IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2021

CORAM:

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

W.P. No.10216 of 2021 and
W.M.P.Nos.10835 & 10836 of 2021

Elankodi,
W/o.R.Suresh Kumar,
F24, Galaxy Parsn Nestle Apartment,
Nanjundapuram Road,
Ramanathapuram,
Coimbatore – 641 036. ... Petitioner

Vs

1. The Branch Manager,
Erode Branch,
The Tamil Nadu Industrial Investment
Corporation Limited,
C.S.Sengottaiah Complex, 2nd Floor,
No.23, Chidambaram Colony,
Periyar Nagar, Erode – 638 001.

2. The Officer on Special Duty (Recovery)
TIIC Limited,
No.692, Anna Salai,
Nandanam,
Chennai – 600 035.

3. The Service Manager (Recovery)
TIIC Limited,
No.692, Anna Salai,
Nandanam, Chennai – 600 035.

4. P.Thillakarasi,
W/o Mani Gounder,
No.39, Chinnamuthu 3rd Street,
Edayankattu Valasu,
Erode – 638 011. ...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus calling for the records relating to the order dated 21.12.2020 passed in TIIC/Erode.FU/2020-2021 on the file of the first respondent herein and to quash the same as null and void, and forbearing the respondents from proceeding in any manner against the petitioner in respect of the land to an extent of 11216 ½ Sq.Ft., in Survey No.362/5 in Vellakovil Village in Kangeyam Taluk in Erode District.

For Petitioner : Mr.A.V.Arun for Elizabeth Ravi
For Respondents : Mr.K.Magesh
Standing counsel for R1
Mr.V.Ayyadurai Standing counsel
for Mr.R.Karthikeyan for R4
No Appearance for R2, R3

ORDER

This writ petition has been filed challenging the action taken by the respondent Corporation bringing the subject property for auction sale pursuant to the notice issued to the partnership firm; the petitioner and other partners on 19.10.2020 and to forbear the respondents from proceeding further.

2.The case of the petitioner is that the partnership firm namely, M/s.Ranga Woolen Spinners sought for financial assistance from the Tamil Nadu Industrial Investment Corporation Limited (TIIC). The Corporation extended financial facilities to the partnership firm. At the time when the loan was paid to the firm, a mortgage deed was entered into on 25.03.1992 and the subject property was also one of the property that was mortgaged as a security for the repayment of loan. There was default in payment of the loan and hence, the loan was foreclosed on 17.07.1997. Thereafter, the Corporation also offered a one time settlement to the firm and the same did not go through. Therefore, the Corporation proceeded further and took symbolic possession of the mortgaged assets on 17.10.2002 by invoking their powers under Section 29 of the State Financial Corporations Act, 1951 (hereinafter referred to as 'the Act'). The physical possession of the properties was also taken on 27.07.2017.

3. The respondent Corporation thereafter attempted to bring the mortgaged properties for public auction and the same got challenged before this Court by the partnership firm and all those writ petitions were dismissed. Ultimately, the respondent Corporation made a valiant attempt to bring the property for auction sale and the auction was held on 22.01.2021 and the fourth respondent was the successful bidder and it is stated that a sale deed was also executed in her favour. Aggrieved by the same, the present writ petition has been filed before this Court.

4. The respondents 1 to 3 have filed a counter affidavit and the relevant portions in the counter affidavit are extracted hereunder:

> "10. With regard to the averment made in paragraph 7 of the affidavit is denied as false. It is false to state that this respondent took symbolic possession of the mortgaged assets on 17.10.2007 by invoking their power under Section 29 of the State Financial Corporation Act. It is pertinent to note that this respondent is giving due notices and intimating the actions taken against the firm to the petitioner and the partners of her firm. This respondent Corporation after giving due notices took symbolic possession of mortgaged assets on 17.10.2002 and took physical possession of the same on 27.07.2007 under Section 29 of the State Financial Corporation Act.
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> ...
>
> 12. With regard to the averment made in paragraph 9 of the affidavit and denied as false. It is false to state that all the efforts taken by the said firm through its partners and herself were not successful. It is true that this respondent by their letter dated 19.10.2020 called upon to pay a sum of Rs.17.67 lakhs towards principal and Rs.2552.93 lakhs towards interest with other charges amounting to Rs.6.34 lakhs totaling Rs.2576.94 lakhs as on 19.10.2020 and further interest from 01.07.2020.
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> 13. With regard to the averments made in paras 10 to 12 of the affidavit, all the allegations mentioned therein is true and correct. In the said letter dated 19.10.2020 this respondent had also categorically mentioned at page No.2 as "if you have any objection about the valuation, you may inform us within seven days from the date of receipt of this letter". In spite of the same there was no response form the petitioner and her firm.
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> 14. With regard to the averments made in paragraphs 13 to 15 of the affidavit they are denied as false. The respondent Corporation has

given enormous time to the petitioner and her firm on various occasions to settle the lone account but in spite of that, they have failed to settle the loan dues and OTS option given to the petitioner and her firm by the respondent Corporation. The respondent Corporation has no other option except to sell the property on auction on 22.01.2021 and the fourth respondent herein was the successful bidder in the e-auction.

