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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.12.2019

CORAM

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

WP.Nos.35475 & 35479/2019 & WMP.Nos.36298 & 36301/2019

M.Anandabalaji

.. Petitioner in
both petitions

Versus

1. Tamil Nadu Mercantile Bank Limited
Pollachi Branch, rep.by the Authorised
Officer, Door No.76 and 77, New Scheme
Road, Pollachi 642 001.

2.Mrs.Vidhya

3.Mr.Sasi Kumar

.. Respondents
in both petitions

COMMON PRAYER:- Writ petitions filed under Article 226 of the Constitution of India prays to issue a Writ of certiorarified mandamus calling for the records relating to order of the Debts Recovery Appellate Tribunal at Chennai in MA[SA]-57 & 58/2019 [IA.Nos.1418 & 1419 in SA.No.261/2019 on the file of DRT, Coimbatore] dated 18.12.2019 and quash the same and consequently forbearing the first respondent in way of interfering with the peaceful possession and enjoyment of the property comprised in SF.No.24/1 [old number 24] situated at door number 2/142 [New Door Number 2/245] Devi Nagar, Plot No.A1 Solapalayam Village, Pollachi, till the disposal of the securitisation appeal in SA.No.261/2019 on the file of the Debts Recovery Tribunal at Coimbatore.

For Petitioner :	Mr.A.Edwin Prabakar
For R1 :	Mr.V.Chandrasekaran
For R3 :	Mr.Elayarajkumar for M/s.Ramalingam Associates



COMMON ORDER

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

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- (1) By consent, the writ petition is taken up for final disposal. Mr.V.Chandrasekaran, learned counsel accepts notice on behalf of the 1st respondent and Mr.Elayarajkumar, learned counsel accepts notice on behalf of the 3rd respondent.
- (2) The petitioner is the mortgagor / guarantor in respect of the loan availed by M/s.Anadabalaji Ginning Factory, a Proprietary Concern and in lieu of the default committed in servicing the Debts/loan, the 1st respondent / Bank initiated proceedings by issuing a Notice dated 27.09.2017 under Section 13[2] of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in short 'SARFAESI Act'], and demanded a sum of Rs.1,60,05,920/- as on 31.08.2017 for Cash Credit Loan Account with future interest @ 17.25% per annum or BRR with monthly rests on the aforesaid amount together with the incidental expenses and it was followed by the Possession Notice dated 19.04.2018. The petitioner, who is the son of the Principal Borrower, viz., Mr.G.Manickam, and also a mortgagor/guarantor, aggrieved by the Possession Notice dated 19.04.2018, filed SA.No.216 of 2018 on the file of the Debts Recovery Tribunal, at Coimbatore.
- (3) In the interregnum, the petitioner also moved the 1st respondent / Bank for One Time Settlement and vide communication dated 07.07.2018, the 1st respondent / Bank had informed the petitioner that the balance outstanding amount as on 30.06.2019 was Rs.1,86,26,847/- and therefore, advised him to remit the same with cost immediately, failing which SARFAESI proceedings already initiated, would continue. The Auction Sale Notice fixing the date of auction on 28.09.2018 was issued by the 1st respondent and challenging the same, the petitioner filed SA.No.388/2018 on the file of the DRT at Coimbatore and the 1st respondent/Bank also issued the Sale Notice for sale of immovable property through E-Auction and pending disposal of the same, also filed applications for stay. It appears that in the interregnum, the auction sale was conducted and it was knocked down in favour of one Mr.Sasi Kumar, the 3rd respondent herein and a Sale Certificate was also issued in his favour on 12.06.2019 which was duly registered before the Sub Registrar, Pollachi, bearing Document No.5254/2019.
- (4) The petitioner made a challenge to the auction sale in favour of the 3rd respondent herein by filing SA.No.261/2019 on the file of the DRT, at Coimbatore and in the said appeal, the 3rd respondent herein, took a stand that after registration of the



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Sale Certificate, the Village Administrative Officer of the concerned Village has issued the Ownership Certificate and based on the Sale Certificate, the electricity service connection had been transferred in his name and so also the patta, vide proceedings of the Zonal Deputy Tahsildar, dated 15.06.2019.

- (5) The application for interim orders in IA.No.1418/2019 in SA.No.261/2019 was taken up by the DRT, at Madurai - the Presiding Officer, In-charge of the DRT at Coimbatore and vide order dated 22.07.2019, the petition for stay came to be dismissed and the petition in IA.No.1419/2019 filed by the petitioner, restraining the 3rd respondent/auction purchaser from alienating and encumbering the property purchased by him, also came to be dismissed on the same day.
- (6) The petitioner, aggrieved by the dismissal of the petitions for interim orders, filed two appeals before the Debts Recovery Appellate Tribunal at Chennai and with regard to the waiver of pre-deposit, the DRAT has passed an order dated 29.08.2019, directing the petitioner to deposit a sum of Rs.60 Lakhs by way of pre-deposit within the stipulated time and according to the learned counsel for the petitioner, the order has also been complied with. The Tribunal, vide impugned order dated 18.12.2019, had taken up the miscellaneous petitions and dismissed both the petitions vide impugned common order dated 18.12.2019 by recording the reason that it was the second sale and in respect of the first sale, the upset price was fixed at Rs.3,25,25,000/- and since it could not attract any bidder, the upset price was reduced to Rs.2,93,25,000/- and in the auction sale held, the 3rd respondent herein, became the successful bidder and further noted the fact that the dispute between brother and sister cannot be made a basis for delaying and deferring the recovery exercise and having found that appeals are being devoid of substance, had dismissed the same and challenging the legality of the said common order, the present writ petitions are filed.
- (7) Mr. Edwin Prabakar, learned counsel for the petitioner would submit that DRAT at Chennai, had failed to take into consideration of the fact that the conditional pre-deposit order has been fully complied with by the petitioner and therefore, would have granted some breathing time so as to enable the petitioner to approach the 1st respondent / Bank as well as the auction purchaser for an amicable settlement and he would further add that the auction property is admeasuring to an extent of 29868 sq.ft., (+) the superstructure constructed on the land comprised in S.No.24/1 bearing Door No.2/142, New Door No.2/245, Solapalayam Village, Pollachi and as per the present Market Value, it is worth more than Rs.5 Crores and odd,



