

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.01.2020

CORAM

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

W.P.No.2289 of 2020 &
WMP.No. 2661 of 2020

1. RajkumarRangachari
2. Real Value Systems (P) Ltd.,
represented by its Director
RajkumarRangachari,
No.39/38, Besant Avenue,
Adyar, Chennai 600 020. ..Petitioners

Vs.

1. Pridhvi Asset Reconstruction and
Securitisation Company Ltd.,
No.1-155, Raja Praasadm,
4th Floor Wing-I, Masjid Banda Road,
Hyderabad 500 084.
2. The Branch Manager,
Andhra Bank,
Besant Nagar Branch,
7th Ave, GOCHS Colony,
Besant Nagar, Chennai 600 090 ..Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the execution of Assignment Deed dated 30.6.2016 registered on 18.10.2016 as Doc.No.3623 of 2016 in favour of the 1st respondent and issuance of Sale Notices No.316/2019/986 dated 14.11.2019 and 316/2019/1122 dated 21.12.2019 under Rule 9(1) of the Security Interest (Enforcement) Rules 2002 by the 1st respondent herein and to quash the same as illegal, defective, non-est in law and in violation of the mandatory requirements under SARFAESI Act 2002, consequently direct the 1st respondent to hand over all the documents/title deeds and the physical possession of the property namely residential Flat admeasuirng 4141 sq.ft. bearing at Flat Nos.VII/I and VII/II, No.2A/38 and 2A/39, on 7th Floor with open terrace area admeasuring 1645 sq.ft. and car

parking Nos.1, 2, 3 and 4 and undivided share of land measuring 1999.28 sq.ft. In R.S.No.4274/1, 4274/31, 4274/30, part of Door No.2/1, 3 new No.2/3 in Rams Block, Swathi Towers, Durgabaideshmukh Road, R.A.Puram, Chennai-28 .

For Petitioners : Mr. C. Prabakaran
For Respondents : Mr. Srinath Sridevan for R2

ORDER

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

The petitioner challenging the legality of the impugned sale notice dated 21.12.2019 issued by the 1st respondent come forward to file this writ petition.

2. A perusal and consideration of the materials placed before this Court by the petitioner, in the form of Typed set of documents, would disclose the following facts.

- a) The petitioners availed financial assistance from Andhra Bank, by creating mortgage in respect of an immovable property. In view of the default committed, the the authorised Officer of Andhra Bank, Besant Nagar Branch, Chennai, issued notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'Act') dated 2.7.2013, calling upon the petitioner to make the payment of SOD at Rs.1,78,30,637/- as on 30.06.2013 and Term Loan at Rs.31,08,648/- as on 30.06.2013 with subsequent interest and it was followed by a possession notice, dated 12.09.2013.
- b) The petitioners, in response to the same, submitted his representation dated 5.11.2014. In the interregnum, the debt was assigned in favour of the first respondent which is an Asset Reconstruction Securitisation Company and they having found that while issuing notice under section 13(2) of the Act and possession notice under section 13(4) of the Act, terrace area of 1645 sq.ft. of the mortgaged property have not been included, withdrew the said notice and issued a fresh notice dated 23.8.2016 under section 13(2) of the Act, demanding Rs.1,44,84,167/- as on 31.7.2016 together with interest and called upon the borrower/petitioner to pay the same within 60 days from the date of receipt of said notice.
- c) It appears that the 1st respondent company also got an order dated 23.5.2018 in CrI.M.P.No.953 of 2018 by invoking section 14(1) of the Act, passed by the Chief Metropolitan Magistrate Chennai, to get the actual physical possession of the property.

d) The petitioners has also made a challenge to the earlier sale notice dated 30.1.2019 issued by the 1st respondent herein by filing WP.No.7168 of 2019 and vide order of this Court dated 13.3.2019, the said writ petition was dismissed holding that the petitioner is having an effective alternative remedy under section 17 of the Act. After the dismissal of the writ petition, the impugned sale notice dated 14.11.2019, followed by a sale notice dated 21.12.2019 came to be issued and challenge is made to both notices in the present writ petition.

3. Learned counsel appearing for the petitioners would submit that in the notices issued by the Bank under section 13 (2) and 13(4) of the Act, the undivided share of land has not been indicated and for the first time in the impugned sale notice, 'undivided share of land measuring 1999.28 sq.ft in R.S.No.4274/1, 4274/31, 4274/30, part of Door No.2/1, 3, New No.2/3 in Rams Block, Swathi Towers, Durgabai Deshmukh Road, R.A.Puram, Chennai 600 028' has been indicated and therefore the impugned order per se is unsustainable.

4. It is further submitted by the learned counsel appearing for the petitioners that even before the registration of the assignment agreement, the 1st respondent has issued a notice and therefore on the date of issuing notice under section 13(2) of the Act, the 1st respondent lacks competence of jurisdiction to issue such kind of notice.

5. It is also submitted by the learned counsel appearing for the petitioners that admittedly, the property is located in one of the prime localities in the City of Chennai and it is attempted to be sold for a paltry amount in favour of a bidder who has already been identified by the 1st respondent and since gross injustice has been done to the petitioners, they pray for interference.

