BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **20.07.2020**

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P.(MD)No.7731 of 2020
and
W.M.P.(MD)No. 7222 of 2020

A.Ramamoorthy ... Petitioner

Vs.

1.The Authorised Officer,
UCO Bank,
K.K.Nagar Branch,
401, East 9th street,
K.K.Nagar, Madurai 625 020.

2. Reserve Bank of India,
16th floor, Central Office Building,
Shahid Bhagat Singh Marg,
Mumbai 400 001. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, call for the records of the 1st respondent pertaining to the e-auction sale notice dated 13.03.2020 and consequently conducted sale on 02.04.2020 and quash the same.

For Petitioner : Mr. N.Murugesan
For Respondents : Mr. P.T.S.Narendrararasan,
for Mr.K.Periyasamy,
Standing Counsel for Bank

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O R D E R

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

The petitioner originally availed a loan of Rs.5,00,000/- from the first respondent on 21.06.2004 and it was enhanced to Rs.8,90,000/- on 29.03.2005 and for due repayment of the loan made, the petitioner has also created security of the loan by creating equitable mortgage and the sons of the petitioners are also stood as guarantors.

2.The petitioner would further state that one of his son R.Lenin Kumar and the mother of the petitioner, namely, A.Ramayee Ammal had availed a loan of Rs.10,00,000/- from the first respondent on 22.06.2004, for which the petitioner, her daughter and three others stood as guarantors and that apart his daughter S.Masco Malar and another one P.Muthammal availed the loan for a sum of Rs.10,00,000/- on 22.06.2004 from the first respondent, for which the petitioner, his son and three others stood as guarantors. The petitioner along with one J.Siva Karumban and his son, his daughter, his mother and two others have availed further loan of Rs.10,00,000/- on 22.06.2004, for which the similar process was followed. The petitioner had committed default in payment of loan and therefore, action was initiated under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) and the petitioner was given an offer of one time settlement of the loan amount and the petitioner has also deposited a sum of Rs.3,30,000/- by way of two instalments, namely, Rs.2,00,000/- and Rs.1,30,000/- on 22.08.2019 and 26.08.2019 respectively and the balance payable as per the compromise was Rs.29,70,000/-. The petitioner due to the financial difficulties was not able to comply with the one time settlement. Therefore, the first respondent has issued a sale notice dated 13.03.2020 informing that the secured property will be sold through e-mail auction.

3.Learned counsel for the petitioner would submit that he has obtained the valuation report from a private qualified valuer on 09.03.2019 and as per the report the value of the property is Rs.6,89,74,000/-, whereas it has been sold for a sum of Rs.68,96,000/- at only just above the upset price and their appears to be a collusion between the banker and the auction purchaser. The petitioner challenging the legality of the sale notice dated 13.03.2020 had filed this writ petition.

4.The learned counsel for the petitioner would submit that in view of the present COVID-19 pandemic out break, the petitioner is not able to pay the balance and further points out that as per the valuation of the qualified valuer, the value of the secured assets are Rs.6,89,74,000/-, whereas the said property was sold for Rs.68,96,000/- and since he is having a good case on merits, he prays for an interim order.

5.Per contra, Mr.PT.S.Narendravasan,who accepts notice on behalf of the first respondent, on instruction would submit that the auction in pursuance of the impugned sale notice auction was held on 02.04.2020 and a private individual has become the successful bidder and a sale deed was executed in his favour and the sale certificate dated 05.06.2020 has also been issued in his favour and he has already approached the jurisdictional officials under Section 14 of the SARFAESI Act and an order granting physical possession also came to be passed on 04.06.2020 and since the petitioner is having an effective alternative remedy under Section 17 of the SARFAESI Act and he failed to implead the auction purchaser and the valuation report produced by the petitioner *per se* is not maintainable, prays for dismissal.

6.The learned counsel for the petitioner in response would submit that this Court considering the COVID - 19 pandemic situation may *suo motu* extent the period of limitation so as to enable the petitioner to approach the appellate forum.

7.This Court considered the rival submissions and also perused the materials placed before it.

8.The petitioner has an effective alternative remedy under Section 17 of the SARFAESI Act before the the Debts Recovery Tribunal, Madurai and the decision of the Hon'ble Apex Court reported in (2010) 8 SCC 110 [United Bank of India vs. Satyawati Tondon & Ors.] has also held that in the light of availability of effective alternative remedy, the Writ Petition is not maintainable.

9.In the light of the subsequent development in the form of successful sale has been knocked down by a private individual and the sale certificate was also issued in his favour and that apart the petitioner is having an effective alternative remedy under Section 17 of the SARFAESI Act, this Court is not able to come to the aid of the petitioner.

10.In the result, the Writ Petition is dismissed. The petitioner is at liberty to workout his remedy under Section 17 of SARFAESI Act. Consequently, connected Miscellaneous Petition is closed. However, in the circumstances of the case, there shall be no order as to the costs.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sj

<u>Note</u>: *In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned*

To

Reserve Bank of India,
16th floor, Central Office Building,
Shahid Bhagat Singh Marg,
Mumbai 400 001.

+1 CC to M/s.N.MURUGESAN, Advocate (SR-13170[F] dated 21/07/2020)

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and
W.M.P.(MD)No. 7222 of 2020
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