THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.12.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALTHA

WP.No.35526 of 2019
and W.M.P.No.36368 of 2019

1.M/s.D.M.Silks
rep.by its Proprietrix
Mrs.S.Geetha

2.D.Sampath ....Petitioners

vs.

1.The Authorised Officer,
Tamil nadu Mercantile bank Ltd.,
for Kancheepuram Branch,
40A, Vanigar Street,
kancheepuram 635 501.

2.D.Selvam ...Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorari calling for all records on the file of the 1st respondent pertaining to the sale notice dated 29.11.2019 and quash the same.

For Petitioner : Mr.T.V.Badrinarayanan
For Respondents : Mr.Anil Relwari

ORDER

[Order of the Court was made by M.SATHYANARAYANAN,J.,]

The 1st petitioner is a Partnership concern and approached the 1st respondent Bank for availing credit facilities in the nature of cash credit facility to improve the business.

2. The 1st respondent had sanctioned cash credit to the limit of Rs.20,00,000/-. It appears that on account of financial crisis and other related factors, the 1st petitioner /

proprietrix unable to service the loan and therefore, the account of the said Concern has been declared as ''Non Performing Assets''. The 1st respondent had invoked the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the SARFAESI Act') has issued a notice dated 10.02.2014 under Section 13(2) of the said Act and it was followed by a Possession Notice dated 07.05.2014 under Section 13(4) of the SARFAESI Act.

3. The 1st petitioner as well as the second petitioner, who is a mortgagee / Guarantor, challenging the legality of the Possession Notice dated 07.05.2014, filed S.A.No.234 of 2014 on the file of the Debts Recovery Tribunal - III at Chennai. The 1st respondent also filed an application under Section 19(1) of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 against the petitioners as well as against one Mr.D.Sampath and Mr.D.Selvam, who appear to be co-owners, for recovery of Rs.31,59,140.90/- together with interest with an additional prayer for sale of hypothecated items in the Schedule 'A' and sale of immovable property in Schedule 'B' and the Original Application is still pending.

4. The Debts Recovery Appellate Tribunal, vide order dated 01.01.2018, had dismissed S.A.No.234/2014 on merits. Aggrieved by the dismissal of the said application, the petitioners 1 and 2 preferred an appeal before the Debts Recovery Appellate Tribunal in AIR (SA) No.67/2018 and after entertainment of the appeal, an order of pre-deposit was made and since it was not complied with, the main appeal itself came to be dismissed for want of compliance of pre-deposit, vide order dated 08.06.2018. It appears that thereafter valuation of immovable properties was done and the certificate of valuation was given by Mr.K.Rafique Adam Sheriff dated 08.06.2019. Thereafter sale notices were issued and the 1st petitioner made a challenge to the sale notice dated 10.01.2019, filed S.A.No.31/2019 before the Debts Recovery Tribunal - III, Chennai and a conditional interim order was passed and it was also complied with and for want of bidders, the sale could not be proceeded with. In terms of the said Sale Notice, the 1st respondent again on 15.06.2019 has issued a third Sale Notice and challenging the same, the petitioners once again filed an appeal in S.A.No.140/2019 on the file of the Debts Recovery Tribunal - III, Chennai and an order of conditional interim stay was granted and it was also complied with.

5. The Tribunal, vide order dated 30.08.2019, has dismissed S.A.No.140/2019 for the reason that no sale has taken place on the scheduled properties and as such, the said impugned Sale

Notice has become infructuous and further observed that since the appellants could not make out any meritable grounds in their appeal, the appeal is devoid of merits and is liable to be dismissed and accordingly, dismissed the same.

6. It appears that pending disposal of the said S.A.No.140/2019, the petitioners herein filed I.A.No.521/2019 praying for appropriate orders to summon various officers of the respondent Bank to justify his stand as to on what basis they had fixed the upset price suo-motu in the first sale notice dated 06.06.2018 without obtaining valuation report in violation of the provisions contained in Rule 8(5) of the SARFAESI Act and adopted the same in respect of two further Sale Notices dated 10.01.2019 and 15.06.2019 respectively. The Tribunal, having found that the main appeal itself came to be disposed of, filing of Interlocutory application is only to drag the proceedings and permitted the respondent Bank to proceed further in their course of recovery and accordingly dismissed the said Interlocutory Application.