6. Per contra, Mr.Srinath Sridevan, learned Standing Counsel appearing for the 1st respondent Bank, on instructions, would submit that the grounds of points were urged by the petitioners in WP.No.7168 of 2019, which came to be dismissed, vide order dated 13.3.2019 for the reason that there is an effective, alternative remedy available for the petitioners and in the light of the dismissal of the writ petition, it is not open to the petitioners to re-urge the points before this court once again.

7. Insofar as non mentioning of undivided share of land in 13(2) and 13(4) notices under the Act, it is the submission of the respondent that it is only an irregularity and also produced valuation report which would indicate that the Civil Engineer has already done valuation in respect of undivided share of the land also. ■

8. As regards the issuance of notice under 13(2) of the Act, prior to the registration of the assignment in their favour, learned counsel appearing for the 2nd respondent, by drawing attention of this Court to the 47 of the Registration Act and submitted that once registration is effected it relates back to the date of execution of document and therefore deed of assignment is perfectly in order and he would further submit that the points resubmitted by the petitioner would revolve around the adjudication and disputed question of fact and in the light of the fact that alternative remedy is available, it is open to the petitioners to urge the same before the jurisdiction tribunal and prayed for dismissal of writ petition.

9. This Court, has carefully considered the submissions made on either side and perused the materials placed before it.

10. The points urged by the learned counsel for the petitioner namely (i) belated date of registration of the assignment deed; (ii), non mentioning of the undivided share of land in 13(2) and 13(4) notices issued under the Act and mentioning the same later in the impugned sale notice, (iii) valuation of upset price fixed by the 1st respondent for sale of the property, in the considered opinion of this Court, would definitely revolve around the adjudication and disputed question of facts. Therefore, this Court is not inclined to accept the same for the reasons that in the event of any positive findings given by this Court in this writ petition, it would definitely affect the valuable right of the petitioners in the appeal to be preferred before the Appellate Forum/jurisdiction Debt Recovery Tribunal. At the same time, this Court directs the 1st respondent to adopt a fair and transparent proceedings while conducting auction as well, for the reason that if they get more amount, it will also considerably reduce their debt, so also, burden on the part of the writ petitioners/borrowers.

11. In the result, the writ petition is dismissed and the petitioner is at liberty to avail the alternative remedy by filing an appeal before the jurisdiction Debt Recovery Tribunal, if the papers are otherwise, in order, Debt Recovery Tribunal

may entertain the appeal and give disposal in accordance with law as expeditiously as possible. No costs. Consequently, connected W.P.No.2661 of 2020 is closed.

Sd/-

Assistant Registrar(C.S.VI)

/True Copy/

Sub Assistant Registrar

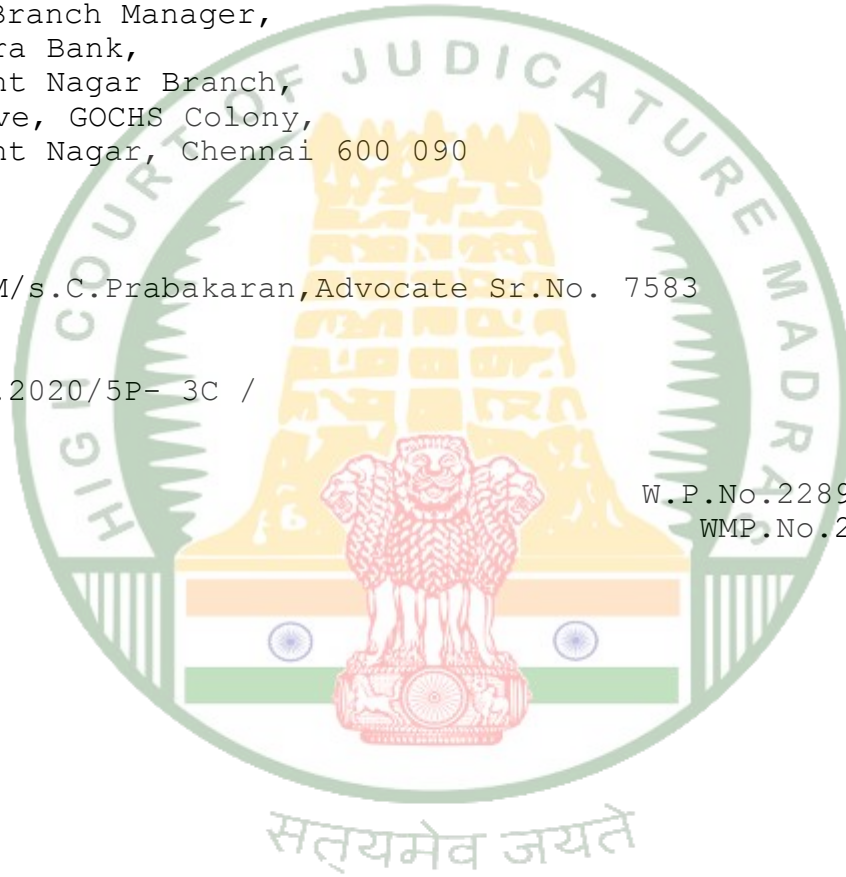
To

The Branch Manager,
Andhra Bank,
Besant Nagar Branch,
7th Ave, GOCHS Colony,
Besant Nagar, Chennai 600 090

+1 cc to M/s.C.Prabakaran, Advocate Sr.No. 7583

AKM/01.03.2020/5P- 3C /

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