BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **23.09.2019**

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P.(MD)No.20466 of 2019

and

W.M.P.(MD)No.17088 and 17090 of 2019

D.Jeyakumar ... Petitioner

Vs.

1.Indian Overseas Bank,
Rep by its Authorized Officer,
Dharapuram Road,
Dindigul District.

2.Indian Overseas Bank,
Rep by its Branch Manager,
Dharapuram Road,
Ottanchatram-624 619,
Dindigul District.

3.C.R.Senthilkumar ..Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records of the Debt Recovery Appellate Tribunal at Chennai pertaining to the proceedings in RA(SA)No.88 / 2014 and quash the order dated 25.06.2019 confirming the order dated 11.07.2013 passed by the Debt Recovery Tribunal, Madurai and consequently quash the possession notice dated 02.08.2011 issued by the second respondent and sale certificate dated 29.08.2011 issued by the first respondent.

For Petitioner : Mr.P.Sesubalan Raja

For R1 and R2 : Mr.S.Pirammanayagam

For R3 : Mr.M.Senthil Kumar

ORDER

[Order of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.P.Susebalan Raja, learned counsel for the petitioner, Mr.S.Pirammanayagam, learned counsel for the first and second respondents and Mr.M.Senthil Kumar , learned counsel for the third respondent. By consent of both parties, this writ petition is taken up for final disposal.

2. This writ petition has been filed challenging the order of Debt Recovery Appellate Tribunal (in short DRAT'), by which the appeal filed by the petitioner challenging the order passed by the Debt Recovery Tribunal (in short 'DRT') in S.A.No.204 of 2011 was dismissed.

3. It is strenuously contended by the learned counsel for the petitioner that the statutory minimum period of notice of 30 days was not given to the petitioner / borrower and the property was sold by private negotiation prior to the expiry of 30 days and there is a clear violation of Rule 8(8) of SARFAESI Act. In respect of his contention the learned counsel placed reliance of the decision of the Hon'ble Supreme Court in the case of ***Mathew Varghese Vs. M.Amritha Kumar and others*** [(2014) 5 SCC 610]. Referring to paragraphs 29.3 to 30 of the said judgment, it is submitted that the petitioner / borrower was not given adequate opportunity as laid down by the Hon'ble Supreme Court in the said decision, which has interpreted Rule 8 and 9 of the Act.

4. To examine the correctness of the said statement, we have gone through the order passed by DRT in S.A.No.204 of 2011 dated 11.07.2013. The petitioner / borrower had raised an identical question before DRT stating that the sale by private treaty vitiated by non-adherence to the procedure contemplated under the Rules. This aspect of the matter was considered by DRT, in which in paragraph 9(vi), the following finding has been rendered:-

> *(vi)During the arguments it is submitted since there were no bids received for the two sale notices issues earlier, it obtained another valuation report on 14.06.2011. Meanwhile it has received the offers from a third party for purchase of said property. Shri C.R.Senthil Kumar sent letters on 05.08.2011 and 29.08.2011 offering to purchase the properties for Rs.21.60 lakhs. So it has decided to sell the subject property under private treaty as per the Act and the respondent vide their letter dated 09.08.2011 formed the applicant that it is proposed to sell the subject property under a private treaty as per the Act and advised him to bring better offer and requested send his offer 19.08.2011 and if no offer was received and the said property would be sold. Since, no reply received within the stipulated time and treating his silence as consent sold the same to*

the said third party under private treaty and issued a Sale Certificate on 29.08.2011 to the purchaser. After knowing the said sale only then the applicant sent a proposal informing that his friend is ready to redeem the property for RS.13 lakhs as outstanding was Rs.12,32,298/- as on 02.08.2011 for which the Authorised Officer sent replies clarifying the matter including the outstanding amount vide his letter dated 13.09.2011 and 14.09.2011. The said letters are acknowledgment of the proof of serving at filed at page No.44 to 50 of the Typeset. So the contention that they have not given any consent for sale by way of private treaty is not tenable. Had they got objections to the private treaty sale proposed by respondent vide his letter dated 09.08.2011 immediately he might have objected the same. Instead of making any objections for the private treaty the applicant himself brought a counter proposal for selling the sale at Rs.12,32,298/- as against the offer brought by the Bank for Rs.21.60 lakhs. The outstanding amount as on 31.05.2012 was Rs.20.27,722/- with further interest. In fact in the insolvency proceedings the applicants herein also declared the total value of the two properties as Rs.35 lakhs where as for the one property the bank got offer of Rs.21.60 lakhs and the bank took three valuation reports on the subject property in question. Therefore, these contentions are not tenable."

