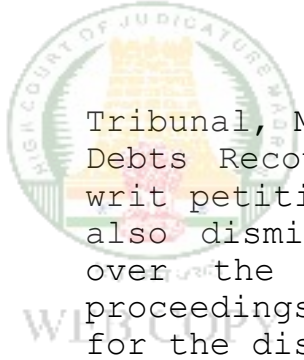
5. When the matter is taken up for hearing, the learned Counsel for the petitioner submitted that the petitioner is ready and willing to pay the entire amount due and payable as on date to the fourth respondent bank. Further, unless and until a clear 30 days notice is given to the petitioner, no sale or transfer can be resorted to by the fourth respondent bank and hence, the impugned notice issued by the second respondent pursuant to the auction sale conducted on 28.06.2017 as per the sale notice dated 02.06.2017 warrants interference at the hands of this Court and prayed for quashing the same. In support of his submissions, he placed heavy reliance on the following decisions:

(i) *Mathew Varghese v. M.Amirtha Kumar and others* reported in 2014-3-L.W. 289;

(ii) *J.Rajiv Subramaniyan v. Pandiyas* reported in (2014) 3 MLJ 121 (SC) : 2014 (2) CTC 323; and

(iii) *Vasu P.Shetty v. Hotel Vandana Palace and others* reported in 2014 (3) CTC 193.

6. Per contra, the learned Counsel for the respondents 3 and 4, reiterating the averments in the counter affidavit filed by the third respondent, contended that when the second respondent issued a notice directing the petitioner to hand over the possession of the property, the petitioner submitted a representation cum consent letter dated 30.07.2018 requesting the second respondent to grant time for handing over the actual possession of the property on or before 29.08.2018 and thereafter, time was extended till 29.11.2018 and the same had also been pointed out in the impugned notice dated 01.12.2018. Now, the property was sold and sale certificate was registered and the respondents 3 and 4 have to hand over the actual possession of the property to the auction purchaser and if the possession was not handed over to the auction purchaser, he will be put to irreparable loss. Further, he also contended that the application belatedly filed before the Debts Recovery Appellate Tribunal was also dismissed and the application for stay in I.A.No.1331 of 2017 in S.A.No.264 of 2017 before the Debts Recovery



Tribunal, Madurai was also dismissed and the appeal filed before the Debts Recovery Appellate Tribunal, Madurai, was dismissed and the writ petition in W.P(MD)No.16325 of 2018 filed by the petitioner was also dismissed. Despite the same, the petitioner without handing over the possession of the property, tried to drag on the proceedings by filing the present writ petition and hence, prayed for the dismissal of this writ petition.

7. Heard the submissions of the learned Counsel for the parties and perused the materials available on record.

8. In the recent judgment of the Honourable Supreme Court dated 05.10.2018 in *ICICI Bank Limited v. Umakanta Mohapatra*, Civil Appeal Nos.10251 - 10265 of 2018 arising out of SLP(C)Nos.16758 - 16772 of 2015, it is held as follows:

"Despite several judgments of this court, including a judgment by Hon'ble Mr. Justice Navin Sinha, as recently as on 30.01.2018, in *Authorized Officer, State Bank of Travancore and Anr., vs. Mathew K.C.*, (2018) 3 SCC 85, the High Courts continue to entertain matters which arise under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), and keep granting interim orders in favour of persons who are Non-Performing Assets (NPAs).

The writ petition itself was not maintainable, as a result of which, in view of our recent judgment, which has followed earlier judgments of this Court, held as follows:-

18. We cannot help but disapprove the approach of the High Court for reasons already noticed in *Dwarikesh Sugar Industries Ltd., vs. Prem Heavy Engineering Works (P) Ltd., and Another*, (1997) 6 SCC 450, observing:-

"32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."

The writ petition, in this case, being not maintainable, obviously, all orders passed must perish, including the impugned order, which is set aside."

9. In view of the recent judgment of the Honourable Supreme



Court, we are of the opinion that the present writ petition is not maintainable and the appropriate remedy available for the petitioner is to approach the Debt Recovery Tribunal and thus, the present writ petition fails.

10. In the result, this writ petition stands dismissed, however, granting liberty to the petitioner to work out his remedy, if any, before the Debt Recovery Tribunal in accordance with law. No costs. Consequently, the connected writ miscellaneous petitions are also dismissed.

Sd/
Assistant Registrar (P&A)

/True copy/

Sub Assistant Registrar (CS-II)

TO

1. The District Collector,
Ramanathapuram District,
Ramanathapuram.

2. The Tahsildar,
Paramakudi Taluk,
Ramanathapuram District.

+1cc to Mr. R. PANDIVEL, Advocate, SR.No.100233

W.P (MD) No.24044 of 2018
and

W.M.P (MD) Nos.21750 and 21751 of 2018
13.12.2018

RSB

KK/RSK/SAR-2/13.12.2018/5P-4C