IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.06.2019

C O R A M
THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

W.P.No.11989 of 2016 and W.M.P.No.10722 of 2016
and W.P.No.12386 of 2016
and W.P.No.12387 of 2016

W.P.No.11989 of 2016

M/s.Rainbow Foundations Ltd.,
Rep by its Joint Managing Director Mr.Gajraj Jain,
4, Thanikachalam Road,
T.Nagar, Chennai 600 017 ... Petitioner

-vs-

1. The Authorized Officer,
State Bank of India
Stressed Assets Management Branch,
No.32, Montieth Road,
Red Cross Building, Egmore,
Chennai 600 008.

2. The Sub Registrar
Purasawalkam,
Chennai 600 007

3. Rathna Stores (Firm)
Represented by its Partners

4. S.Krishnakumar
[R3 and R4 are impleaded as per order dated 23.02.2017 by B.R.J in W.M.P.No.12488 of 2016 in W.P.No.11989 of 2016] ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of mandamus directing the second respondent to register and return the Sale Certificate issued by the first respondent dated 23.03.2016.

W.P.Nos.12386 and 12387 of 2016
State Bank of India
Stressed Assets Management Branch,
No.32, Montieth Road,
Red Cross Building, Egmore,
Chennai 600 008. ..Petitioner in W.P.Nos.12386 and 12387 of 2016

-vs-

1. The Tax Recovery Officer-1,
Income Tax Department,
Government of India,
Room No.327A, 3rd Floor, New Block,
No.121, M.G.Road, Aayakar Bhavan,
Chennai 600 034.

2. The Sub Registrar,
Purasakkam Sub Registrar Office,
Puraswakkam, Chennai.

3. M/s.Rathna Stores (Firm)
Rep by its Managing Partner,
Old No.47, New No.91, Pondy Bazzar,
T.Nagar, Chennai 600 017.
And also at
No.199, Purasawalkkam High Road,
Purasawalkkam, Chennai 600 007.

4. The Joint Commissioner of Income Tax,
Income Tax Department, Government of India,
Room No.322, 3rd Floor, Wanaparthy Block,
No.121, M.G.Road, Chennai 600 034

..Respondents in W.P.Nos.12386 and 12387 of 2016

Prayer in W.P.No.12386 of 2017: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of mandamus directing the second respondent to receive, register and return the Sale Certificate dated 23.03.2016 executed by the petitioner in favour of M/s.Rainbow Foundations Ltd., in respect of the vacant land bearing Old Door No.58, then Nos.74 and 75, present Door Nos.177 and 179, Purasawalkam High Road, Chennai 600 007, R.S.No.121/1 of Block No.5, Purasawalkam Division, Purasawalkam-Perambur Taluk, measuring an extent of 3 grounds 231 sq.ft or thereabouts, sold in the Auction held on 22.02.2016 under the provisions of SARFAESI Act, within a time frame as may be specified by this Court.

Prayer in W.P.No.12387 of 2017: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorarified mandamus to call for the records of the impugned communication of the fourth respondent dated 28.03.2016, reiterating the order of attachment of the mortgaged properties and seeking for proportionate claim to the sale proceeds in derogation of the rights of the petitioner and to quash the same, being arbitrary, non considerate, derogation of the statutory provisions and being against the principal of natural justice and air play and direct the respondents 1 and 4 not to interfere with the right of the petitioner in enforcing the mortgaged assets.

For Petitioner in W.P No.11989 of 2016 ...Ms.Vasudha Thiagarajan

For Petitioners in WP.No.12386 & 12387 of 2016 - Mr.Elayarajkumar for M/s. Ramalingam & Associates

For Respondent-1 in all W.P 11989 of 2016 ... Mr.P.Elayarajkumar for M/s.Ramalingam Associates

For Respondent-2. in all WPs ..Mr.T.M.Pappiah Special Government Pleader

For Respondent in WP.Nos.12386 & 12387/2016 .. Mrs.Hema MuraliKrishnan

For Respondent 3 & 4 in WP.No.11989 of 2016 & For Respondent 3 in WP Nos.12386 & 12387 /2016 .. Mr.A.Tamilvanan

COMMON ORDER

Challenging the impugned communication of the fourth respondent/The Joint Commissioner of Income Tax, dated 28.03.2016 and seeking a direction to the second respondent to receive, register and return the Sale Certificate dated 23.03.2016 executed by the State Bank of India in favour of M/s.Rainbow Foundations Ltd., the present Writ Petitions are filed.

