BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.08.2019
CORAM:
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
and
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.(MD)No.18434 of 2019
and
W.M.P.(MD)Nos.14858 and 14860 of 2019

M/s.Sri Veeramakali Rice Mill
Rep. by its Proprietor Mr.C.Pandi,
No.6, Sorgavasal Street,
Pallathur, Karaikudi,
Sivagangai District. ... Petitioner

- Vs. -

1.The Authorized Officer,
Canara Bank, Karaikudi Branch,
No.56 and 67, Chekkalai Road,
Karaikudi, Sivagangai District.

2.The Branch Manager,
Canara Bank, Karaikudi Branch,
No.56 and 67, Chekkalai Road,
Karaikudi, Sivagangai District. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records relating to the impugned Sale Auction Notice, dated 29.07.2019, issued by the first respondent herein published in the Daily Thanthi News Paper, dated 30.07.2019 and to quash the same as illegal.

For Petitioner : Mr.G.Prabhu Rajadurai for Mr.V.B.Sundhareshwar

For Respondents : Mr.C.Jawahar Ravindran

O R D E R
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[Order of the Court was made by
SENTHILKUMAR RAMAMOORTHY, J.]

This writ petition is directed against the auction sale notice, dated 29.07.2019 issued by the first respondent herein.

2.The petitioner took a loan from the second respondent bank and in view of the default in repayment of the said loan, proceedings were initiated under the SARFAESI Act. The auction sale notice that was issued on 25.06.2018 pursuant to proceedings under Section 13(4) of the SARFAESI Act, was challenged by the petitioner herein by filing S.A.No.366 of 2018 before the Debts Recovery Tribunal, Madurai. In the said appeal, an interim application bearing I.A.No.1839 of 2018 was filed and by order dated 26.07.2018, an ad-interim stay was granted not to confirm the sale until 26.10.2018 subject to condition that the petitioner should pay a sum of Rs.30,81,000/- in three equal installments within the time limit specified therein. The petitioner paid first two installments as directed by the Debts Recovery Tribunal, but the third installment was paid with a delay of one day. On account of the said delay, the interim stay granted on 26.07.2018 was vacated by order dated 26.10.2018. The said order vacating the stay was challenged in C.R.P.(MD)No.2472 of 2018, wherein by order dated 02.11.2018, this Court allowed the said Civil Revision Petition and restored the conditional order passed by the Debts Recovery Tribunal on 26.07.2018 in I.A.No.1839 of 2018 in S.A.No.366 of 2018 and further directed the Debts Recovery Tribunal, Madurai, to proceed with the pending S.A.No.366 of 2018 on merits and in accordance with law.

3.Thereafter, the petitioner requested for One Time Settlement of its loan accounts for a consolidated sum of Rs.90,00,000/- in full and final settlement and the said offer was accepted by the bank by communication dated 16.04.2019. The petitioner also filed a writ petition in W.P.(MD)No.11527 of 2019, whereby he prayed that the time limit for making payments as per the One Time Settlement should be extended until 21.05.2019, so as to enable him to make the payment. However, it appears that the petitioner did not make payments as per the said One Time Settlement. In these facts and circumstances, the bank issued the impugned E-auction sale notice on 29.07.2019, whereby the auction sale was fixed on 30.08.2019.

4.We heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents bank.

5.The petitioner contended that the ad-interim order of the Debts Recovery Tribunal in I.A.No.1839 of 2018 in S.A.No.366 of 2018 was restored by the order dated 02.11.2018 in C.R.P.(MD)No.2472 of 2018 and that the conditional order of the Debts Recovery Tribunal was fully complied with. Accordingly, he submitted that the petitioner is entitled to protection from the sale of his property until the disposal of S.A.No.366 of 2018. Consequently, he submitted that the impugned auction sale notice is liable to be interfered with because it has the effect of interfering with the order of interim stay, which was restored by an order of this Court. In effect, he submitted that it could render his appeal before the Debts Recovery Tribunal infructuous.

6.To the contrary, the learned counsel for the respondents bank submitted that the order of interim stay granted by the Debts Recovery Tribunal was only till 26.10.2018. He also referred to the documents relating to the One Time Settlement offer given by the petitioner herein and the acceptance thereof by the bank. He emphasised that out of total outstanding amount of about Rs.1,62,10,101/- as on 20.03.2019, the bank had agreed to accept the sum of Rs.90,00,000/- as full and final settlement. He further pointed out that an extension of time was also granted for the purpose of making payment as per the One Time Settlement scheme by order dated 08.05.2019 in W.P.(MD)No.11527 of 2019. Inspite of that, he submitted that the petitioner did not honour the demand made under the One Time Settlement scheme. Therefore, he submitted that the bank was constrained to issue the impugned auction sale notice so as to realise the huge outstanding of Rs.1,62,10,101/-. Consequently, he submitted that the impugned auction sale notice is not liable to be interfered with. He further submitted on a demurrer that even if such notice is interfered with, it should be limited to not-confirming the sale pursuant to the auction sale notice.

7.We perused the records and considered the oral submissions carefully.

8.On perusal of the order dated 26.07.2018 of the Debts Recovery Tribunal in the interim application in S.A.No.366 of 2018 and the order of this Court in C.R.P.(MD)No.2472 of 2018, it is evident that the order of interim stay was restored by this Court. It is also clear that the conditions imposed by the Debts Recovery Tribunal while granting interim stay have also been fulfilled. As regards the proceedings relating to the One Time Settlement, such proceedings are independent proceedings relating to the recovery of the total outstanding of the bank. In this connection, it is also relevant to state that this Court while disposing of the Civil Revision Petition, subsequently directed the Debts Recovery Tribunal, Madurai, to proceed with the pending S.A.No.366 of 2018 on merits and in accordance with law. We find that the said appeal was filed some time in July, 2018 and is still pending as on date.

9.Considering the totality of the facts and circumstances and in particular, the fact that the conditional order of ad-interim stay was complied with, we are inclined to set aside the auction sale notice, dated 29.07.2019 subject to the following directions:-

(a).The Debts Recovery Tribunal shall dispose of S.A.No.366 of 2018 on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order;

(b).Until disposal of the said S.A.No.366 of 2018, the bank shall not proceed with the sale of the Assets specified in the impugned auction sale notice;

(c).If the bank succeeds in S.A.No.366 of 2018, the bank is at liberty to proceed with such auction sale; and

(d).Any expenditure that was incurred in issuing the auction sale notice, may be debited from the account of the petitioner.

10.In the result, the writ petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Authorized Officer,
Canara Bank, Karaikudi Branch,
No.56 and 67, Chekkalai Road,
Karaikudi, Sivagangai District.

2.The Branch Manager,
Canara Bank, Karaikudi Branch,
No.56 and 67, Chekkalai Road,
Karaikudi, Sivagangai District.

3.The Presiding Officer,
Debts Recovery Tribunal, Madurai.

+1 CC to M/s.C. JAWAHAAR RAVINDRAN, Advocate (SR-83644[F] dated 27/08/2019)

+1 CC to M/s.V.B. SUNDHARESH WAR, Advocate (SR-83674[F] dated 27/08/2019)

W.P.(MD)No.18434 of 2019
27.08.2019

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