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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

WP No.23544 of 2021

R.Arulselvi .. Petitioner

Vs.

1. The Presiding Officer
Debt Recovery Tribunal-3 Chennai,
5th Floor, Spencer Tower,
770 A, Anna Salai, Chennai 600 002.

2. Bank of Baroda
Rep. by its Senior Manager,
No.53 Kamarajar Road,
Kanchipuram 631 501. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration declaring that the auction sale notice dated 30/07/2021 issued by 2nd respondent is in violation of Section 5 A (4) of Sarfaesi Act because it was issued after the final order in O.A.679 of 2017 having been passed on 07/07/2021 by Honourable DRT - III Chennai and also barred by Limitation.

For the Petitioner : Mr.B.Gurumurthy

ORDER

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

The petitioner is admittedly a defaulting borrower. The debt due from the borrower to the third respondent secured creditor is somewhat covered by the assets which have been furnished by way of security.

2. The grievance in the petition is that the secured creditor is proceeding simultaneously against the petitioning borrower both by way of executing the certificate before the

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recovery officer of the appropriate Debts Recovery Tribunal and pursuant to the notice issued under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The prayer in the petition is to declare an auction sale notice dated July 30, 2021 as violative of Section 5A(4) of the Act of 2002 because it was issued after the final order was passed in the recovery proceedings numbered as O.A.No.679 of 2017. According to the petitioner, the certificate was issued by the Debts Recovery Tribunal-III, Chennai, on July 7, 2021.

3. Section 5A(4) of the Act has no manner of application in the present case. Section 5A(4) contemplates a situation where there is more than one creditor or the debt due to a creditor is transferred to an asset reconstruction company or another creditor. Sub-Section(4) of Section 5A mandates that if the proceedings are transferred from one Debts Recovery Tribunal to another for the purpose of consolidation, or any recovery certificate is transferred by one Debts Recovery Tribunal to another, all pending applications will stand transferred simultaneously. There is no question of transfer of any proceedings in the present case as the petitioner only speaks of recovery proceedings having been levied before the Debts Recovery Tribunal-III by the secured creditor and the secured creditor also independently proceeding against the secured assets.

4. While it is elementary that the second respondent secured creditor cannot recover any more money than what is due to such creditor from the borrowers, including the petitioner herein, there can be no impediment to a secured creditor proceeding simultaneously in recovery proceedings before any Debts Recovery Tribunal together with measures being adopted under Section 13(4) of the Act against any security that has been furnished in connection with the transaction.

5. As on date, the amount due from the petitioner or the borrowers to the respondent secured creditor has been quantified. The petitioner admits that such quantification has been made by Debts Recovery Tribunal-III on July 7, 2021. Thus, the quantum of recovery that can be made by the secured creditor will be governed by such order, subject to further interest that may have been ordered by such certificate itself. However, it is open to the secured creditor to proceed both against the secured asset and against individuals and assets of the individual debtors as long as the cumulative amount recovered falls within the amount adjudged to be due by the Debts Recovery Tribunal-III in favour of the secured creditor. In other words, the secured creditor may not recover anything more than what is due to the secured creditor; but the secured creditor cannot be stopped

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from proceeding both against the individuals who are borrowers and the assets of such borrowers along with the measures adopted in respect of the secured assets.

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6. Since the prayer made in the petition is misconceived, the same cannot be acceded to. WP No.23544 of 2021 is dismissed. There will, however, be no order as to costs, particularly since the petition has been dismissed at the receiving stage and without issuing notice to the respondent secured creditor.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To:

1. The Presiding Officer
   Debt Recovery Tribunal-3 Chennai,
   5th Floor, Spencer Tower,
   770 A, Anna Salai, Chennai 600 002.

2. The Senior Manager,
   Bank of Baroda
   No.53 Kamarajar Road,
   Kanchipuram 631 501.

+1cc to Mr.B.Gurumurthy, Advocate SR.No.57731

WP No.23544 of 2021

SG(CO)
SB(12/11/2021)

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