IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2021

CORAM :

The Hon'ble Mr.SANJIB BANERJEE, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.7724, 7725 and 7415 of 2020
and W.M.P.No.9084 of 2020

W.P.Nos.7724 & 7725 of 2020

M/s.Suganthi Educational Trust
rep. by its Managing Trustee,
Dr.Sujatha Balasubramanian,
No.15, Corporation Colony,
Kodambakkam, Chennai 600 024. .. Petitioner in all WPs.

-vs-

1. M/s.The Karur Vysya Bank Ltd.,
Corporate Business Unit,
No.1, 1st Floor, Padmavathiyar Road,
Gopalapuram, Chennai 600 018. .. 1st respondent in WP.7724 & 7725/20 and Respondent in WP.7415/20

2. M/s.CFM Asset Reconstruction Private Limited (CFM ARC),
Registered office at
A/3, 5th Floor, SafalProfitaire,
Near Prahlad Nagar Garden,
Ahmedabad - 380 015,
Corporate Office at 1st Floor,
Wakefield House,
Sprott Road, Ballard Estate,
Mumbai 400 038.

3. The Sub-Registrar
Sub-Registrar of Pallavaram
O/o.The Sub-Registrar, Pallavaram,
Chennai 600 044. .. Respondents 2 & 3 in W.Ps.7724 & 7725/20

Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of – (i) W.P.No.7724/2020 - Certiorarified Mandamus to call for the records of the impugned letter dated 5.5.2020 of the first Respondent Bank notifying the Assignment of Debt with underlying securities holding the said Assignment of Debt with underlying securities as Null and Void being in derogation of the order of this Honourable Court and consequently direct the first respondent Bank to accept the request of the Petitioner to bring prospective purchasers for the personal properties and conclude the sale by issuing NOC for the same; (ii) W.P.No.7725/2020 - directing the Respondents herein not to act in any manner or carry on any act deed enforcement etc. upon the Assignment of Debt with underlying securities by the first respondent to the second respondent notified in the Letter dated 5.5.2020 by the first respondent being a transaction in derogation to the orders of this Honourable Court and non-est in law; and (iii) W.P.No.7415 of 2020 – Certiorarified Mandamus to Call for the records of the respondent Bank in the impugned letter dated 13/03/2020 and the consequential rejection letter dated 23/03/2020 and quash the same as being in derogation of law and constitutional right guaranteed and consequently direct the respondent Bank to accept the request of the petitioner to bring prospective purchasers for the personal properties and conclude the sale by issuing NOC for the same.

For Petitioner : Mr.R.Imayavarman for M/s.Ramalingam Associates

For Respondents : Mr.Menon, Karthik, Mukundan for R-2 in W.P.Nos.7724 & 7725 of 2020
Mr.T.P.Pappiah for R-3 Special Government Pleader in WP(MD)Nos.7724 & 7725 of 2020

COMMON ORDER

(Made by The Hon'ble Chief Justice)

These are three utterly frivolous petitions that should not have been brought to the Court at all. The first petition, W.P.No.7415 of 2020, challenged a notice issued by the secured creditor-respondent to conduct an auction sale by resorting to the measures under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. Quite surprisingly, an ex parte ad-interim order came to be made at the admission stage of the petition, primarily because of the lockdown that had then recently been imposed. Paragraph 7 of the order dated March 30, 2020 is of relevance:

> "7. We direct by way of this interim order, the Respondent Bank to maintain the status quo in the matter, as it exists today and not to proceed with the auction of the assets of the petitioner's Trust or its Guarantors, without the specific leave of the Court, till further orders."

3. Subsequent writ petitions, W.P.Nos.7724 and 7725 of 2020, came to be filed questioning the transfer of the debt and the securities by the erstwhile secured creditor, Karur Vysya Bank, to CFM Asset Reconstruction Private Limited, an asset reconstruction company within the meaning of the relevant definition in the Act of 2002. The principal ground urged in the subsequent writ petitions is that in view of the order of status quo passed on March 30, 2020, the bank could not have transferred its debt or securities in favour of any third party.

4. For a start, the order of status quo that was passed was sufficiently clarified in paragraph 7 of the relevant order itself as it appears to have been issued only in connection with the auction sale. It would also stand to reason that the order of status quo was confined to the auction sale since it is such auction sale that could prejudice any borrower or cogent grounds could be brought to challenge the proposed auction sale on the ruse that no debt was due from the borrower to the secured creditor or that the reserve price set for the asset may have been grossly low or the like. The general right of a creditor, particularly a secured creditor as defined in the Act of 2002, to transfer the amount due and owing from a borrower and the securities obtained in respect thereof to another, particularly to an asset reconstruction company as defined in such Act, has nothing to do with the borrower where the definition of a borrower under the Act of 2002 covers even a guarantor. This is

because the quality of the claim, or the permissibility thereof, would remain unaltered upon the transfer of the debt due and the securities held for such debt by a secured creditor to an asset reconstruction company.

5. It has also been appropriately pointed out on behalf of the respondent-asset reconstruction company that Section 5 of the Act of 2002 permits the kind of transfer that was made by Karur Vysya Bank in favour of such asset reconstruction company. The relevant provision begins with the non-obstante clause covering "any agreement" and "any other law for the time being in force".

6. Thus, unless the petitioner herein can demonstrate that notwithstanding such non-obstante clause, the transfer could not have been made by Karur Vysya Bank to the respondent-asset reconstruction company, the objection raised has to be rejected out of hand. The thin thread on which the objection hung was the direction of status quo in the order of March 30, 2020. Since the relevant order has now been interpreted and it is discovered that the order of status quo could not have required the bank not to transfer the debt and the corresponding assets to any third party, there is no basis to the petitioner's challenge to the transfer in favour of the respondent-asset reconstruction company and the subsequent steps taken by such asset reconstruction company to realise its just dues from the petitioner.

7. In any event, the initial petition should have been carried to the appropriate Debts Recovery Tribunal in view of Section 17 of the Act of 2002 that permits any grievance of any person against any measure taken by a secured creditor under Section 13 (4) of the Act to be carried to the Debts Recovery Tribunal exercising jurisdiction. The writ petition was possibly entertained in view of the emergency like situation in the wake of the lockdown that had been declared in the preceding week or that week itself.

8. Accordingly, there is no merit in the petitioner's challenge to the transfer of the debt and secured assets in favour of the respondent-asset reconstruction company by Karur Vysya Bank. As far as petitioner's grievance against the measures taken by Karur Vysya Bank under Section 13 (4) of the Act are concerned, they are irrelevant since such bank is no longer in the picture. In the event the respondent-asset reconstruction company takes any measures under Section 13 (4) of the Act by which the petitioner is aggrieved, it will be open to the petitioner to approach the appropriate Debts Recovery Tribunal in accordance with law.

9. It is made clear that the merits of the dispute between the secured creditor and the borrower have not been gone into.

W.P.Nos.7724, 7725 and 7415 of 2020 are disposed of. There will be no order as to costs. Consequently, W.M.P.No.9084 of 2020 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

SRA

To

The Sub-Registrar
Sub-Registrar of Pallavaram
O/o.The Sub-Registrar,
Pallavaram,
Chennai 600 044.

+1cc to Mr.Menon, Karthik, Mukundan, Advocate, S.R.No.20595
+4cc to Mr.Ramalingam & Associates, S.R.Nos.20590 & 20592

W.P.Nos.7724, 7725 & 7415 of 2020
and W.M.P.No.9084 of 2020

SRA(CO)
TE (19/04/2021)