IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.03.2020

CORAM :

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

AND

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.Nos.33843 of 2019 & 2568 of 2020
and
W.M.P.Nos.34363 of 2019, 2975 & 2977 of 2020

W.P.Nos.33843 of 2019:

V.Suganthi ... Petitioner

Versus

The Chief Manager/Authorised Officer,
Canara Bank, Muthialpet Branch,
Near Manakula Vinayagar Temple,
No.45, NSC Bose Road,
Puducherry-605 001. ... Respondent

W.P.No.2568 of 2020 :

1.Sri Sugaam Packs
Rep by Proprietrix, V.Suganthi.
2.K.Venkatesan ...Petitioners

Versus

The Chief Manager/Authorised Officer,
Canara Bank, Muthialpet Branch,
Near Manakula Vinayagar Temple,
No.45, NSC Bose Road,
Puducherry-605 001. ... Respondent

Prayer in W.P.No.33843 of 2019: Writ Petition filed under Article 226 of Constitution of India, Praying to issue a Writ of Certiorari, to call for the records in relation to impugned E-Auction notice dated 02.11.2019 to schedule the E-Auction on 06.12.2019 at 11.30 AM - 12.30 PM from the file of sole respondent and quash the same.

Prayer in W.P.No.2568 of 2020: Writ Petition filed under Article 226 of Constitution of India, Praying to issue a Writ of Certiorarified Mandamus, to call for the records in relation to impugned E-Auction notice dated 17.01.2020 issued by the respondent to the E-Auction fixed on 06.02.2020 at 11.00 AM to 12.00 PM and quash the same and to direct the respondent to issue no due certificate.

In W.P.No.33843 of 2019
For Petitioner : Mr.G.Kadhiresan
For Respondent : Mr.S.R.Sumathy

In W.P.No.2568 of 2020
For Petitioners : Mr.D.Malarvizhi
For Respondent : Mr.S.R.Sumathy

COMMON ORDER

(Order of the Court was made by Krishnan Ramasamy, J.)

W.P.No.33843 of 2019 has been filed by one V.Suganthi, Proprietrix of Sri Sugaam Packs, challenging the E-Auction notice dated 02.11.2019 issued by the respondent, fixing the E-Auction on 06.12.2019.

2. W.P.No.2568 of 2020 has been filed by Sri Sugaam Packs represented by its Proprietrix V.Suganthi, and K.Venkatesan, who is one of the guarantors of the loan obtained by Sri Sugaam Packs and also the husband of V.Suganthi, challenging the E-Auction notice dated 17.01.2020 issued by the respondent for the E-Auction scheduled to be held on 06.02.2020.

3. The petitioner in W.P.No.33843 of 2019 is the Proprietrix of Sri Sugaam Packs (hereinafter referred to as 'Firm'/Proprietorship concern). The first petitioner in W.P.No.2568 of 2020 is the proprietorship concern represented by its Proprietrix, V.Suganthi. The second petitioner is a guarantor of the loan, who is none other than the husband of V.Suganthi.

4. The Firm is a Small Scale Industry formed in the year 2005. During the course of its business, the Firm approached the respondent-Bank for a term loan and working capital facilities. The respondent-Bank, after a thorough scrutiny of the project proposal, sanctioned a sum of Rs.1,00,00,000/- (Rupees One Crore) as term loan and a sum of Rs.25 lakhs as working capital facilities. Subsequently, the said working capital limit was increased by Rs.15 lakhs to a sum of Rs.40 lakhs. That apart, the respondent-Bank also granted a sum of

Rs.25 lakhs as second term loan. During the year 2012, the firm suffered heavily due to "Thane Cyclone". Thus, it had approached the respondent-bank with a proposal for an additional loan to rehabilitate its project. The bank, after a thorough scrutiny of the said proposal, sanctioned a sum of Rs.40 lakhs.

5. That apart, the firm was also insured its factory and a sum of Rs.28 lakhs was granted by the insurance company for the damages sustained due to the Thane Cyclone. The said amount was adjusted by the bank towards the repayment of the loan.

