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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

WP.No.4911/2020 & WMP.No.5809 & 5811/2020

1.M/s.Universal Shoe Company
rep.by its Partner Mrs.V.Arshad Ahmed
SF.No.119/1,2, 121/A&1B
Thuthipet, Ambur 635811.
2.Mr.V.Arshad Ahmed
3.Mrs.Kaka Arshiya Kause
4.Mr.Kaka Md Asrar .. Petitioners

Versus

M/s.Canara Bank represented by its
Authorised Officer, Ambur Branch,
Vellore District 635802. .. Respondent

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of certiorarified mandamus calling for the records relating to Rule 8[6] of E-Auction sale notice dated 28.01.2020 issued by the respondent and quash the same, and direct the respondent to regularize the account of the petitioner.

For Petitioners: Mrs.Thenmozhi Siva Perumal
For Respondent : Mr.P.Raghunathan for
M/s.T.S.Gopalan Associates

ORDER

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

(1)By consent, the writ petition is taken up for final disposal. Mr.P.Raghunathan, learned Standing counsel accepts notice on behalf of the respondent/Bank.

(2)The 1st petitioner is the borrower and it had availed financial assistance from the respondent/Bank for commercial purposes and in lieu of the defaults committed, action was initiated under the provisions of the Securitisation and



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Reconstruction of Financial Assets and Enforcement of Secured Assets Act, 2002 [in short 'the SARFAESI Act'] in the form of Demand Notice dated 27.12.2018 under Section 13[2] of the Act, demanding a sum of Rs.3,30,65,798.45p., from 01.12.2018. The petitioner, making a challenge to the Auction Sale Notice, filed a SARFAESI Application and pending disposal of the same, conditional order of interim stay was granted and the matter was taken up for hearing on 27.12.2019, the Bank has filed a Memo stating that the settlement is in offing between them and in the light of the challenge made to the Possession Notice, no progress could be made and in the light of the said submission, the applicant had withdrawn the application and the Tribunal has taken into consideration that 50% of the publication charges ordered to be debited to the borrower's account. The Tribunal, further made it clear that the said order does not preclude the respondent/Bank from issuing a fresh Possession Notice and the borrower to contest the same if advised as per law.

- (3) The petitioners submitted a representation dated 17.01.2020 offering to settle the matter by way of One Time Settlement by sending a communication to the Asset Recovery Branch, I Floor, Spencers Tower-II, No.770-A, Anna Salai, Chennai, with a copy marked to the Branch Manager, Canara Bank, Ambur. However, to the shock and surprise of the petitioner, a Possession Notice dated 21.01.2020 came to be issued in super cession of the earlier Possession Notice dated 19.03.2019 and it is followed by E-Auction Sale Notice dated 28.01.2020, fixing the date of auction sale on 29.02.2020 between 11.30 a.m., and 12.30 p.m. and the petitioner making a challenge to the said E-Auction Sale Notice, came forward to file the present writ petition.
- (4) The learned counsel for the petitioners would submit that in the light of the stand taken by the respondent/Bank in the earlier SARFAESI application, the petitioner was constrained to withdraw the original application and going back on the promise as to the consideration of the One Time Settlement, the respondent/Bank in super cession of the earlier Possession Notice, had issued fresh notice and it is also followed by the E-Auction Sale Notice and on instructions, would further pray that if some concession is shown in calculation of interest, the petitioner is willing to settle the entire dues.
- (5) Per contra, Mr.P.Raghunathan, learned counsel appearing for the respondent/Bank, on instructions would submit that the offer of One Time Settlement dated 17.01.2020 has been address to a wrong address and the Ambur Branch of the respondent/Bank has sent a communication dated 22.01.2020 to the address given in the said letter and it was returned as 'not claimed' to the sender and though repeated attempts were made by the Postal



Authorities to serve the said communication on eight occasions, the postman found that it was locked and intimation was also given and as such, it cannot be said that the One Time Offer made by the petitioner was not considered by the respondent/Bank and would further add that since the petitioner is having an effective alternate remedy, it can avail the said remedy before the jurisdictional Debts Recovery Tribunal.

- (6) This Court has considered the rival submissions and also perused the materials placed before it.
- (7) The Communication sent by the respondent/Bank dated 22.01.2020 to the address given in the letter dated 17.01.2020 could not be served as 'not claimed' and returned to the sender and also on account of 'door locked' and intimation to that effect was also given.
- (8) The Tribunal in the order dated 27.12.2019 in SA.No.112/2019 has also made it clear that the said order does not preclude the respondent/Bank from issuing a fresh Possession Notice and the borrower to contest the same, if advised, as per law and according to the learned counsel for the petitioners, despite the communication dated 22.01.2020 was sent to call upon them for discussing the subject matter as to the settlement, the said communication itself could not be served.
- (9) In the light of the above facts and circumstances, this Court is unable to come to the aid of the petitioners. However, if the petitioners are so advised, they are at liberty to submit a comprehensive representation as to the manner and mode in which they seek to settle the debts and as and when such a representation is received, the respondent/Bank is directed to consider the same on merits and in accordance with law and that apart, the petitioners are also having an effective alternate remedy in the form of filing SARFAESI application before the jurisdictional Debts Recovery Tribunal.
- (10) In the result, the writ petition stands dismissed subject to above observation. No costs. Consequently, the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar



To

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The Authorised Officer,
M/s.Canara Bank
Ambur Branch,
Vellore District 635802.

+1 CC to M/s. T.S. Gopalan & Co, sr 17470.

WP.No.4911/2020

SPD(CO)
SP(14/07/2020)