

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.01.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.No.35854 of 2019 and 8291 of 2020
and W.M.P.Nos.36760, 36761/2019 and 9934 of 2020

M/s.Varshini Equipments
rep.by its Sole Proprietrix
Mrs.G.Umamaheswari
13/1C, Eachanari to Madhukkarai Road,
Madhukkarai Post,
Coimbatore 641 105. ..Petitioner in both petitions

Versus

1. Inspector General of Registration
No.100, Santhome High Road, Mullima Nagar,
Mandavelipakkam, Raja Annamalai Puram,
Chennai, Tamil Nadu 600 028.
2. District Registrar,
No.02, State Bank Road,
opp. Railway Police Station,
Gopalapuram, Coimbatore,
Tamil Nadu 641 018.
3. The Sub-Registrar,
Madukkari Sub Registrar Office,
Coimbatore District.
4. The Sub-Registrar-Joint-1
Coimbatore Sub-Registrar Office,
Coimbatore District.
5. The General Manager, Indian Bank,
Corporate Office,
254-260 Avvai Shamugam Salai,
Chennai 600 014.
6. The Authorised Officer-cum-Chief Manager,
Indian Bank, Stressed Assets Management Branch,
No.31, Varity Hall Road,
Coimbatore 641 001.
7. Mr.M.Muthukumar

1. The General Manager, Indian Bank,
Corporate Office,
254-260 Avvai Shamugam Salai,
Chennai 600 014.
2. The Authorised Officer-cum-Chief Manager,
Indian Bank, Stressed Assets Management Branch,
No.31, Varity Hall Road,
Coimbatore 641 001.

..Respondents in W.P.No.8291/2020

Prayer in W.P.No.35854/2019:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for records, relating to the registered Certificate of Sale bearing Document No.4749 of 2019 dated 08.07.2019 on the file of the 3rd respondent and registered Certificate of Sale bearing Document No.3212 of 2019 dated 29.05.2019 on the file to the 4th respondent and quash the same as void, sham and nominal and pass such further or order in the interest of justice.

Prayer in W.P.No.8291/2020:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for records, relating to the order of warrant dated 02.01.2020 in Crl.M.P.No.1152 of 2019 on the file of the Chief Judicial Magistrate, Coimbatore, and quash the same and to pass such further or other order or orders that may deem fit and proper to the circumstances of the case.

For Petitioner in both W.Ps : Mr.V.Ramamurthy
for Ms.D.Kamachi D

For Respondents in W.P.No.35854/2019:

For RR6	:	Mr.Jayesh B.Dolia
For RR7	:	Mr.A.S.Vijayaraghavan
For RR8	:	Mr.K.J.Parthsarthy

For Respondents in W.P.No.8291/2020:

For RR2	:	Mr.Jayesh B.Dolia for M/s.Aiyar and Dolia
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COMMON ORDER

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

By consent, both these Writ Petitions are taken up and are disposed of by this common order, as the facts pleaded and points urged to be adjudicated are related to each other.

2. The deponent of the affidavit is the sole Proprietor of M/s.Varshini Equipments, involved in manufacturing stone crusher machineries and spare parts for the machineries etc, for the past 25 years. The petitioner approached M/s.Indian Bank, for availing credit facilities for the purpose of factory modernization and for diversifying the manufacturing unit and on processing the same, a sum of Rs.1.25 crores was sanctioned as a term loan and a sum of Rs.2 crores was sanctioned as working capital facilities respectively, during the year 2011. The petitioner also expressed grievance that despite the said sanction, a sum of Rs.92.80 lakhs alone was disbursed and the petitioner has also executed necessary documents, creating security over the immovable assets.

3. In the light of the fact that the petitioner M/s.Indian Bank has failed to disburse the sanctioned loan amount in full, they were constrained to approach M/s.Bell Finvest India Limited for financial support to sell the factory and to settle the dues to the 6th respondent Bank and accordingly, the Sanction Letter given by the said financial company was enclosed in the representation dated 30.05.2012, requesting them for No Objection Certificate and initially they agreed to give NOC and however subsequently it was refused and the account of the petitioner was declared as 'Non Performing Asset' on 23.08.2012 and in order to recover the said dues, action was also initiated under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The petitioner has filed S.A.No.93/2013, on the file of the Debts Recovery Tribunal, Coimbatore, to set aside the Sale Notice dated 01.04.2013 and initially conditional interim order was granted and it was not complied with and the said SARFAESI Appeal is still pending. M/s.Indian bank has also filed O.A.No.1/2014, on the file of the Debts Recovery Tribunal, Coimbatore for recovery of a sum of Rs.1,81,68,454/- together with interest at the rate of 18.5% per annum and other consequential relief and it is also still pending.