6. The submissions of the learned counsel for the petitioners are two-fold. The first limb of the argument was that the firm had suffered extensively due to Thane Cyclone, thus, the insurance company paid a sum of Rs.28 lakhs to compensate the damages. When the firm was suffering extensively due to the Thane Cyclone, which made the firm on to severe financial crisis, the respondent-bank without considering all these aspects, instead of allowing the petitioner firm to utilize the insurance claim amount to compensate its additional financial needs, adjusted the said amount against the repayment of the loan. The firm also approached the respondent-bank for the rehabilitation of the project due to the setbacks of Thane Cyclone and the bank also sanctioned a sum of Rs.40 lakhs in the year 2012. Further, the petitioners have made a request not to adjust the insurance claim amount as the same has to be utilised to meet out its urgent financial needs and, moreover, the sum of Rs.40 lakhs sanctioned by the bank was also not enough to compensate the damages sustained due to cyclone. However, the respondent-bank, without analysing all these aspects, simply adjusted the entire insurance compensation amount of Rs.28 lakhs towards the repayment of the loan. Until the Thane Cyclone, the firm had been repaying the loan to the bank without any default. Due to heavy financial implication, the firm was not able to carry on its business, for which, the respondent-bank was the only reason and, consequently, it had declared the petitioners' firm loan as an NPA. Therefore, the entire cause for the default was due to the illegal action of the respondent-bank to adjust the insurance claim towards the repayment of the loan.

7. The next limb of the argument was that the respondent-bank initially conducted an auction for the entire property, however, subsequently, the property was sold in two parts, separately. Had the respondent-bank taken the steps to sell both the parts together, it would have fetched more value, than selling in two parts. Thus, the auction conducted by the respondent-bank was not in accordance with the established procedures, which is illegal and liable to be set aside.

8. Per contra, the learned counsel appearing for the respondent-bank submitted that they have initially sanctioned a

sum of Rs.1 crore as term loan and a sum of Rs.25 lakhs as working capital facility during the year 2005; subsequently, the working capital limit was increased by Rs.15 lakhs to Rs.40 lakhs and a sum of Rs.25 lakhs was granted as second term loan. The bank also sympathetically considered the damages sustained by the petitioners firm due to Thane Cyclone and sanctioned a sum of Rs.40 lakhs in the year 2012 under the "Thane Cyclone Rehabilitation" scheme. The firm received a sum of Rs.28 lakhs as the insurance claim. One of the terms and conditions of approval of the Thane Cyclone Rehabilitation loan was that the firm has to repay the entire insurance claim amount to adjust the repayment of its loan.

9. For the second limb of the argument made by the petitioners, learned counsel for the respondent-bank submitted that they have conducted E-auctions as per the well-established procedures and not violated any of the provisions of the E-auction procedures as mandated by the SARFAESI Act and Security Interest (Enforcement) Rules, 2002. Originally, the firm account was declared as an NPA on 19.11.2012. Thereafter, at the request of the petitioners, an OTS proposal was also considered and the petitioners had paid a sum of Rs.15 lakhs on 02.09.2015. Thereafter, on 06.06.2016, the petitioners' firm had promised to repay the remaining amount of Rs.1.2 crore along with interest on or before 08.09.2016 by selling the mortgaged property. However, nothing has come out from the petitioners. Therefore, the E-auctions were conducted for the sale of land and building on 29.02.2016, 28.11.2017, 26.02.2018, and 26.03.2018. Since the respondent-bank has not received any offers, the reserve price was reduced as per the norms and the E-auction was fixed on 06.12.2019.

10. As there were no offers for the earlier E-auctions for the entire property, the property was divided into two parts and the sale notice was also issued for both properties. As per Rule 8 (5) of Securities Interest (Enforcement) Rules, 2002, the secured creditors are permitted to sell the property either in part or in whole. Accordingly, the vacant land and building admeasuring 50852 sq.ft was successfully sold for a sum of Rs.98,30,000/-. The second part of the property was sold by way of E-auction held on 06.02.2020 for a sum of Rs.91,60,000/-. Therefore, the counsel submitted that the E-auctions were conducted in accordance with the established procedures under the relevant Rules and Act. Hence, he prayed for dismissal of the writ petitions.

