

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 07.01.2021
CORAM
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN
WP.No.4359 of 2020
and W.M.P.Nos.5158 & 5159 of 2020

1.M/s.Mahan Textile Process India (P) Ltd
rep.by its Managing Director A.Mahalingam
47(D) 4, Kangayam Main Road, Tirupur 641 604.

2.A.Mahalingam

3.Mrs.M.Kalaiselvi .. Petitioners

Versus

1.The Authorized Officer
The Tamil Nadu Industrial Investment Corporation (TIIC)
Ltd.,
Tirupur Branch,
Kumaran Shopping Complex, II Floor,
Near Railway Station,
Kumaran Road, Tirupur 641 601.

2.M/s.Small Industries Development Bank of India
rep.by its Branch Manager,
1st Floor, K.S.N.Complex,
No.74, J.G.Nagar, 60 Feet Road,
Tirupur f641 602.

3.The Authorized Officer and Chief Manager
India SME Asset Reconstruction Company Ltd, (ISARC)
1004, 10th Floor Naman Center
Plot No.C 31, G Block, Bandrakurla Complex,
Bandra, Mumbai 400 051.

4.R.Nagaraj .. Respondents

(4th respondent is impleaded vide order dated 07.01.2021 in
W.M.P.No.7913/2020)

Prayer:-Writ petition filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Certiorari calling for the records of the first respondent
pertaining to the notice issued under Section 13(2) dated
26.12.2012 and Rule 8(1) possession notice dated 07.01.2021
and E-Auction notice TIIC/TPR/LAO/2019-20 dated 08.01.2020,
respectively and quash the same.

For Petitioners: Mr.M.L.Ramesh

For R1 : Mr.S.R.Rajagopal
Additional Advocate General for
Mr.M.Elumalai
Special Government Pleader

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J. through
video conferencing]

By consent, the Writ Petition is taken up for final disposal and disposed of by this final order.

2. The petitioners came forward to file this Writ Petition, challenging the impugned auction Sale Notice of the 1st respondent dated 08.01.2020. A perusal of the affidavit filed in support of this Writ Petition would disclose among other things that challenging the very same impugned notice, the petitioners herein had filed S.A.No.73 of 2020 and pending disposal of the same, prayed for interim stay of all further proceedings by filing I.A.No.318 of 2020 in S.A.No.73 of 2020 and the Debts Recovery Tribunal, Coimbatore, after taking into consideration the rival submissions and materials placed, found that no valid reasons have been assigned and held that in the absence of merits, the request made by the petitioner for grant of interim stay cannot be considered and accordingly dismissed the said petition and challenging the legality of the same, the present Writ Petition is filed.

3. The primordial submission made by the learned counsel appearing for the petitioners is that though there are other secured assets available, so as to enable the contesting respondent to sell it and realise the dues, the agricultural properties alone were targeted and were sold in favour of the auction purchaser for very low price and in the light of Section 31(i) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, such a sale is totally void and prays for interference.

4. Per contra, Mr.S.R.Rajagopal, learned Additional Advocate General assisted by Mr.M.Elumalai, learned Additional Government Pleader appearing for the 1st respondent has drawn the attention of this Court to the grounds of appeal in S.A.No.73 of 2020 and would submit that very same grounds apart from other grounds have been raised in the said appeal and since the Tribunal has exercised discretion in a particular manner, by giving out a detailed reasons for rejection of the petition for interim orders, this Court in exercise of it's jurisdiction under Article 226 of the Constitution of India, may not judicially review the same for the reason that the scope of judicial review is very limited in respect of those orders and prays for dismissal of this Writ Petition.

5. This Court heard the submission of the learned counsel appearing for the 2nd respondent and the learned counsel appearing for the auction purchaser would submit that though the Sale Certificate came to be issued in his favour as early as on 05.06.2020, he is yet to realise the fruits of the sale and prays for dismissal of this Writ Petition.

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

7. The primordial question raised by the learned counsel appearing for the petitioner is that since the properties, sold in favour of the auction purchaser / 4th respondent, are agricultural properties, which are exempted under Section 31 (i) of the SARFAESI Act, the sale itself void abinitio. In the considered opinion of this Court, whether the properties are agricultural in nature or not would revolve around adjudication on disputed question of facts and the said exercise cannot be undertaken by this Court in exercise of it's jurisdiction under Article 226 of the Constitution of India.

8. Be that as it may, the petitioner shall also raise the same as one of the ground in the pending S.A.No.73 of 2020. This Court has also taken note of the submission made by the learned counsel appearing for the petitioner that there are other valuable secured assets available for sale and despite that, secured Agricultural properties have been brought for sale and sold in favour of the auction purchaser / 4th respondent.

9. In the light of the above facts and circumstances, coupled with the reasons assigned above and having taken note of the fact that the Tribunal has exercised it's discretion in a fair and proper manner, this Court is not in a position to interfere with the impugned order, declining the grant of interim relief. However, Debts Recovery Tribunal, Coimbatore, is directed to accord priority and dispose of the S.A.No.73 of 2020, in accordance with law as expeditiously as possible, and not later than six weeks from the date of receipt of a copy of this order / uploading of the order in the website. It is also open to the auction purchaser to implead himself in S.A.No.73 of 2020 as a party.

10. In the result, the Writ Petition is dismissed, subject to the above observations. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

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To

1.The Authorized Officer

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Near Railway Station,
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2.The Branch Manager,

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3.The Authorized Officer and Chief Manager

India SME Asset Reconstruction Company Ltd, (ISARC)
1004, 10th Floor Naman Center
Plot No.C 31, G Block, Bandrakurla Complex,
Bandra, Mumbai 400 051.

4.The Presiding Officer,

Debts Recovery Tribunal,
Coimbatore.

+1cc to Mr.K.Magesh , Advocate SR.No. 818

+1cc to Mr.ML.Ramesh , Advocate SR.No. 826

+1cc to Mr.Balaji, Advocate SR.No. 1736

WP.No.4359/2020

A.SK(18.03.2021)