2. M/s.Rainbow Foundations Ltd., is a Public Limited Company duly registered under the Companies Act, 1956. The State Bank of India had issued an e-auction sale notice dated 13.01.2016 for sale of the property, which is the vacant land, situated at Old Door No.58, Nos.74 and 75, present Door Nos.177 and 179, Purasawalkam High Road, Chennai 600 007, R.S.No.121/1 of Block No.5, Purasawalkam Division, Purasawalkam - Perambur Taluk, measuring an extent of 3 grounds 231 sq.ft or thereabouts and sold in the Auction held on 22.02.2016.

3. The said property originally belonged to one S.Krishnakumar, owner of M/s.Rathna Stores Firm, who was subsequently impleaded in W.P.No.11989 of 2016. The said

property was secured by the State Bank of India towards the financial facility offered by the Bank to M/s.Rathna Stores. Pursuant to the credit facility being availed, the borrower/Rathna Stores (Firm) and the guarantor/S.Krishnakumar executed necessary documents in favour of the Bank. The said cash credit facility was enhanced and the primary securities were also extended to the enhanced credit as well. While so, on 28.06.2014, the loan accounts were classified as Non-Performing Assets on account of the default in servicing the accounts. Hence, the State Bank of India issued a notice on 30.06.2014 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short SARFAESI Act) to the borrower and the guarantors. As per the said notice, the amount due and payable by the Borrower is Rs.22,19,21,526/-. Following the notice under Section 13(2), a possession notice under Section 13(4) of the SARFAESI Act was issued to the borrower and the guarantors on 23.09.2014. Aggrieved by the same, the borrowers filed the Appeal in S.A.No.376 of 2014 before the DRT-III, Chennai.

4. In the meanwhile, the State Bank of India had obtained an interim order from the Chief Metropolitan Magistrate, Allikulam, Chennai and got warrant issued on 06.02.2016 for taking possession. In the appeal preferred by the borrowers, the Debt Recovery Tribunal granted an order of interim stay on condition that 20% of the amount due as per the demand notice, be deposited on or before 28.10.2014. Thereafter, a second notice under Section 13(4) was also issued on 18.11.2014, as the borrowers did not remit the amount as per the interim order. Hence, S.A.No.376 of 2014 came to be dismissed. The Bank also issued e-auction sale notice bringing the properties for sale on 17.10.2015.

5. On 20.11.2015, 3 items of the properties belonging to the borrowers, which were mortgaged with the Bank, were attached by the Income Tax Department for recovery of Tax arrears. The Income Tax Department is also put on notice of sale by the Bank. Once again, the borrowers filed S.A.No.481 of 2015, challenging the auction notice dated 17.10.2015, in which, the borrowers were directed to deposit Rupees One Crore on or before 03.12.2015 and stay of confirmation of sale was granted. There were no bidders in the said auction. Thereafter, yet another e-auction notice was issued by the Bank on 13.01.2016, fixing the date of Sale on 22.02.2016. As there was no sale, S.A.No.481 of 2015 filed by the fourth respondent in W.P.No.11989 of 2016 was dismissed as infructuous.

6. On 22.02.2016, e-auction was conducted and the petitioner in W.P.No.11989 of 2016 was declared to be the highest and successful bidder, as it had purchased the first item for a sum of Rs.14,58,00,000/-. The said petitioner also claimed to have

deposited the initial amount as per the tender conditions. Once again, the borrowers challenged the e-auction dated 22.02.2016 by filing S.A.No.121 of 2016. In the meanwhile, the possession was taken by the Bank and the balance amount had to be deposited by M/s.Rainbow Foundation Limited. On 15.03.2016, M/s.Rainbow Foundation Limited had deposited the balance of the bid amount. On 23.03.2016, the possession certificate was also issued by the Bank in favour of M/s.Rainbow Foundation Limited regarding the item No.1 and the sale certificate was issued on the same day.