11. We have given due attention to the submissions made by both the learned counsel and also perused the material available on record.

12. The petitioners had approached the respondent-bank for a term loan as well as working capital facilities. As per the request of the petitioners, the bank sanctioned a sum of Rs.1 crore as term loan, Rs.25 lakhs as working capital facilities and a sum of Rs.15 lakhs as additional working capital. The respondent- bank also granted a sum of Rs.25 lakhs as second term loan in the year 2012. The petitioner firm was heavily damaged due to the Thane Cyclone, which hit the petitioner firm on 30.12.2011. Therefore, the petitioner approached the respondent-bank for rehabilitation. The bank also accepted the request of the petitioners and sanctioned the sum of Rs.40 lakhs under the 'Thane Cyclone Rehabilitation' Scheme in the year 2012. However, the loan of the petitioners was declared by the bank as an NPA on 19.11.2012. After a period of 11 months from the date of 'Thane Cyclone' the loan account of the petitioner firm was declared as an NPA by the respondent-bank. The respondent-bank had admitted the fact that the firm suffered severely due to the 'Thane Cyclone' and, thus, at the request of the petitioner firm, the respondent-bank sanctioned a sum of Rs.40 lakhs under the "Thane Cyclone Rehabilitation Loan". This was granted in the year 2012. Subsequently, a sum of Rs.28 lakhs was received by the firm from its insurance company towards the damages sustained due to the 'Thane Cyclone'. The said amount was adjusted by the bank during the year 2012 against repayment of the loan, without accepting the petitioners' request not to adjust the insurance compensation amount.

13. The respondent-bank declared the petitioner firm loan as an NPA on 19.11.2012, which shows that the petitioner firm was in severe financial stress. There was no word about the default in repayment till the date of 'Thane Cyclone' i.e., 30.12.2011. Over a period of seven years, the petitioner firm had been repaying the instalments without any default. It appears, the default in payment of the instalments during the year 2012 was due to the extensive damage sustained by the petitioners and the requirement of additional funds.

14. Before the petitioner firm loan was declared an NPA due to the Thane cyclone, the bank had re-scrutinized the petitioner project and found that the project requires infusion of more funds, and, thus, it granted a sum of Rs.40 lakhs as financial support during the second quarter of 2012. When the bank found that the petitioner firm required more funds and taking note of the financial stress a sum of Rs.40 lakhs was granted during the year 2012, we are not able to trace any reason as to why the bank had adjusted a sum of Rs.28 lakhs against the repayment of loan during the same period, ignoring the additional financial requirement of the petitioner and without heeding to the petitioner's request not to adjust the insurance amount against the repayment of loan.

15. It is an admitted fact that the respondent bank found that the petitioner firm was in financial stress, and, thus, it had provided a sum of Rs.40 lakhs as financial assistance. Thereafter, the petitioner made a request not to adjust the insurance claim amount, but, the bank adjusted the said claim amount, referring to the terms and conditions of the sanction of the Thane Cyclone Rehabilitation Loan. The bank was keen on adjusting the insurance claim against the outstanding loan.

16. At this jucture, a few issues arise for the consideration of this Court, which are as follows :

i) Why the bank has adjusted the insurance claim amount of the petitioner firm, inspite of its request not to adjust same due to the requirement of additional financial needs ?

ii) Has the bank ever taken any steps to find out the reason for default by the borrower ?

iii) Is it the duty of the banker to follow up the utilisation of the loan by the borrower periodically and to find out the reason for the default in repayment of loan by the borrower, before declaring a loan as an NPA?