15. With regard to the averments made in Ground (a) to (c) are denied as false. I submit that the petitioner Tmt.S.Elankodi, the partner of the firm executed a supplementary Deed of Partnership by converting her property to the petitioner's firm property and the land value was brought in to the books of accounts of the petitioner firm and for construction of building in security of the petitioner firm, as per the power vested under Sec.29 of State Finance Corporation Act 1951 action was taken against this Primary Security.

...

17. With regard to the averments made in Ground (d) to (h) are denied as false. The respondent Corporation took symbolic possession of the mortgaged property on 17.10.2002 and brought the mortgaged properties for so many public auction from the year 2002 onwards and the last one ended on 22.01.2021. The action taken by the respondent Corporation is well within the limitation period. The partnership firm of the petitioner has approached this Hon'ble Court in W.P.No.45073 of 2006 and obtained conditional stay for payment of Rs.30 lakhs within a period of 2 weeks from 22.11.2006. However, since the same was not complied the writ petition was dismissed on 27.10.2017. Thereafter, the petitioner's husband Mr.R.Suresh Kumar promised to settle the loan account and had issued his 2 postdated cheques for Rs.15 lakhs dated 15.01.2011 and Rs.10 lakhs dated 15.02.2011. Both cheques were returned. The respondent Corporation has filed Section 138 of the Negotiable Instruments Act case before the Judicial Magistrate, Coimbatore in C.C.No.230 of 2011 and 261 of 2011 and the same are pending as on date.

> (a) This respondent Corporation had brought the mortgaged properties for 13th public auction sale and the same was held on 14.02.2011 and the respondent Corporation had received highest bid amount of Rs.41.25 lakhs from Thiru.V.K.Sathyamoorthy, Palladam. Once again the petitioner's husband R.Suresh Kumar filed another W.P.No.3504 of 2011 before this Hon'ble High Court to stay of the confirmation of auction sale. This respondent contested the matter very seriously and the Hon'ble High Court was pleased to vacate the stay order on 02.01.2012."

5. Heard the learned counsel for the petitioner, the learned counsel for the respondent Corporation 1 to 3 and the learned Senior counsel appearing on behalf of the fourth respondent.

6. The learned counsel for the petitioner primarily raised three grounds challenging the action taken by the Corporation and they are,

(a) The petitioner even though was a partner of the firm, the property in question is her individual property and the same was only given in her capacity as a surety. Therefore, the respondent Corporation cannot invoke their powers under Section 29 of the Act to bring the property belonging to the surety/guarantor for auction sale and such action is illegal. To substantiate this submission, the learned counsel relied upon the judgments of the Hon'ble Supreme Court in Karnataka State Financial Corporation v. N.Narasimahaiah and Others reported in (2008) 5 SCC 176 and Subhransu Sekhar Padhi v. Gunamani Swain And Others reported in (2014) 12 SCC 368;

(b) The loan was admittedly foreclosed on 17.07.1997 and under Article 62 of the Limitation Act, to enforce the payment of money secured by a mortgage, action ought to have been taken within a period of 12 years. The 12 years period will start running from 17.07.1997 and therefore, the action should have been taken latest by the year 2009. However, in the present case, the property has been brought to auction only in the year 2020. Therefore, the action taken by the respondent Corporation is clearly barred by limitation. The learned counsel developed his argument by submitting that even insofar as taking action under Section 29 of the Act, the same has to be done within the four corners of law, which also includes law of limitation and in the present case, the auction is clearly barred by limitation and

(c) The learned counsel also submitted that there is undervaluation of the property and the property has been sold for a song and the same is liable to be interfered by this Court.