4. M/s.Indian Bank brought the secured assets for sale by issuing e-auction Sale Notice dated 04.06.2015 and one of the Guarantors, namely, Mr.Veluswamy has also entered into an Agreement of Sale dated 06.11.2018, with Paul Victor. The petitioner, on 15.11.2018, also submitted an OTS proposal and it was favorably considered and vide communication dated 06.12.2018, the petitioner was called upon to pay a sum of Rs.200.47 lakhs, subject to certain conditions. The petitioner had entered into an Agreement of Sale on 15.03.2019 with one P.J.David, in respect of a land admeasuring an extent of 0.95 acres in S.F.No.13/1C. M/s.Indian Bank and subsequently cancelled the OTS proposal vide communication dated 16.07.2019 and on 27.03.2019, once again issued the Sale Notice in respect of the above said landed property in S.F.No.13/1C admeasuring an extent of 0.95 crores and it was successful in favour of one Mr.Muthukumar /7th respondent and the Agreement

holders namely Paul Victor and P.J.David also filed S.A.No.181 of 2019, on the file of the Debts Recovery Tribunal-II, Madras, challenging the auction sale dated 22.04.2019 and the petitioner along with guarantors also filed S.A.No.240 of 2019, on the file of the Debts Recovery Tribunal-II, Coimbatore, challenging the auction sale dated 22.04.2019 and in I.A.No.175 of 2019, prays for interim orders. The Debts Recovery Tribunal-II, Chennai has passed the ad-interim order of physical dispossession of the applicant from the application schedule mentioned property for a period of 30 days except by taking recourse to the procedure contemplated under SARFAESI Act and Rules made thereunder subject to the condition that the Petitioners shall deposit a sum of Rs.50,00,000/- in instalments and according to the petitioner, the said order has also been complied with and on 01.08.2019, the said interim order has been extended until further orders and on 13.09.2019, interim order already granted was extended until further orders. The petitioner in W.P.No.35854 of 2019, challenging the Sale Certificates dated 08.07.2019 and 29.05.2019, respectively bearing Document Nos.4749 of 2019 and 3212 of 2019, executed in favour of the respondents 7 and 8 has filed the Writ Petition and it was entertained and vide order dated 19.03.2020, interim Status Quo as on 19.03.2020, was directed to be maintained. In the interregnum, the Bank has also approached the Court of Chief Judicial Magistrate, by filing an application under Section 14(1) and (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, for taking the actual physical possession of the assets and also filed CrI.M.P.No.1152 of 2019 and it was also ordered on 02.01.2020 and thereafter Warrant was issued for taking actual physical possession of the asset and making a challenge to the said Warrant dated 02.01.2020, W.P.No.8291 of 2020, came to be filed.

5. Mr.V.Ramamurthy, learned counsel appearing for the petitioners has invited the attention of this Court to the notes of the additional typed set of documents no.1 dated 18.01.2021 and would submit that the petitioner has submitted a comprehensive and workable proposal dated 16.01.2021, to the Assistant General Manager, Zonal Offices, Coimbatore as well as Chief Manager / Authorised Officer, Coimbatore, and in the light of the same, this Court may pass appropriate orders for consideration and disposal of the said representation and it would give quietus to the pending litigations.

6. Per contra, Mr.Jayesh B.Dolia, learned Standing Counsel appearing for the Indian Bank would submit that S.A.No.181 of 2019 as well as S.A.No.240/2019, filed before the Debts Recovery Tribunal-II, Chennai, is not maintainable, for the reason that the petitioner himself on an earlier occasion had filed S.A.No.93 of 2013 at Coimbatore and no part of cause of action will arise within the jurisdiction of the

Debts Recovery Tribunal at Chennai and would further point out that the sole asset is situated at Coimbatore only.

7. The learned counsel appearing for the respondents argued on the merits of the matter and submitted that already private respondents became the successful purchaser and Sale Certificates have also been issued in their favour and remedy open to the petitioner is to proceed further in S.A.No.240/2019 and this has to be transferred to the file of the Debts Recovery Tribunal at Coimbatore. As regards the latest representation / proposal dated 10.01.2021, it is for the petitioner to follow the same with the official respondent concerned.

8. Mr.A.S.Vijayaraghavan, learned counsel appearing for the 7th respondent in W.P.No.35854 of 2019 would submit that unless and until the Sale Certificate issued in his favour, is set aside in the manner known to law, as well as the order of the Chief Judicial Magistrate, Coimbatore in Crl.M.P.No.1152 of 2019 are challenged to be set aside in a manner known to law, the petitioner cannot make any grievance and he would further add that the petitioner is repeatedly guilty of abusing the process of law and prays for dismissal of these Writ Petitions with exemplary costs.

