BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 04.06.2021
CORAM:
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P.[MD]No.12996 of 2017

S.Santhanakrishnan (died)
Kalyani
(Petitioner substituted vide Court order,
dated 23.03.2021 in WMP(MD) No.3756 of 2020) ... Petitioner

Vs.

1.The Authorised Officer,
Canara Bank,
K.Pudur,
Madurai - 625 007.

2.The Branch Manager,
Canara Bank,
K.Pudur,
Madurai - 625 007.

3.R.Josephine Dhanam

4.Sulthan Ammal ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the respondents 1 and 2 to take necessary action as contemplated under the SARFAESI Act and hand over the possession of the property by due process of law which is situated in Old Survey No.72/1. New Natham Survey No.72/5 under Natham Patta No.108 in Ambalakarapatti, Uthangudi Village, Madurai North Taluk, Madurai District.

For Petitioner : Mr.M.Thirunavukarasu
For Respondents 1 & 2 : Mr.R.Pandivel
For 3rd Respondent : Mr.M.V.Venkateseshan

ORDER
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[Order of the Court was made by **T.S.SIVAGNANAM, J.]**

We have heard Mr.M.Thirunavukkarasu, learned counsel appearing for the petitioner, Mr.R.Pandivel learned counsel appearing for the respondents 1 & 2/ Bank, Mr.M.V.Venkataseshan, learned counsel appearing for the third respondent and though notice has been served and the name of the fourth respondent is printed in the cause list, none appears for the fourth respondent.

2. By consent on either side, the writ petition itself is taken up for disposal.

3.The undisputed facts are that the third respondent is a borrower of a loan from the first and second respondents Bank. The third respondent defaulted in payment of the loan and accordingly, an auction was initiated by the respondent Bank under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act"). Ultimately, the property in question was put up for sale and the writ petitioner had participated in the auction sale and was declared as a successful bidder and a sale certificate was also issued in his favour on 30.05.2020. Though the entire sale consideration has been appropriated by the respondent Bank and the sale certificate has been issued, till date, the petitioner has not been able to enjoy the property, because the respondent bank was not able to hand over the vacant possession of the property to the petitioner.

4. The original petitioner is Mr.S.Santhanakrishnan, who is no more, leaving behind his wife, who has been substituted as the petitioner in this writ petition. The third respondent, who is the borrower, appears to have initiated proceedings before the Debt Recovery Tribunal, where, there was an interim order of stay subject to certain conditions of payment and the conditions were not complied with. An appeal was filed before the Debt Recovery Appellate Tribunal and a conditional order of interim stay was passed, which has been complied with by the third respondent. In the interregnum, the SARFAESI appeal itself was dismissed for default. An application for restoration was filed, the condone delay petition was dismissed and several other orders have been passed and the net result is that the proceedings before the Debt Recovery Tribunal, were not diligently prosecuted by the third respondent. As on date, the third respondent can have no claim over the property, on account of the subsequent conduct of the third respondent. Inasmuch as he has sold the property in favour of the fourth respondent by sale deed, dated 14.02.2014, registered as Document No.711 of 2014, on the file of the Sub-Registrar, Thamaraipatti on 07.11.2014, the third respondent has no jurisdiction to deal with the matter and as the property has been proceeded against, under the provisions of the SARFAESI Act and the property has been sold in public auction and the petitioner has been declared as a successful purchaser, sale certificate has been issued in his favour in the year 2012 itself, which has not been assailed till date and is valid. Therefore, all proceedings which have been initiated by the third respondent before the Debt Recovery Tribunal and Debt Recovery Appellate Tribunal, are all stand abated. On account of the singular conduct of the third respondent in selling the secured asset to the fourth respondent, over which, he has no legal right of sale on the date of execution and registration of the

sale deed, i.e. 14.12.2014. The net result is, all proceedings before the Debt Recovery Tribunal and the Debt Recovery Appellate Tribunal have to be dismissed, which will be done by the Tribunal as and when the applications came up for hearing.

5. Though the learned counsel for the petitioner submitted that the District Collector has passed orders under Section 14 of the Act, as early as in the year 21.05.2014 itself, such order cannot be used of, at this juncture, because a third party interest has been illegally created by the third respondent by selling the property to the fourth respondent. Therefore, necessarily, the Bank has to take immediate action to file an application under Section 14 of the Act, before the learned Chief Judicial Magistrate, Madurai and take all effective steps to hand over the vacant physical possession of the property to the petitioner.

6.Accordingly, we direct the respondents 1 and 2, namely, Canara Bank to file an application under Section 14 of the Act, before the learned Chief Judicial Magistrate, Madurai, within two weeks from the date of receipt of a copy of this order and if the same is filed, the learned Chief Judicial Magistrate, Madurai, may take up the application at the earliest, considering the fact that the sale certificate was already issued in favour of the petitioner in the year 2012, and they are unable to enjoy the fruits of the purchase and pass appropriate orders on merits and in accordance with law, to enable the respondent Bank to take over the possession of the property in question. The learned Chief Judicial Magistrate shall dispose of the application as expeditiously as possible. It appears that the respondent Bank has already lodged a complaint as against the third respondent for selling the secured assets, which has already been sold to the petitioner and if that is so, the respondent bank is directed to diligently prosecute the proceedings against the third respondent.

7.With the above directions, this Writ Petition is disposed of. No Costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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+1 CC to M/s.M.V.VENKATASESHAN, Advocate (SR-18997[F] dated 08/06/2021)

W.P.[MD]No.12996 of 2017

04.06.2021

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