7. As there was an attachment at the behest of the Income Tax Department, the auction purchaser was constrained to file the Writ Petition in W.P.No.11989 of 2016 seeking a mandamus directing the second respondent therein to register the Sale Certificate and return the same to the auction purchaser. In the meanwhile, in S.A.No.121 of 2016, the borrowers were directed to file an Affidavit of Undertaking to deposit the entire amount by 20.05.2016. On 12.04.2016, W.P.No.11989 of 2016 was allowed by this Court, directing the second respondent therein to register the document and release the same within a period of two weeks from the date of receipt of copy of that order. After disposal of the Writ Petition, the borrowers filed the impleading application. A Writ Appeal in W.A.No.633 of 2016 was filed by M/s.Rathna Stores(Firm) with the leave of the Court against the order passed in W.P.No.11989 of 2016 dated 12.04.2016. The said Writ Appeal was disposed of and the matter was remitted back for fresh consideration and the second respondent therein was also directed to release the document as decided by the learned Single Judge in W.P.No.11989 of 2016.

8. Pursuant to the order of remand, Rathna Stores(Firm) and S.Krishna Kumar were impleaded as respondents 3 and 4 in W.M.P.No.12488 of 2016 in W.P.No.11989 of 2016, vide order dated 23.02.2017. In the meanwhile, in S.A.No.121 of 2016, the borrowers sought for extension of time by four months for depositing the entire amount. Whileso, the State Bank of India had filed Writ Petitions in W.P.No.12386 of 2016 and W.P.No.12387 of 2016 seeking a direction to the second respondent to register and release the Sale Certificate in favour of the auction purchaser and to quash the attachment proceedings respectively.

9. The stand of the second respondent/the Sub Registrar is that the secured creditors will hold the first priority charge on the mortgaged properties based on the mortgage created to secure the outstanding dues in the credit facilities availed. The Bank also had issued a letter dated 10.02.2016 to the Income Tax Department informing them about the first charge over the property and put them on notice that the surplus sale proceeds be paid to the Department and requested for No Objection Certificate (NOC) and not to stand in the way of sale of the

properties. However, there was no response to the same. In the meanwhile, the auction sale was conducted on 22.02.2016 and the sale certificate was also issued in favour of the auction purchaser. As the Income Tax Authorities failed to issue NOC and reiterated the attachment, the registration of Sale Certificate in favour of the auction purchaser in exercise of the rights under the SARFAESI Act, could not be done.

10. Aggrieved by the non-registration of the Sale Certificate, W.P.No.12386 of 2016 was filed by the Bank against the Income Tax Authorities. It is claimed by the bank that the Income Tax Authority does not have any statutory power to issue NOC and thus, the Income Tax authorities cannot interfere with the right of the secured creditors to proceed against the secured assets under the provisions of the SARFAESI Act. Therefore, the Sub Registrar has got no authority to demand NOC from the Income Tax Authorities for the purpose of the registration of the Sale Certificate. As the petitioner in W.P.No.11989 of 2016 is the successful bidder, the Bank issued a Sale Certificate under Rule 9(6) of the Rules framed under the SARFAESI Act on 23.03.2016 and possession was also handed over to the purchaser on the same day, vide possession certificate dated 23.03.2016, and on the same day, the petitioner had approached the Registering Authority for registering the sale certificate after paying the Stamp duty of Rs.72,90,000/- and 14,58,100/- for registration and presented the Sale Certificate for registration, which has been refused by the registering authorities.

11. The question that has to be now decided in all the three Writ Petitions is as to whether the Income Tax Authorities can deny the auction purchaser's right to register the sale certificate on the ground of the attachment of the property.

12. The learned counsel for the auction purchaser contended that M/s.Rainbow Foundation Limited was the successful bider in the public auction and the sale certificate was issued under SARFAESI proceedings and the Stamp Duty under Article 18 r/w 23 of the Indian Stamp Act, 1899, was also paid on the sale price fixed in the Sale Certificate. Hence, the Registering Authority cannot have any right to deny the title of the auction purchaser on the pretext that the properties were already attached by the Income Tax Authorities and that the Income Tax Department will have title over the property.

13. In the present case, on 10.06.2016, in the interest of Justice, in the said Writ Appeal, a Division Bench of this Court had afforded an opportunity to the borrowers to implead themselves as parties and gave one more chance to deposit the entire amount before Registration. Though the order was passed on 10.06.2016, till such time the Writ Petition(s) was taken up,

the borrowers had not taken any steps to deposit the entire amount.

14. A secured creditor has secured free hand to resort to a Sale without the intervention of the Court or Tribunal. Section 13(8) of the SARFAESI Act clearly stipulates that the borrower can have full right to redeem the property by tendering all the dues to the secured creditor at any time before the date fixed for sale or transfer. Even at the last moment, if the borrower is tendering the amount, the sale can be stopped. In the case on hand, the borrower and the guarantor failed to comply with the provisions of Section 13(8) of the SARFAESI Act. At this juncture, it is useful to extract Section 13(8) of the SARFAESI Act as hereunder :

> 13. Enforcement of security interest.-
>
> (8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secure asset."

