IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.15261/2020 & WMP.Nos.19089 & 19090/2020

P.Chellammal .. Petitioner

Versus

1.The Authorised Officer
Corporation Bank
279, Gandhi Road
Erode-638 001.

2.The Manager
Corporation Bank
279, Gandhiji Road
Erode-638 001.

3.R.Mahendran .. Respondents

**Prayer:-** Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the entire records of the 1st respondent in Sale Certificate dated 17.03.2020 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.A.Deivasigamani for
Mr.N.Chinnaraj

ORDER

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

(1)By consent, the writ petition is taken up for final disposal and is disposed of by this order.

(2)The petitioner had availed the Housing Loan from the Corporation Bank, Erode Branch, for a sum of Rs.9 Lakhs and in lieu of the defaults committed, the Demand Notice dated 29.05.2019 under Section 13[2] of the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in short "the SARFAESI Act"], came to be issued and it was followed by a Possession Notice dated 06.09.2019 under Section 13[4] of the SARFAESI Act.

(3)Since the petitioner had failed to comply with the terms of the said notices, symbolic possession of the mortgaged asset was taken on 06.09.2019 and it was also published in English and Vernacular News Dailies on 13.09.2019. The 1st respondent – Bank proceeded with the auction by issuing an E-Auction Sale Notice dated 14.11.2019, fixing the date of the auction sale on 23.12.2019 and necessary publications were also effected in the News Dailies. In the E-Auction Sale held on 23.12.2019, the 3rd respondent became the successful bidder and his bid for a sum of Rs.16.40 Lakhs was accepted. Thereafter, the 1st respondent – Bank has invoked Section 14 of the SARFAESI Act, by filing an application before the Court of the Chief Judicial Magistrate, Erode, for taking actual physical possession of the secured asset and it was also ordered. The Court of the Chief Judicial Magistrate, Erode, vide order dated 06.02.2020 in CMP.No.1710 of 2020, also appointed an Advocate Commissioner to take physical possession of the asset. At this juncture, the petitioner came forward to file the present writ petition.

(4)The learned counsel for the petitioner would submit that admittedly, the mortgaged asset is a residential premises in which, the petitioner is residing along with her family and in order to establish his bona fide, is also ready and willing to deposit a sum of Rs.5 Lakhs to the credit of the 1st respondent – Bank and in the light of COVID-19 pandemic virus and ensuing monsoon, some interim protection may be accorded to the petitioner till she approaches the jurisdictional Debts Recovery Tribunal, by filing a SARFAESI Application.

(5)This Court has considered the arguments advanced by the learned counsel for the petitioner and also perused the materials placed before it.

(6)It appears form the materials that the petitioner did not make a challenge to the Recovery Proceedings initiated by the 1st respondent – Bank under the relevant provisions of the SARFAESI Act and the third party right has also been created in the form of confirmation of the E-Auction Sale notice in favour of the 3rd respondent. It is the vehement and forceful submission of the learned counsel for the petitioner, by drawing the attention of this Court to the Valuation Certificate issued by Mr.C.Kulandaivelu, Civil Engineer, stating that the secured asset/property is worth Rs.30,05,298/- and whereas, the property was sold for a meager sum in favour of the 3rd respondent. In the considered opinion of the Court, the adoption of the Valuation procedure and the issues relating to the secured asset being sold for a lesser value, cannot be adjudicated by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India and the remedy open to the petitioner, if any, is to invoke the Appellate remedy by filing a SARFAESI application before the jurisdictional Debts Recovery Tribunal.

(7)In the result, the writ petition stands dismissed and the petitioner is at liberty to invoke the Appeal remedy if she is so advised and is available under law before the jurisdictional Appellate Forum. No costs. Consequently, the connected miscellaneous petitions are closed.

[MSNJ] [RHJ]
29.10.2020

AP

Internet:Yes

To
1.The Authorised Officer
Corporation Bank
279, Gandhi Road
Erode-638 001.

2.The Manager
Corporation Bank
279, Gandhiji Road
Erode-638 001.

M.SATHYANARAYANAN, J.,
AND
R.HEMALATHA, J.,

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