IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.3932 of 2020
and W.M.P.Nos.4658 & 4659 of 2020

Amutha Sweets Bakery and Snacks Parks,
rep by its Prop D.Kamaraj
3748, Sakthiganapathy Complex,
Trichy - Chennai Main Road,
No.1, Toll Gate, Bikshandarkoil,
Mannachanallur Taluk,
Trichy District. ... Petitioner

Vs.

1.The Registrar,
Debts Recovery Tribunal,
Madurai Bench,
Kalyani Towers, Ring Road, Madurai.

2.The Authorized Officer,
Tamilnad Mercantile Bank,
No.1, Toll Gate, Bikshandarkoil,
Mannachanallur Taluk,
Trichy District.

3.Senthilkumar ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the Debts Recovery Appellate Tribunal with respect to the order dated 23.12.2019 in MA(SA).No.39/2019 and quash the same.

For Petitioner : Mr.S.Prabhakar, Senior Counsel
assisted by Mr.P.S.Amalraj

O R D E R

(Order of the Court was made by M.SATHYANARAYANAN, J.)

The petitioner is the borrower and had availed a Term Loan of Rs.15,00,000/- and an Over Draft Loan of Rs.10,00,000/- on 17.05.2016 from Tamilnad Mercantile Bank and for the due repayment of the loan, an immovable security has also been created upon the land and building situated in S.F.No.70/4A, Bikshandarkoil Village, Manchanallur Taluk, Trichy District, ad-measuring an extent of 2520 square feet and a building having plinth area of 1200 square feet. It appears that the petitioner/borrower had committed default in the repayment of loan and therefore, the said account was declared as Non Performing Asset on 31.01.2018.

2.The Tamilnad Mercantile Bank (in short "TMB") had initiated recovery proceedings under the provisions of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act) by issuing a notice under Section 13(2) dated 15.02.2018 calling upon the petitioner/borrower to pay a sum of Rs.11,94,479/- as on 03.02.2018 together with interest @ 19.75% per annum with monthly rests in the Term Loan Account and a sum of Rs.10,32,893.50p as on 31.01.2018 together with interest @ 14% per annum with monthly rests in the Over Draft Loan Account and the said notice was duly acknowledged by the petitioner/borrower on 16.02.2018.

3.The petitioner/borrower did not comply with the said notice and therefore, symbolic possession of the secured asset was taken on 23.04.2018 and the same was duly published in News Daily on 24.07.2018. The respondent - Bank had issued a sale notice on 10.05.2018 and the said notice was also duly published in News Daily on 11.05.2018. The petitioner made a challenge to the sale notice dated 10.05.2018 by filing an appeal in S.A.No.293 of 2018 before the Debts Recovery Tribunal at Madurai and prayed for interim order. The Debts Recovery Tribunal at Madurai had passed a conditional interim order by staying the confirmation of sale till 30.08.2018 subject to the condition that the petitioner/borrower should pay Rs.5,00,000/- in favour of TMB on or before 29.06.2018, a sum of Rs.2,92,000/- on or before 30.07.2018 and another sum of Rs.2,92,000/- on or before 29.08.2018 with default clause.

4.Since there was no stay of the auction sale by the Debts Recovery Tribunal, Madurai, the sale was held on 14.06.2018 and one S.Senthilkumar was declared as the successful bidder with a bid amount of Rs.60,00,000/-against the upset price of Rs.53,25,500/-. The borrower had complied with the payment of 1st installment of Rs.5,00,000/-, but failed to pay the 2nd installment of Rs.2,92,000/- on 30.07.2018 and since the conditional order has not been fully complied with, in terms of the default clause, the stay of confirmation of sale stand vacated automatically and therefore, TMB had confirmed the sale of the secured asset in favour of S.Senthilkumar on 31.07.2018 and also issued the Sale Certificate, which also came to be registered on 30.08.2018 with the Sub Registrar, Mannachanallur. It is also the stand of the Bank that after adjusting the sale consideration towards various loan amounts, a sum of Rs.13,20,201.60p has also been credited to the Savings Bank Account of the petitioner on 30.08.2018.

5. The petitioner/borrower also filed applications in I.A.Nos.1938 and 1939 of 2018 pending the SARFAESI Appeal in S.A.No.293 of 2018 for extension of time and the said applications were also dismissed. The petitioner, challenging the proceedings of TMB dated 31.07.2018 relating to sale of the petitioner's property, filed W.P.(MD).No.21167 of 2018 and the said Writ Petition came to be ultimately dismissed on 30.11.2018 on the ground of availability of alternative remedy.

6. The petitioner, aggrieved by the dismissal of I.A.No.1939 of 2018 in S.A.No.293 of 2018 and pursuant to the liberty granted in the said Writ Petition, filed AIR(SA).No.27 of 2019 before the Debt Recovery Appellate Tribunal at Chennai. The Tribunal, vide proceedings dated 02.04.2019 had taken note of the fact of the conditional interim order dated 05.03.2019 and listed for confirmation of deposit of Rs.60,00,000/- and the fact that the order had been complied with by the petitioner and therefore, directed the parties to maintain status-quo, with a further direction to number the said appeal. After the numbering of the appeal, notices were ordered and the TMB as well as the auction purchaser had filed their counter affidavits. It is the stand of the auction purchaser that in the auction that took place, he became the successful bidder and quoted a sum of Rs.60,00,000/- and the sale was confirmed on 14.06.2018 and a sale certificate was also issued on 31.07.2018 in his favour, which was also registered, vide Document No.3107/2018 and prayed for dismissal of the said appeal.