5. On a plain reading of the above finding, it is clearly evident that the respondent had issued notice to the petitioner stating that they intend to sell the property by a private negotiation and had an offer from a purchaser, namely, the third respondent, who is wiling to pay Rs.21.60 lakhs for the purchase of the property owned by the petitioner / borrower and the petitioner was granted liberty to bring a borrower to purchase the property for higher amount than that was offered by the third respondent as Rs.21.60 lakhs on or before 19.08.2011. However, the petitioner failed to bring any borrower for higher price before the said cut off date of 19.08.2011. Consequently, the property was sold by private negotiation and sale certificate was issued in favour of the third respondent on 29.08.2011. Though the sale certificate was issued in favour of the third respondent on the said date, till date the third respondent is not able to take physical possession of the property in question.

6. The DRT found that after knowing that the property was sold to the third respondent and sale certificate was also issued in favour of the third respondent, the petitioner informed the bank stating that the he is ready to redeem the property by paying a sum of Rs.13 lakhs by settling the outstanding due of

Rs.12,32,298/- as on 02.08.2011. The Authorised Officer sent reply in respect of the main objection to the sale by private treaty, stating that the petitioner was able to bring a counter proposal only for Rs.12,32,298/- as against the offer given to the Bank of Rs.21.60 lakhs.

7. Further, it is submitted that the outstanding due as on 31.05.2012 was Rs.20,27,722/-. Further, DRT stated that the insolvency proceedings were initiated against the petitioner and the total value of the property was declared as Rs.35 lakhs and for the one property the Bank had got offer of Rs.21.60 lakhs and the Bank took three valuation reports for the property in question. On the above factual matrix, DRT rejected the petitioner's claim. This was confirmed by DRAT.

8. The learned counsel for the writ petitioner has drawn the attention of this Court to Para 14 of the order passed by DRAT, which is impugned before us. It is submitted that DRAT stated that on the small technical defects, which may occur in the sale process, the sale cannot be set aside as a whole. This observation made by DRAT is incorrect and un-controverted with the decision in the case cited supra. We find that DRAT has not specifically dealt with the finding rendered by DRT in paragraph 9 (vi) of its order, dated 11.07.2013 and we find from the said paragraph that there has been full and due compliance of Rule 8 of the relevant Act. Apart from that the petitioner was not able to make an offer as offered by the third respondent. Therefore, in our view, DRT was right in dismissing the SARFAESI appeal and DRAT was also right in dismissing the appeal filed by the petitioner, against which, the present writ petition has been filed.

9. We find that there are no grounds to interfere with the order impugned before us. For the above reason, this writ petition is dismissed.

10. The learned counsel for the petitioner submitted that the property, which has been sold in the year 2017 to the third respondent is a dwelling house and the petitioner continues to reside there and he is also willing to make an offer. However, we cannot be asked to go into any such issues. Though the sale certificate was issued in favour of the third respondent on 29.08.2011, till date the third respondent is unable to obtain the actual physical possession of the property, which he purchased from the Bank by private treaty. Further more, the property is stated to be a dwelling house. Therefore, liberty is given to the petitioner to approach the third respondent with an appropriate offer. It is for the third respondent to consider the facts and take appropriate decision in the matter. The order of dismissal will not stand in the way of the third respondent in using his

discretion. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

Sub Assistant Registrar(CS)

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+1 CC to M/s.S.PRAMANAYAGAM, Advocate (SR-88492[F] dated 23/09/2019)

+1 CC to M/s.M.SENTHIL KUMAR, Advocate (SR-88647[F] dated 23/09/2019)

ORDER MADE IN
W.P.(MD)No.20466 of 2019
23.09.2019

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