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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE  
AND  
THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P.No.20670 of 2021

R.Arjun Chinni Nambi

...Petitioner

Vs.

1.Encore Asset Reconstruction Company  
Private Limited  
(Encore ARC) 5th Floor, Plot No.137  
Sector 44, Gurugram 122 002  
Haryana.

2.Karur Vysya Bank Ltd.  
Asset Recovery Branch  
No.1, Padmavathiyar Road  
Gopalapuram, Chennai 600 086.

...Respondents

Prayer : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the impugned E-Auction Sale Notice dated 03.09.2021, by fixing the E-Auction Sale on 23.09.2021 issued by the first respondent bank, quash the same, pending SARFAESI Appeal in S.A.No.177 of 2021 before the Debts Recovery Tribunal II, Chennai and consequently forbear the respondent from taking any further coercive action under the SARFAESI Act 2002 as against the mortgage property till disposal of the present writ petition.

For the Petitioner : Mr.P.Paul Britto Kumar

ORDER

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

The petitioner's immediate grievance against the respondent secured creditor is, inter alia, on account of notices being issued to a dead person and a request having been carried under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by including the name of a dead person therein. The petitioner says that the law requires a creditor to give notice to the heirs of a deceased debtor and afford the



same time to the heirs to discharge the debt before the heirs can be proceeded against. The petitioner says that it is inconceivable that any proceedings would be instituted by a creditor against a deceased debtor.

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2. There is a minor matter of a sum in excess of Rs.9 crore having been obtained by the petitioner's now deceased father by way of credit facilities from the respondent bank. There is no whisper as to how the amount would be repaid, though it must be noticed that the petitioner has carried a petition under Section 17 of the Act to the appropriate Debts Recovery Tribunal. The immediate grievance of the petitioner is that despite the pendency of the petition under Section 17 of the Act of 2002 and the petitioner having complied with the conditions imposed while passing a conditional order by the appropriate Tribunal, the respondent secured creditor has acted contrary to the relevant order passed by the Tribunal.

3. On the petitioner's admission, the proceedings are still pending before the Tribunal. In such a situation, the petitioner's grievance that any order passed by the Tribunal has been violated ought to be carried to the Tribunal itself. The other grievances of the petitioner that have been aired here need also be taken to the Tribunal since the Section 17 proceedings remain pending in such forum.

4. The invocation of this extraordinary jurisdiction, in the circumstances, is found to be exceptionable and WP No.20670 of 2021 is dismissed by leaving the petitioner free to approach the appropriate Tribunal in accordance with law in respect of the matters complained of herein.

5. There will be no order as to costs. WMP Nos.21936 and 21937 of 2021 are closed.

Sd/-  
Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

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To

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SRA(CO)  
RVM(29/09/2021)

W.P.No.20670 of 2021