17. The material available before us is not sufficient to render any finding on the Issues (i) and (ii) above.

18. With regard to Issue No. (iii), it is a usual practice that the banks sanction loan after thorough verification and due diligence, taking into consideration of viability of the project. Thus, when a bank finds a project's request viable and a loan sanction is made, then, it is logical that the project continues to be viable unless interrupted by some event or impossibility. Even when a borrower suffers a difficulty in repayment and if that difficulty could be remedied, then, the bank and the borrower should sit across and find the ways to set right the things to let the borrower come back on track, as long as the project is viable. The immediate response of the Bank should not be knee-jerk and it should understand the issues in each and every case individually and not paint every case with the same brush. If a project proposal was considered to be viable and loan sanction was made, it would not become overnight unviable so as to recall the entire loan. There might be some genuine cases that warrant the bank to sit with the borrower and set right the default that has occurred and ensure that the project otherwise viable is not thwarted or terminated due to the hurry created by the bank, seeking repayment. Though it cannot be disputed that the banks cannnot be too liberal or too considerate while dealing with defaulters, there are cases that require a pragmatic approach. The bank should separate the grain from chaff and visualize as to in what all cases the defaults can be regularised without taking the extreme step of making the borrower face the axe of an auction and the cases that warrant an extreme step. This would pave way for a

borrower, who faces temporary or short lasting difficulties, to come back on track and continue the journey. Thus, it cannot be disputed that the banks, who have been handling public money, as custodians of the depositers, have a bounden duty to monitor the utilisation of loan in the post lending era and in case there is any default in repayment of loan by the borrower, the bank has to be in a position to state the reason for default, as the same is possible only in the cases where the banks follow up their post lending periodically. Of course, it is the duty of the banks to monitor the utilisation of loan periodically along with the progress of the borrower. The banks should always be in a position to state the reason for default, if it is called for by the Court / Tribunal during the course of its adjuducation of disputes. Thus, we are of the opinion that the banks are duty bound to monitor the utilisation of the loan amount by the borrowers and the progress of the project periodically and they should be in a position to state the reason for default in repayment by the borrowers, when the banks declared a loan as an NPA, which, we feel, would give opportunity to both the borrowers and the banks to narrow down the losses on either side and to reduce the NPAs considerably.

19. Also, the material available before us will not be sufficient to give any finding with regard to the manner of adjustment of a sum of Rs.28 lakhs by the respondent bank against the repayment of loan. This Court is not an appropriate Court to examine this aspect and it requires examination of the witnesses, production of additional documents etc. Thus, we are of the view that this issue can be decided before the appropriate forum in case the parties to these proceedings seek to invoke the availability of alternative remedy. In such a case, the appropriate Forum/Court/Tribunal shall decide the Issues (i) and (ii), as framed in para No.16 above, in case the parties to these proceedings raise the said issues in their respective claims.

20. As far as the second main issue is concerned, the respondent-bank sold the mortgaged properties in two parts. They have E-auctioned the property on four occasions i.e., on 29.02.2016, 28.11,2017, 26.02.2018 and 26.03.2018. On all these dates, the respondent-bank has not received any offers and, therefore, the reserve price was reduced as per the norms and the property was divided into two parts. After the revision of the reserve price, E-auction was conducted on 06.12.2019, the first part being vacant land and building consisting of 50852 sq.ft., which was sold for a sum of Rs.98,30,000/- and the second part of E-auction was conducted on 06.02.2020 for the vacant land to the extent of 70000 sq.ft., which was sold for a sum of Rs.91,60,000/. As per Rule 8 (5) of the Securities Interest (Enforcement) Rules 2002, the secured creditors are

permitted to sell the mortgaged property either in part or in a whole. In terms of the provisions of Rule 8 (5) of the said Rule, the respondent bank has taken all steps to sell the property in two parts. Thus, we do not find any fault on the part of the Bank in selling the property in two parts, as alleged by the petitioners.

21. We are not persuaded with the submissions of the learned counsel for the petitioners on both the points, as there is no material avaliable for judicial review against the impugned E-Auctions of the respondent-bank. Therefore, these Writ Petitions deserve to be dismissed and they are accordingly, dismissed. No costs. Consequently, the connected W.M.Ps. are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To
The Chief Manager/Authorised Officer,
Canara Bank, Muthialpet Branch,
Near Manakula Vinayagar Tample,
No.45, NSC Bose Road,
Puducherry-605 001.

+2cc to M/s.SR.Sumathy, Advocate, Sr.Nos.22551 & 22552
+1cc to Mr.R.Margabandhu, Advocate, Sr.No.23794

W.P.Nos.33843 of 2019 & 2568 of 2020

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