

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2020

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MRS.JUSTICE R.HEMALATHA

W.P.No.13532 of 2020 &
WMP.Nos.116761 and 16764 of 2020

Shree Murugan Flour Mills Pvt Limited,
Represented by its authorised signatory
and the Director Mr.G.Balasubramaniam
S/o.Govindaswamy, aged 68 years,
having its registered office at
No.5, Vinayakar Kovil Street,
Krishnaswamy Nagar, Ramanathapuram,
Coimbatore District - 641 045. ... Petitioner

Vs

Indian Overseas Bank,
Rep. by its Authorised officer,
Asset Recovery Management Branch,
11/952 Cross Cut Road,
Gandhipuram,
Coimbatore 641 012. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the respondent relating to the impugned notice issued under Section 13(2) of SARFAESI dated 06.08.2019 and Possession Notices dated 27.02.2020 and 05.03.2020 and consequential sale notice dated 24.08.2020, e-auction notice dated 24.08.2020 and quash the same as illegal, and consequently direct the respondent to consider application of the petitioner's request for One Time Settlement of dues dated 13.02.2020.

For Petitioner .. Mr.P.H.Aravind Pandian, AAG
Assisted by Mr.C.V.Shailandhran
For RR1 .. Mr.M.L.Ganesh

ORDER

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

This writ petition has been filed by the petitioner challenging the notice issued under Section 13(2) of the

SARFAESI Act and the consequential sale notice dated 24.08.2020, by which, auction is proposed to be held on 29.09.2020 in view of the alleged default said to have been committed by the petitioner.

2.The learned Senior Counsel appearing for the petitioner submitted that even as per the proceedings of the respondent-Bank, the petitioner has been paying the money regularly. Therefore, the statement, that it fell as non performing asset way back in the year 2017 is factually incorrect. If that is the case, the petitioner can take into account of the Rs.9 crores amount paid by adding that into one time settlement. Therefore, this is the issue which is required to be considered.

3.Mr.M.L.Ganesh, learned counsel appearing for the first respondent submitted that the writ petition as filed is not maintainable. Challenge to the notice issued under Section 13 (2) of the SARFAESI Act without challenging the subsequent symbolic possession taken under Section 13(4) SARFAESI Act is not maintainable. Orders have been passed under Section 13(4) of the Act by taking symbolic possession. The auction is proposed to be held on 29.09.2020. The contention raised on fact cannot be sustained in the eye of law as the decision taken is borne out by facts and also pursuant to the audit conducted. In any case, such contention cannot be raised before this Court.

4. Considering the submissions made, we are of the view that when an effective alternative remedy is available before the Debts Recovery Tribunal at Coimbatore, we are not inclined to entertain this writ petition. In such view of the matter, while directing the respondent to go on with the proposed auction scheduled to be conducted on 29.09.2020, we further direct the respondent not to confirm the sale so as to enable the petitioner to approach the Debts Recovery Tribunal, Coimbatore, and get appropriate orders.

5. The writ petition stands disposed of accordingly. The petitioner is at liberty to approach the Debts Recovery Tribunal, Coimbatore within a period of three weeks from the date of receipt of a copy of this order. All the issues both on fact and law are left open. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

raa/kmk

To,
The Debts Recovery Tribunal, Coimbatore.

+lcc to Mr.S.V.Shailandharan , Advocate SR.No. 31269

W.P.No.13532 of 2020

A.SK(30/09/2020)



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