7. Per contra, the learned counsel on behalf of the respondent Corporation apart from reiterating the stand taken in the counter affidavit, submitted that the Corporation has been attempting to recover the money from the year 2005 onwards and every time, the auction notice/advertisement is issued, the same was made a subject matter of challenge before this Court and the auction was stalled. In order to substantiate his submission, the learned counsel for the petitioner brought to the notice of this Court three earlier writ petitions filed by the partnership firm, which was represented by the husband of the petitioner in W.P.No.45073/2006, W.P.No.20350/2008 and W.P.No.3504/2011. The learned counsel submitted that all these writ petitions were dismissed. It was submitted that with very great difficulty the property was ultimately brought for auction on 22.01.2021 and the fourth respondent was the highest bidder and the sale deed was also executed in favour of the fourth respondent. The learned counsel further brought to the notice of this Court Paragraph No.17 of the counter affidavit and submitted that there are absolutely no bonafides, since even the cheques that were issued by the husband of the petitioner promising to settle the loan were dishonoured, which resulted in initiation of criminal proceedings under Section 138 of the Negotiable Instruments Act. The learned counsel therefore submitted that there are absolutely no merits in the present writ petition.

8. Insofar as the contention raised by the learned counsel for the petitioner to the effect that the petitioner was only a guarantor and her property cannot be brought for auction sale under Section 29 of the Act, the learned counsel submitted that the said contention is unsustainable since the petitioner was a signatory in the mortgage deed and the property in question was very much a property belonging to the firm and therefore, the said contention is liable to be rejected by this Court. Insofar as the ground of limitation is concerned, the learned counsel submitted that steps are being taken to bring the property for auction sale right from the year 2005 onwards and every time, it was stalled by filing one writ petition or the other and therefore, the action was initiated on the part of the respondent Corporation well on time and the delay can only be attributed to the partnership firm in which the petitioner is also one of the partner. The learned counsel further submitted that the property was properly valued and there is no infirmity in the valuation and the ground of undervaluation raised by the petitioner is also not sustainable.

9. The learned senior counsel appearing on behalf of the fourth respondent, who is the auction purchaser submitted that the present writ petition is an abuse of process of Court. To substantiate this submission, the learned senior counsel relied upon the judgment of the Hon'ble Supreme Court in U.P.Financial Corporation v. M/s.Gem Cap (India) Pvt. Ltd. and others reported in AIR 1993 SC 1435. The learned senior counsel further submitted that even the pleadings in the affidavit filed in support of the writ petition clearly reveals the fact that the property belongs to the partnership firm and the petitioner is trying to come up with a new case as if it is her personal property and she stood only as a guarantor. The learned senior counsel submitted that the petitioner cannot be allowed to contend before this Court something contrary to what is found on record. The learned senior counsel further submitted that the conduct of the parties right from the beginning must be taken into account by this Court and there are absolutely no bonafides on the part of the petitioner to have once again knocked the doors of this Court and made an attempt to stall the auction sale that was conducted by the respondent Corporation. Therefore, the learned counsel submitted that the present writ petition is liable to be dismissed.

10. This Court has carefully considered the submissions made on either side and the materials available on record.

11. This is yet another case where a party after borrowing money from TIIC is adopting ways and means to delay the inevitable. There is no dispute with regard to the fact that the partnership firm had borrowed loan from the respondent Corporation. It is also not in dispute that the firm committed default and the loan was also foreclosed as early as in the year 1997. Several representations were made seeking for one time settlement and it never went through. The attempt made by the respondent Corporation to bring the properties that were mortgaged for sale was also put to challenge before this Court repeatedly by the partnership firm represented by the husband of the petitioner and all these writ petitions came to be dismissed. Ultimately, the respondent Corporation somehow managed to bring the subject property for auction on 22.01.2021 and the fourth respondent is the successful bidder in the auction conducted by the Corporation. It is also stated that the sale deed also has been executed in favour of the fourth respondent.

12. The first ground that has been raised by the learned counsel for the petitioner is that the petitioner was only a guarantor and she had given the subject property as a security and hence, the respondent Corporation cannot invoke Section 29 of the Act insofar this property is concerned. The petitioner

is drawing inspirations from the judgment of the Hon'ble Supreme Court, which has been referred supra.

13. There is absolutely no quarrel in the ratio that has been enunciated in the judgments that were cited by the learned counsel for the petitioner. Section 29 of the Act confers right on the respondent Corporation only to proceed against the properties belonging to the industrial concern. Only insofar as those properties, it is left open to the respondent Corporation to either invoke Section 29 or Section 31 of the Act. However, when it comes to the property of an individual, which is given by a person as a surety or as a guarantor, Section 29 of the Act cannot be invoked. In those cases, at the best, the Corporation can only invoke Section 31 of the Act and proceed further by filing a suit.

14. In order to appreciate the contention raised by the learned counsel for the petitioner, it is necessary to look into the materials that have been placed before this Court in order to ascertain whether the property in question is the individual property of the petitioner or it is a property, which belongs to the firm. While considering this issue, it must not be forgotten that the petitioner is also a partner in the firm and it is trite law that insofar as the liability of the partnership is concerned, it is always joint and several. It must also be borne in mind that at the time when the mortgage deed was entered into on 25.03.1992, the partnership firm and the partners were parties to the document and the subject property was mortgaged and nowhere in the mortgage deed, it is found that the property is given by the petitioner as a security or that the petitioner stood as a guarantor. A reading of the document shows that it was treated as the property belonging to the firm.

