IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.12.2020

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THE HON'BLE MR.JUSTICE R.MAHADEVAN

AND

THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P.No.20203 of 2020 and

W.M.P.Nos.24963 & 24964 of 2020

M/s.Rajeswari Motors Pvt Ltd.,
Rep.by its Director A.Shenbagadevi
No.63, R.S.Road, Palaipalayam
Thiruchengode Taluk
Namakkal District - 638 006. .... Petitioner

Vs

Bank of Baroda Rep.by its Authorised
Officer, Eode Branch,
No.60, Thiruvengadam Swamy Street,
Erode 638 001. ....Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the file of the respondent in the impugned auction sale dated 11.12.2020 published in Dinamani on 13.12.2020 (Coimbatore Edition) and quash the same.

For Petitioner : Mr.P.J.Sri Ganesh

O R D E R

(Order of the Court was made by R.MAHADEVAN, J.)

Challenging the auction sale notice dated 11.12.2020 published in Dhinamani on 13.12.2020 (Coimbatore Edition), the petitioner has come up with this writ petition.

2.It is the case of the petitioner that they are engaged in the business of selling Vespa Scooters. They availed Overdraft facilities from the respondent bank to the tune of Rs.1.38 crores, for which, the Director of the Company mortgaged her personal land and building in S.F.No.311/2A, 311/2D, 311/2E located at Door Nos.57,59 and 61, Palaipalayam, Thiruchengode Taluk, Namakkal District. On account of incurring loss in the business, the petitioner did not repay the loan amount. Pursuant to the same, the respondent bank declared the petitioner's account as a Non Performing Asset (NPA) and issued a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act) on 03.10.2017. Following the said notice, the petitioner paid a part of the dues to the respondent bank, but failed to settle the entire loan amount. Therefore, the respondent bank issued a notice dated 04.08.2018 under Rule 8(6), bringing the property mortgaged for sale by publishing a notification in the newspapers. Challenging the same, the petitioner filed a writ petition in W.P.No.23578 of 2018, which by order dated 11.09.2018, was dismissed by the Division Bench, however granting liberty to the petitioner to approach the Debts Recovery Tribunal, while staying the confirmation of sale for a period of ten days. Now, the respondent bank issued an auction-cum-sale notice dated 11.12.2020 published in newspapers on 13.12.2020 bringing the immovable property mortgaged for sale on 31.12.2020. Hence, this writ petition.

3.Though the learned counsel for the petitioner assailed the notification issued by the respondent bank raising very many grounds, this Court is not inclined to go into the same, in view of the fact that an effective alternative remedy is available to the petitioner under Section 17 of the SARFAESI Act.

4.It is to be noted herein that the Division Bench of this Court by order dated 11.09.2018 in WP.No.23578 of 2018, already directed the petitioner to approach the appropriate forum for appropriate relief. For easy understanding, the operative portion of the said order is reproduced hereinbelow:

> "6.In view of the submissions made by the learned counsel appearing on either side, we are not inclined to stay the auction scheduled to be held on 12.09.2018, however, in the interest of justice, we stay the confirmation of sale alone. We make it clear that the auction scheduled to be held on 12.092018 shall go on, however, confirmation of sale alone is stayed for a period of ten days from today, enabling the petitioner to approach the Debts Recovery Tribunal in accordance with law.
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> 7. With these observations, the writ petition is dismissed. No costs. Consequently, W.M.P.Nos.27531 and 27532 of 2018 are closed."

Despite the same, no application is stated to have beeen filed by the petitioner before the Debts Recovery Tribunal, which is created by the legislation for expeditious adjudication of disputes relating to recovery of the debts due to banks and financial institutions, and the petitioner has filed the present writ petition, without exhausting the alternative remedy. In the opinion of this Court, such course adopted by the petitioner cannot be countenanced, as it is settled law that "the High Court will ordinarily not entertain a petition under Article 226 of the Constitution, if an effective remedy is available to the aggrieved person and that, this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions".

5.In such view of the matter, this writ petition stands disposed of, granting liberty to the petitioner to approach the Debts Recovery Tribunal for appropriate relief. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1 The Authorised Officer/
Chief Manager, Bank of Baroda,
Erode Branch, No.60, Thiruvengadam Swamy
Street, Erode.638001.

+1 CC to Mr.P.J.RISHIKESH, Advocate Sr.No.43185

W.P.No.20203 of 2020

PVS(CO)
KP(20/01/2021)