A reading of the above clause (8) makes it clear that if the dues of the secured creditor together with costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor and no further step shall be taken.

15. The learned counsel for the petitioner/auction purchaser placed reliance on the decision of the Hon'ble Supreme Court reported in 2018 (5) SCC 491 [Dwarika Prasad -vs-State of Uttar Pradesh], wherein, it has been held in paragraph 9 as follows:

> "In the present case, the appellant failed to comply with the provisions of Section 13(8). The statute mandates that it is only where the dues of the secured creditor are tendered together with costs, charges and expenses before the date fixed for sale or transfer that the secured asset is not to be sold or transferred. The appellant was aware of the proceedings initiated by the Bank for asserting its right to recover its dues by selling the property. The appellant moved the DRT in Securitisation Application No. 176 of 2015. During the pendency of those proceedings, orders were passed by the Tribunal on 01.02.2016 and 03.02.2016. The appellant moved the Allahabad High Court which by its order dated 09.03.2016 restrained the Bank and the auction-purchaser from executing the sale deed until 15.03.2016. The stay was

> extended till 28.03.2016 by which date the appellant was to deposit an amount of Rs.7,00,000/- The balance was required to be deposited by 30.04.2016. While the appellant deposited an amount of Rs.7,00,000 with the bank, he failed to deposit the balance in accordance with the provisions of Section 13(8). Even after the writ proceedings before the High Court were withdrawn, the appellant did not deposit the balance due together with the costs, charges and expenses. The sale was confirmed, a sale certificate was issued and a registered sale deed was executed on 12.04.2016. The appellant failed to ensure compliance with Section 13(8). The right to redemption stands extinguished on the execution of the registered sale deed. This is also the view which has been expressed in the Judgment in Mathew Varghese (Mathew Varghese Vs. M.Amritha Kumar (2014 (5) SCC 610 : 2014 (3) SCC (Civ) 254)."

16. In this case, the borrower had not taken any efforts to settle the dues to the State Bank. Despite impleading themselves after the remand, the borrowers failed to save the secured asset as provided under Section 13(8) of the SARFAESI Act. The sale was confirmed, sale certificate was issued and also registered. What remains to be done is the release of the document alone. As the right of redemption is already lost, the borrower has extinguished all his remedies. Applying the above principles even in the case on hand and the borrower having allowed the right of redemption to be extinguished, and he cannot have any right over the suit property.

17. In the above circumstances, these writ petitioners are entitled to succeed. Accordingly, all these writ petitions are allowed. Consequently, the communication of the Joint Commissioner of Income Tax, dated 28.03.2016 is quashed and the second respondent is directed to receive the Sale Certificate dated 23.03.2016, which was already produced before him, register the same and then return it to the petitioner in W.P.No.11989 of 2016. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Connected W.M.P.No.10722 of 2016 is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

srn

To

1. The Authorized Officer,
   State Bank of India
   Stressed Assets Management Branch,
   No.32, Montieth Road,
   Red Cross Building, Egmore,
   Chennai 600 008.

2. The Sub Registrar
   Purasawalkam,
   Chennai 600 007

3. The Joint Commissioner of Income Tax,
   Income Tax Department, Government of India,
   Room No.322, 3rd Floor, Wanaparthy Block,
   No.121, M.G.Road, Chennai 600 034

4. The Recovery Officer,
   Income Tax Department,
   Government of India,
   Room No. 327/A, 3rd Floor,
   New Block, No.121, MG Road, Adayakar Bhavan,
   Chennai-600 0034.

+4ccs to M/s.Ramalingam Associates,Advocate, S.R.No.45620 & 43621
+2ccs to Mr.R.Thiagarajan Advocates, S.R.No.45336.
+1cc to Mrs.Hema Muralikrishnan, Advocate, S.R.No.45518.
+1cc to Mr.S.Sanjay Kumar, Advocate, S.R.No.45222.

W.P.No.11989 of 2016 and
W.M.P.No.10722 of 2016
and W.P.No.12386 of 2016
and W.P.No.12387 of 2016

RSIE(CO)

RRS(21/06/2019)