15. A careful reading of the affidavit filed in support of the writ petition shows that the petitioner herself has admitted to the effect that the superstructure in the subject property was put up by the partnership firm and the machineries were also installed therein. For proper appreciation, Paragraph 3 of the affidavit is extracted hereunder:

> "In partnership with my husband and others, in the name and style of M/s.Ranga Wollen Spinners, hereinafter referred to as the said firm, I entered into the venture, in the manufacture of textiles, and for that purpose, the said property had been subjected to as a collateral security, with the first respondent, along with the superstructures put up by the partnership firm, together with the machineries installed therein".

16. It is clear from the above that the admitted case of the petitioner is that the superstructure in the subject property was put up by the partnership firm and the machineries were also installed therein by the partnership firm. While determining as to whether the property in question was treated as a partnership property, the conduct of the parties assumes a lot of significance. Section 14 of the Partnership Act, 1932 deals with the property of the firm. A careful perusal of the above Section shows that the property will become the property of the partnership firm, where there is an agreement between the partners to that effect. However, this agreement can be expressed or implied. Insofar as implied agreement is concerned, the same has to be deduced from the conduct of the parties.

17. In the present case, the petitioner was admittedly a partner of the firm. When the mortgage deed was executed on 25.03.1992, the petitioner along with other partners belonging to the firm had proceeded further to give an impression to the Corporation that the property in question belonged to the firm. There is absolutely no indication in the mortgage deed that the property in question is the individual property of the petitioner and it has been given as a guarantee. Once there is a written document and it is also registered, no party can be allowed to come up with facts contrary to what has been stated in the document. In all those cases, the Court has to only go by the express terms of the document.

18. In the present case, except for the ipse dixit of the petitioner, all the materials clearly shows that the property was always treated to be the property of the firm. That apart, at Paragraph No.15 of the counter affidavit, there is a specific pleading to the effect that the petitioner as the partner of the firm had executed a supplementary deed of partnership by bringing the subject property into the firm and it was also brought into the books of accounts of the firm. This is yet another factor, which clearly demonstrates that the property in question is very much the property of the firm and it was treated so right from the beginning and the petitioner cannot be allowed to take a completely different stand in the present writ petition.

19. In view of the above finding, the first ground that was raised by the learned counsel for the petitioner does not merit acceptance and the same is accordingly rejected.

20. Insofar as the second ground that has been taken with regard to plea of limitation, this Court does not find any merit in the said contention. It is clear from the records that the respondent Corporation has been attempting to bring the property

for auction sale right from the year 2005 onwards and every time it was put to challenge before this Court by filing one writ petition or the other. The writ petitions were filed by none other than the husband of the petitioner, who was also a partner in the firm. This conduct on the part of the husband of the petitioner speaks volumes about the questionable bonafides of the petitioner, who has approached this Court with yet another writ petition by taking a new plea in order to stall the auction sale. In the considered view of this Court, the respondent Corporation has taken action well within time and it is not barred by limitation.

21. Insofar as the valuation of the property is concerned, the same has been explained in the counter affidavit at Paragraph No.13. This Court does not find any ground to interfere with the action taken by the respondent Corporation. The fourth respondent has participated in the auction and has been declared to be the successful bidder and the sale deed has also been executed in favour of the fourth respondent. Thus, the fourth respondent has acquired right and title of the property. There is absolutely no ground to divest this right of the fourth respondent. This Court does not find any merit in the present writ petition and the contentions raised on the side of the petitioner are unsustainable and in view of the same, this writ petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

RR
To

1. The Branch Manager,
Erode Branch, The Tamil Nadu Industrial Investment Corporation Limited,
C.S.Sengottaiah Complex, 2nd Floor,
No.23, Chidambaram Colony,
Periyar Nagar, Erode - 638 001.

2. The Officer on Special Duty (Recovery)
TIIC Limited, No.692, Anna Salai,
Nandanam, Chennai - 600 035.

3. The Service Manager (Recovery)
   TIIC Limited,
   No.692, Anna Salai,
   Nandanam, Chennai - 600 035.

+1cc to Mr.K.Magesh, Advocate Sr.49209
+1cc to M/s.Elizabeth Ravi, Advocate Sr.48941

W.P.No.10216 of 2021 and
W.M.P.Nos.10835 & 10836 of 2021

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