7. The Debt Recovery Appellate Tribunal, after taking into consideration the stand of the Bank/TMB as well as the auction purchaser, found that there was a delay of one week in payment of the 2nd installment as ordered by the Debts Recovery Tribunal, Madurai, by means of the conditional order and as regards complying of the conditional order and the extension of time, found that since S.A.No.293 of 2018 is still pending before the Debts Recovery Tribunal, Madurai, the issue as to whether the Sale notice has been issued properly or legally, it cannot be

gone into and further recorded the finding that in the pending SARFAESI Appeal all technical issues will be addressed and adjudicated by the Presiding Officer, Debts Recovery Tribunal and recording the said reasons, had dismissed the appeal and also made it clear that the Debt Recovery Appellate Tribunal had not expressed any opinion on the facts and law of the case in respect of the merits of S.A.No.293 of 2018 and also directed the respondent - Bank/ TMB to receive the pre-deposit amount lying with the Registrar of the Tribunal and to deal with it according to law. Challenging the legality of the said order, the present Writ Petition is filed.

8. Mr.S.Prabhakar, learned Senior Counsel assisted by Mr.P.S.Amalraj appearing for the petitioner/borrower would submit that the property is worth many crores and admittedly, the property was sold to the auction purchaser only for a sum of Rs.60,00,000/- and also invited the attention of this Court to the proceedings of the Debt Recovery Tribunal dated 05.03.2019 and would submit that the Debt Recovery Appellate Tribunal had directed the appellant/petitioner/borrower to deposit the entire sale amount of Rs.60,00,000/- with the Registrar, Debt Recovery Appellate Tribunal within a period of four weeks from the date of the said order and the petitioner had complied with the said order, which is also reflected in the subsequent proceedings of the Debt Recovery Appellate Tribunal dated 02.04.2019, wherein status-quo was also ordered to be maintained and despite the compliance of the order, the Debt Recovery Appellate Tribunal did not proceed further to set aside the auction sale and further relegated the same to the Debts Recovery Tribunal, Madurai in the pending SARFAESI Appeal and the impugned order passed by the Debts Recovery Tribunal at Chennai is per se illegal, unsustainable and on equitable ground also the petitioner is entitled to pray for the release of the property.

9. This Court heard the submission of the learned Senior Counsel appearing for the petitioner and also perused the materials placed before it.

10.The fact remains that the petitioner did not comply with the conditional interim order dated 19.06.2018 made in I.A.No.1457 of 2018 in S.A.No.293 of 2018. The petition in I.A.No.1939 of 2018 filed by the petitioner for extension of time to comply with the conditional interim order also came to be negatived, vide order dated 14.09.2018. The petitioner filed W.P.(MD).No.21167 of 2018 by making a challenge to the order made in I.A.No.1939 of 2018 in S.A.No.293 of 2018 and it came to be rejected, vide order dated 30.11.2018 by directing the petitioner to avail the alternative remedy. Accordingly, the petitioner filed an appeal before the Debt Recovery Appellate Tribunal, Chennai in AIR(SA).No.27 of 2019. The Tribunal had passed the conditional order by directing the petitioner to make a deposit of Rs.60,00,000/- and it was also complied with by the petitioner. The Tribunal, while dealing with the appeal on merits, found that there are certain technical issues as to the non-compliance of the statutory provisions by the TMB while proceeding with the sale and the said issue can be adjudicated in the pending S.A.No.293 of 2018 before the Debts Recovery Tribunal, Madurai and also made an observation that whatever observation made in the impugned order cannot influence the mind of the Tribunal and it can adjudicate the issue purely on merits and in accordance with law.

11. The learned Senior Counsel appearing for the petitioner apprehends that the respondent/Bank may initiate further steps to recover the actual physical possession of the assets and there is every likelihood that auction purchaser may also further legally proceed with the property and hence prays for appropriate orders of restrainment.

12. In the considered opinion of this Court, it is not inclined to do so for the reason that the comprehensive appeal in S.A.No.293 of 2018 before the Debts Recovery Tribunal, Madurai is pending and in the event of the Tribunal finding that requisite procedural/statutory formalities have not been complied with, it is always entitled to pass appropriate orders under Section 19 of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002.

13.This Court, on an independent application of mind to the entire materials placed, is of the considered view that there is no error apparent or infirmity in the reasons assigned by the Tribunal in dismissing the appeal.

14. In the result, the Writ Petition is dismissed, confirming the order of the Debts Recovery Appellate Tribunal order dated 23.12.2019 made in MA(SA).No.39/2019. It is once again made clear that the observations/findings made herein are only for the purpose of disposal of this Writ Petition and this Court has not ventured into the merits or otherwise of the pending litigation S.A.No.293 of 2018, on the file of the Debts Recovery Tribunal, Madurai.

15.The Debts Recovery Tribunal, Madurai, is required to accord priority and give disposal to the pending appeal, as expeditiously as possible, not later than two months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

1.The Registrar,
Debts Recovery Tribunal,
Madurai Bench,
Kalyani Towers, Ring Road, Madurai.

2.The Authorized Officer,
Tamilnad Mercantile Bank,
No.1, Toll Gate, Bikshandarkoil,
Mannachanallur Taluk,
Trichy District.

+1cc to Mr.P.S.Amalraj, Advocate, sr 13489

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and W.M.P.Nos.4658 & 4659 of 2020

CA(CO)
GS(21/05/2020)