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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No. 5164 of 2021

Sunil Kumar Jain

.. Petitioner

Vs

1.The Presiding Officer,
Debts Recovery Tribunal,
Coimbatore,
2nd & 3rd Floors, Jawan's Bhavan,
27, T.B.Road,
Coimbatore - 641 018.

2.The Authorised Officer,
Bank of Baroda,
Salem Main Branch,
44, Sannadhi Street,
Fort, Salem 636 001.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the first respondent to restore S.A.No. 21 of 2021 on its file dismissed as infructuous on 20.01.2021 and decide the application on merits.

For Petitioner

: Mr.P.Senthil Kumaran

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The petitioner, who has obtained credit facilities from the Bank of Baroda and who had challenged the sale notice issued by the secured creditor under the Securitisation and Reconstruction of Financial Assets and Enforcement of



Security Interest Act, 2002 before the Debts Recovery Tribunal, questions the propriety of the order passed by the Tribunal on January 20, 2021.

2. The petitioner says that since the petitioner was not represented, the Tribunal ought to have afforded some time and adjourned the matter and the Tribunal should not have disposed of the matter before it on the mere submission of the secured creditor.

3. Since it appears to be the admitted position that the petitioner was not represented before the Tribunal on January 20, 2021, the Tribunal was well within its rights to dismiss the proceedings under Section 17 of the Act of 2002 for default. However, the Tribunal recorded the statement made on behalf of the secured creditor that no sale was held on the scheduled date. The Tribunal thereafter observed that since the proposed sale had been challenged and no sale took place, the proceedings before it had become infructuous.

4. It may be noticed in the present context that what triggers off a right to approach the Tribunal under Section 17 of the Act of 2002 is the taking of any measure by a secured creditor under Section 13(4) of the Act of 2002. The measure that the secured creditor in this case had taken was to issue a sale notice. It was such measure that could have been, and was, challenged. In course of such challenge, it is open to a borrower, if it is the borrower lodging the challenge, to assert all grounds in defence, including the ground that the secured creditor had wrongfully invoked the provisions of the said Act of 2002 or that there was no debt due or the like. Once the measure that was taken by the secured creditor comes to naught, so does the challenge thereto.

5. There is no doubt that upon further measures being taken by the secured creditor, inter alia, to issue a subsequent notice scheduling the date of auction, a right will accrue to the petitioner to again approach the Tribunal under Section 17 of the Act of 2002, where all grounds that could have been urged earlier may again be urged, since such matters had not been taken into consideration earlier. Indeed, the order impugned dated January 20, 2021 does not appear to cause irreparable injury or any serious prejudice to the petitioner herein or to any of the grounds that the petitioner may be entitled to urge against the secured creditor adopting any of the measures under Section 13(4) of the Act of 2002.



6. Accordingly, W.P.No.5164 of 2021 is disposed of without requiring even service to be effected. There will be no order as to costs. Consequently, W.M.P.No.5732 of 2021 is closed.

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7. The petitioner will be obliged to forward copies of the petition and this order to the secured creditor, for the secured creditor to be made aware thereof.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

sasi

To:

1.The Presiding Officer,
Debts Recovery Tribunal,
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W.P.No. 5164 of 2021

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A.SK(31.03.2021)