BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.03.2020
CORAM:
THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

W.P(MD)No.4543 of 2020
and
W.M.P.(MD)No.3884 of 2020

S.Balasubramanian : Petitioner

Vs.

The Authorized Officer,
State Bank of India,
Stressed Assets Management Branch,
1112, Raja Plaza,
Avinashi Road, Coimbatore-641 037. : Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned Sale Notice, dated 18.02.2020 issued by the respondent and the sale is scheduled to be held on 13.03.2020 and quash the same on the ground that the same is arbitrary and illegal.

For Petitioner :Mr.S.Balasubramanian
Party-in-person
For Respondent :Mr.M.L.Ganesh

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ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

This Writ Petition is filed for issuing a Writ of Ceriotari to quash the impugned sale notice, dated 18.02.2020 issued by the respondent.

2.By the impugned sale notice, sale of properties belonging to M/s.Rukmani Mills is scheduled to be held on 13.03.2020. The main ground, on which the petitioner has approached this Court is that there was an auction in respect of property at Alandaur in Chennai and that there are certain irregularities in completing the sale of property at Alandur, Chennai. It is the further case of the petitioner that if the property at Alandur had been sold for proper price, it is not necessary for the bank to proceed against other properties at Madurai, which is the subject matter of the impugned sale notice, dated 18.02.2020.

3.The petitioner, who is appearing as party-in-person, has submitted that the property at Alandur would fetch more than 150 crores and that the same has now been sold for a lesser value, ie., for Rs.60 crores. It is the case of the petitioner that the extent of property at Alandur was originally mentioned as 6.48 acres and that the reserved price for the property was also fixed at Rs.92.50 crores. However, the respondent Bank had not only reduced the upset price, but also increased the extent of property from 6.48 acres to 8.26 acres. In other words, the contention of the petitioner is that when property valuation was more for a lesser extent, the bank brought a larger property for sale by reducing the upset price.

4.The grievance of the petitioner though appealing to us, the learned Counsel for the respondent submitted that the petitioner has dragged on the proceedings from 2008 and the Bank though took possession of the property in 2008, has not recovered even a penny out of any of the properties, which were lawfully mortgaged for securing the loan advanced to M/s.Rukmani Mills. It is also highlighted by learned Counsel for the respondent that the sale was postponed atleast on 13 occasions at the intervention of the petitioner or other members of petitioner's family or by employees of M/s.Rukmani Mills.

5.It is stated by the learned Counsel that out of the mortgaged properties, the claim of employees as well have to be settled. The bank claims that a sum of Rs.100 crores is due from M/s.Rukmani Mills, in view of the delay. Even though the Bank projected a fancy figure by adding penal interest even after the account was declared Non Performing Assets (NPA) and the altered liability is reduced by sale of Alandur property, this Court is not inclined to entertain the Writ Petition for that reason. It is submitted by the Bank that the sale of Alandur property was completed long back and that the sale certificate was also issued to the auction purchaser. Though the property was sold for a sum of Rs.60 crores, it is stated that still a sum of Rs.49 crores is due to the Bank by the petitioner. Even if the mortgaged properties are sold, it is contended that it may not satisfy the dues of the bank, since the employees dues will also have to be settled, which is around Rs.8 crores.

6.Before this Court, it is admitted by the petitioner himself that he has not challenged the sale of Chennai property in the manner know to law, even though he has expressed so many grievances and pointed out certain irregularities in the sale of property at Chennai. The contention of the petitioner that the employees have made a complaint and asked for CBI enquiry may not have relevance for stopping the sale of the property in Madurai. It is open to the petitioner to stop the sale process of the property either at Madurai or at Chennai by approaching Debts Recovery Tribunal as per the provisions under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (in short "SARFAESI Act"). Since an effective alternative remedy is available to the petitioner, this Court will always be reluctant to entertain Writ Petition. As held by Honourable Supreme Court in several cases, particularly, in the case of ***Authorised Officer, State Bank of Travancore and another vs Mathew K.C.***, in ***Civil Appeal No.1281 of 2018***, the Honourable Supreme Court has held that the Writ Petition challenging the proceedings initiated under the SURFAECI Act against the borrower is not maintainable, in view of the alternative remedy available under Section 17 of the SURFAECI Act.

7.This position has been reiterated by Honourable Supreme Court as well as this Court time and again. In the present case, the petitioner has approached this Court suppressing material facts and therefore, we do not find any special reason for entertaining a Writ Petition by showing indulgence or sympathy. The petitioner relied upon the earlier order of this Court, dated 15.09.2019 and submitted that the right to challenge the sale is reserved to the petitioner. That is not an order on merits after considering any legal or factual issues. Hence, this Writ Petition is dismissed. Insofar as the sale of property at Maduari is concerned, the petitioner has challenged the sale process by way of Writ Petition. Therefore, the time taken by the petitioner during the pendency of the Writ Petition may be considered for condoning the delay in filing the appeal before the Debts Recovery Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl Side)

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Sub Assistant Registrar(CS)

Cmr

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12.03.2020

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