whereas without adopting a fair and proper procedure, even the upset price in terms of the first Sale Notice, got drastically reduced so as to enable the 3rd respondent / auction purchaser to purchase the property for a lower sum and he would further add that the petitioner is having a bright chance of success in the pending Appeals in SA.Nos.216/2018, 388/2018 and 261/2019 pending on the file of the DRT at Coimbatore and prays for appropriate direction, directing the Tribunal to dispose of the petitioner's appeals and till such time, prays for a direction, directing the 1st respondent / Bank to defer further proceedings in pursuant to the auction sale.

- (8) Per contra, Mr.V.Chandrasekaran, learned Standing counsel appearing for the 1st respondent / Bank would submit that in the absence of any tenable challenge as to the action initiated by the 1st respondent / Bank under the provisions of the SARFAESI Act, the points urged by the learned counsel for the petitioner do not merit any consideration and despite opportunities given, no full-fledged efforts have been taken by the petitioner to settle the dues and left with no other option only, the property was brought for sale and after complying with all the procedural formalities, the bid was knocked down in favour of the 3rd respondent herein and prays for dismissal of these writ petitions.
- (9) The learned counsel appearing for the 3rd respondent would submit that the Sale Certificate was also came to be registered, based on which, the electricity service connection was transferred in favour of the 3rd respondent and what remains to be done is the actual possession and therefore, in the light of the facts and circumstances, this Court may direct the 1st respondent / Bank to take appropriate action to hand over the actual physical possession of the property in his favour.
- (10) This Court has paid its best attention to the rival submissions and also perused the materials placed before it.
- (11) The grant of interim orders pending disposal of the appeal, is the discretionary order and a perusal of the orders dated 22.07.2019, passed by the Presiding Officer of the DRT at Madurai, in-charge of the DRT at Coimbatore, in IA.Nos.1418 and 1419/2019 in SA.No.261/2019 would disclose that the Tribunal had taken into consideration of the factual aspects and having found that it is not a fit case to grant interim orders, had dismissed the said applications and however, kept the appeal pending. The petitioner, made a challenge to the rejection of the applications for interim orders by filing appeals before the DRAT at Chennai and did comply with the pre-deposit conditional order by making a deposit of Rs.60 Lakhs.



(12)The Appellate Tribunal had taken note of the fact that the earlier conditional order could not be complied with by the petitioner, despite an opportunity was provided to him and having taken note of the fact that the DRT at Madurai, in-charge of the DRT at Coimbatore, had elaborately considered and arrived at the finding, found that the dismissal of the applications for interim relief, does not warrant interference.

(13)In the considered opinion of the Court, the DRT as well as the DRAT, at Chennai had exercised their discretion in a fair and proper manner and this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, has a limited judicial review in respect of the order passed by the DRAT and it is a well settled position of law that it cannot completely re-appreciate and arrive at an altogether a different conclusion. But, at the same time, this Court is inclined to issue direction to the DRT at Coimbatore, to dispose of the SA.Nos.216/2018, 388/2018 and 261/2019 at an early date.

(14)In the result, the writ petitions are dismissed and however, the Debts Recovery Tribunal, at Madurai, in-charge of the Debts Recovery Tribunal at Coimbatore, is directed to accord priority and dispose of SA.Nos.216/2018, 388/2018 and 261/2019 at an early date, preferably before 14.02.2020, uninfluenced by the findings / observations made in the orders dated 22.07.2019 made in IA.Nos.1418 and 1419/2019 in SA.No.261/2109.

(15)It is also made clear that till such time, the 3rd respondent shall not create any third party rights in respect of the property purchased by him in the auction sale.

(16)Further, in the light of the judgment reported in 2016 [12] SCC 18 [AXIS Bank V. SBS Organics Private Limited and Another], the Registry of the DRAT at Chennai, is directed to return the Demand Draft for a sum of Rs.60,00,000/- [Rupees Sixty Lakhs only] to the writ petitioner, within a period of one week from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

AP



To

The Authorised Officer
Tamil Nadu Mercantile Bank Limited
Pollachi Branch,
Door No.76 and 77, New Scheme
Road, Pollachi 642 001.

Copy to :-

The Debts Recovery Tribunal at Madurai,
in-charge of the Debts Recovery Tribunal at
Coimbatore.

[2] The Debts Recovery Appellate Tribunal at Chennai

+4 CCS to Mr.Edwin Prabakar, Advocate sr 105954 & 105953
+4 Ccs to M/s. Ramalingam Associates sr 106056 & 106057
+1 CC to Mr.V.Chandrasekaran, Advocate sr 106678.

WP.Nos.35475 & 35479/2019

RSK(CO)
SP(22/01/2020)