



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.09.2018

CORAM :

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

W.P(MD)No.9846 of 2017 and
W.M.P. (MD) Nos.7541 & 7542 of 2017

T.K.Krishnasamy

... Petitioner

vs.

The Authorised Officer,
Repco Bank,Dindigul Branch
Sri Sakthi Complex,
No.50H, New Agraharam
Ram & Company Petrol Bunk
Palani Road, Dindigul - 624 001

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the impugned tender/public auction sale notice dated 11.05.2017 on the file of the respondent and to quash the same as illegal.

For Petitioner : Mr.K.R.Laxman
For Respondent : Mr.Pala Ramasamy

O R D E R
(Order of the Court was made by T.RAJA, J.)

This Writ Petition is directed against the tender/public auction sale notice dated 11.05.2017 issued by the authorised officer under the SARFAESI Act by the borrower.

2. Learned counsel for the petitioner would submit that the petitioner's wife and his brother's son had availed a mortgage loan from the respondent herein and for the said loan, the petitioner's wife offered a property as co-applicant and his brother's son also stood as a guarantor. Since there was a default in making the repayment, the respondent, without issuing demand notice under Section 13(2) of the SARFAESI Act, issued possession notice under Section 13(4) of the said Act, asking for repayment of the dues. There was also violation in fixation of the rate of interest. Initially, the total interest was shown as Rs.24 lakhs for the period from 11.05.2017 to 11.05.2018 and as such a sum of Rs.18 lakhs was credited as interest. However, the respondent Bank, without issuing notice under Section 13(2) of the said Act, all of a sudden issued notice



under Section 13(4) of the SARFAESI Act.

3. It was pleaded that the petitioner filed S.A.No.62/2017, inter alia, that no opportunity was given to the petitioner as contemplated under Section 13(2) of the Act and that Rs.26 lakhs was paid, the learned Tribunal was pleased to pass an order of stay subject to condition to deposit 20% of the amount mentioned in the possession notice and 10% to the tune of Rs.4,44,500/- was also ordered to be paid within ten days from 27.02.2017 and remaining 10% to the tune of Rs.4,44,500/- was also ordered to be paid by 31.03.2017. As the petitioner was able to pay only Rs.1,50,000/-, on 09.03.2017, due to the intervention of demonetization and other financial set back faced by the petitioner, which gone beyond the control of the petitioner, he was unable to comply with the said conditional order, hence the petitioner sought some more time. But the respondent failed to entertain such request and as a result, S.A.No.62/2017 was also dismissed for default on 09.07.2018.

4. The learned counsel for the respondent submitted that since the SARFAESI Appeal No.62/2017 filed by the petitioner against the possession notice was dismissed, the respondent Bank, taking note of the fact that the petitioner did not even move any application seeking extension of time for payment of amount ordered by the Tribunal and there was nothing surviving against the respondent to initiate action against the petitioner, issued the present impugned notice. Therefore, it is pleaded that the petitioner cannot come to this Court, as it is nothing but a forum shopping. When the petitioner approached the Debts Recovery Tribunal in S.A.No.62/2017 and conditional order was passed, giving ample opportunity to the petitioner to pay the dues to the respondent Bank, but the same has not been utilised by the petitioner.

5. We also find that when S.A.No.62/2017 against the possession notice issued under Section 13(4) of the SARFAESI Act was dismissed and the order dated 27.02.2017 also clearly shows that the petitioner was given opportunity to pay the money, but he was unable to comply with, we are unable to entertain the writ petition. Accordingly, the writ petition fails and the same is dismissed. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS I)

/True Copy/

Sub Assistant Registrar(CS IV)

RR

1CC TO MR. PALA. RAMASAMY, ADVOCATE SR 82760

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