7. Thereafter, yet another Sale Notice dated 26.09.2019 came to be issued and making a challenge to the Sale Notice, the petitioner filed W.P.No.30379 of 2019 and it was entertained and an order of ad interim stay was passed. Subsequently, the Writ Petition was taken up for final disposal and though it was submitted by the learned counsel appearing for the petitioner as to the undervaluation of the property and lesser upset price, fixed by the respondent Bank, the Division Bench was not inclined to go into the same and having found that the sale could not be conducted in pursuant to the Sale Notice dated 26.09.2019, dismissed the same with an observation that it is open to the petitioner therein to assail the fresh sale notice issued by the first respondent Bank in future. Thereafter, the 1st respondent has issued the impugned Sale Notice dated 29.11.2019 fixing the date of auction on 24.12.2019 at 11.30 am and challenging the same, the present Writ Petition is filed.

8. The learned counsel appearing for the petitioner would vehemently and forcefully contend that the properties are worth about Rs.3.5 crores and without proper valuation, it is sought to be sold at paltry price of Rs.33,00,000/- and would further add that the valuation has also been done properly in accordance with the relevant guidelines. Though in the earlier SARFAESI appeal it was also one of the primordial points, the Tribunal did not consider the same for the reason that no sale had taken place in pursuant to the Sale Notice and as such, the matter requires consideration at the hands of this Court.

9. The learned counsel appearing for the petitioner would further add that since auction of sale with the said upset price is fixed on 24.12.2019, prays for stay of all further proceedings.

10. Per contra, Mr.Anil Relwani, learned counsel appearing for the 1st respondent Bank would submit that since the petitioner is having an effective alternative remedy, the present Writ Petition is not maintainable and further add that it is the fifth attempt made by the 1st respondent Bank to sell the secured assets and insofar as the valuation done, a qualified Civil Engineer has done the valuation and given the Valuation Report and it cannot be faulted with and the only endeavour of the petitioners is to stall the auction proceedings and prays for dismissal of this Writ Petition.

11. This Court has carefully considered the rival submission and also perused the materials placed before it.

12. No doubt in S.A.No.140/2019, which was preferred against the Sale Notice dated 15.06.2019, the petitioner did raise the ground as to the undervaluation of the property as well as the fixation of upset price and however, the Tribunal did not deal with the said issues on merits of the matter for the reason that no sale had took place in terms of the said Sale Notice dated 15.06.2019. However, it also appears that the Tribunal had gone into the merits of the matter and found that the appellants / writ petitioners could not make out any meritable ground in their appeal. A perusal of the order dated 30.08.2019 in S.A.No.140/2019 would disclose that the Tribunal did not deal with the issue as to the plea made by the petitioners as to the valuation and fixation of upset price.

13. In the considered opinion of this Court, whether the valuation was done properly and so also the reduction of upset price, cannot be gone into by this Court in exercise of it's jurisdiction under Article 226 of the Constitution of India and that apart, the petitioners are having effective alternative remedy under Section 17 of the SARFAESI Act and in fact on earlier occasions, he availed the said remedy by filing appeals before the jurisdictional Debts Recovery Tribunal and it came to be disposed of on the ground of want of bidders.

14. In the light of the alternate remedy available, the petitioners are at liberty to avail the same and if any specific ground is raised with regard to the valuation and reduction of upset price, the Tribunal has to consider the said plea also and pass orders accordingly.

15. The Writ Petition is disposed of with the above observation. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Registrar,
Debts Recovery Tribunal,
Chennai.

+2 cc to M/s.P.Rajavelu,Advocate Sr.No. 106760

AKM/02.01.2020/5P-4C /

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