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

10. The fact remains that the petitioner was initially favoured with the acceptance of positive OTS proposal on 06.01.2018 and in the light of the fact that she did not comply with the same, it was cancelled on 16.07.2019 and thereafter, the Bank went for auction and the private respondents in W.P.No.35854 of 2019 became the successful bidders and they were also issued with Sale Certificates.

11. Mr.Paul Victor and Mr.P.J.David filed S.A.No.181/2019, on the file of the Debts Recovery Tribunal-II, Chennai, challenging the auction sale conducted on 22.04.2019 and the petitioner as well as the guarantors had also filed S.A.No.240/2019, before the very same Forum, challenging the Sale dated 22.04.2019. The primordial submission made by the learned counsel appearing for the petitioner is that in the light of the subsistence of interim order in I.A.No.715 of 2019, the act on the part of the Bank in locking and sealing the premises, by taking advantage of the order of the Chief Judicial Magistrate, Coimbatore dated 02.01.2020 in Crl.M.P.No.1152 of 2019 is per se unsustainable.

12. A perusal of the interim order dated 02.07.2019 in I.A.No.715/2019, would read among other things that the conditional order of interim stay was granted for a period of 30 days subject to deposit of Rs.50,00,000/- except by taking recourse to the procedure contemplated under SARFAESI Act and Rules. In the light of the same, there is no blanket interim order and an exception has been carved out by granting liberty to the Bank to proceed under the provisions of the SARFAESI Act and accordingly, they have invoked Section 14(1) and 14(2) of the SARFAESI Act by filing Crl.M.P.No.1152 of 2019, on the file of the Chief Judicial Magistrate, Coimbatore and it was also ordered on 02.01.2020 and it is not yet challenged. It is also pertinent to point out at this juncture that what is challenged in W.P.No.8291 of 2020, is only the Warrant, pursuant to the above said order dated 02.01.2020, made in Crl.M.P.NO.1152 of 2019, on the file of the Chief Judicial Magistrate, Coimbatore. In the considered opinion of this Court the properties which are subject matter of sale, for which Sale Certificates have been issued in favour of the private respondents are situated at Coimbatore and that apart, the petitioner himself on an earlier occasion had filed S.A.No.93 of 2013, only before the Debts Recovery Tribunal, Coimbatore and as such, S.A.No.181/2019 filed by Mr.Paul Victor and Mr.P.J.David and S.A.No.240/2019, filed by the petitioner and guarantors, on the file of the Debts Recovery Tribunal-II, Chennai is unsustainable for want of confined jurisdiction and that apart, it is for the petitioner to workout his remedy in the pending S.A.No.240/2019.

13. This Court, taking into consideration the above facts and circumstances and that in the light of the fact that remedy has already been invoked and in the absence of challenge to the order dated 02.01.2020, passed in Crl.M.P.No.1152/2019, passed by the Court of Chief Judicial Magistrate, Coimbatore, coupled with the fact that despite the alternative remedy is available, the Sale Certificates granted in favour of the private respondents have been put to challenge in W.P.No.35854 of 2019, is of the considered view that the present Writ Petitions lack merits.

14. In the result, these Writ Petitions are dismissed. S.A.No.181/2019 and S.A.No.240/2019, pending on the file of the Debts Recovery Tribunal-II, Chennai are ordered to be transferred to the file of the Debts Recovery Tribunal, Coimbatore and the Registry of the Debts Recovery Tribunal-II, Chennai, is directed to transfer the connected papers to the file of the Debts Recovery Tribunal, Coimbatore, within a period of three weeks from the date of receipt of a copy of this order / uploading of the order in the website and upon receipt of the same, the Debts Recovery Tribunal, Coimbatore, is directed to renumber the said appeals and proceed further

to give a disposal in accordance with law, as expeditiously as possible. As regards the representation dated 16.01.2021 submitted by the petitioner, it is for them to follow the said representation. No costs and connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. Inspector General of Registration
100, Santhome High Road, Mullima Nagar,
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Chennai, Tamil Nadu 600 028.
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6. The Authorised Officer-cum-Chief Manager,
Indian Bank, Stressed Assets Management Branch,
No.31, Varity Hall Road,
Coimbatore 641 001.
7. The Registrar,
Debts Recovery Tribunal II,
Chennai.
8. The Registrar,
Debts Recovery Tribunal,
Coimbatore.

9.The Chief Judicial Magistrate,
Coimbatore.

+1cc to the Government Pleader, SR.No.4583
+1cc to Mr.A.S.Vijayaraghavan, Advocate, SR.No.4694
+1cc to Mr.K.J.Parthasarathy, Advocate, SR.No.4270

WP.No.35854 of 2019 and 8291 of 2020

AK II (CO)
KKV/09/03/2021