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W.P.No.29385 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.29385 of 2022

G.Ashok

..

Petitioner

v.

The Authorised Officer
Indian Overseas Bank
Asset Recovery Management Branch (1535)
Central Office Annexe Building, 3rd Floor
763, Anna Salai
Chennai 600 002

..

Respondent

Petition under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records and quash the order of the Hon'ble DRT-III, Chennai in S.A.No.258 of 2022 dated 06.09.2022, received on 17.10.2022 and consequently declare the measures taken under Section 13(4) of the SARFAESI Act by the Respondent Bank as illegal, non est and void.



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Schedule of the Property

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Item No.1:

4 acres of factory land and building in S.No.423/2B, 423/2C, 423/2F and 423/2G, in Gokulapuram, Sengundram Village, Chengalpet Taluk, Kancheepuram District, which is in the name of M/s AMR Pharma India Private Limited. Bounded on the North by : Vacant land in S.No.423/2D, 2E and 2A; South by: Vacant land in S.No.509 & 510: East by: Vacant land in S.No.423/2G: West by: road and vacant land.

Item No.2:

All that piece and parcel of land measuring an extent of 21382 sq.ft comprising in R.S.No.113/2 & 114/2 Periyakuppam, Thiruvallur (PO)-602 001. Tiruvallur (Tk & Dist). Property owned by Mr.G.Ashok, Bounded on the North by: Land in S.Nos.113/1 & 114/1, South by: Land in S.No.112 (road): East by: Land in S.No.85: West by: Land in S.No.117.

Item No.3:

All that piece and parcel of land measuring 4720 sq.ft with building thereon at R.S.No.95/18 (part) two Part Padi Revenue Village at Plot No.W-18 (Old No.W-188) North Main Road, Anna Nagar West Extension, Chennai 600 101, which is in the name of M/s Iris Art Galleria Pvt Ltd. Bounded by North by: 60 feet wide road, South by: Plots Nos.W-194, 193: East by: Plot No.W-189: West by: Plot No.W-187.

For Petitioner :: Mr.Thanu Madhan N.S.

For Respondent :: Mr.V.Kadhirvel



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ORDER

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Mr.G.Ashok, S/o Mr.Govindan has filed this writ petition challenging the impugned order dated 06.09.2022 passed by the Debts Recovery Tribunal-III, Chennai in S.A.No.258 of 2022 and quash the same with a consequential direction to declare the measures taken under Section 13(4) of the SARFAESI Act by the respondent Bank as illegal, non est and void, in respect of the schedule mentioned properties.

2. Learned counsel appearing for the petitioner submitted that the petitioner had availed credit facilities to the tune of Rs.14,90,00,000/- from the respondent Bank in the year 2014. Although the petitioner was paying the regular installments, when there was a default, the loan account has been declared as Non Performing Asset. Finally, the respondent Bank issued the demand notice under Section 13(2) of the SARFAESI Act on 09.10.2017 claiming the debt amount of Rs.13,92,58,772.56p. However, in supersession of the earlier demand notice, the respondent Bank again issued



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a second demand notice on 02.05.2018 claiming Rs.14,83,00,007.56p.

Thereafter, the respondent Bank has also issued the possession notice on 15.09.2018 under Section 13(4) of the SARFAESI Act. Subsequently, when the respondent Bank issued the auction sale notice dated 25.02.2019, the same was questioned before the Debts Recovery Tribunal-III in S.A.No.72 of 2019 and the Tribunal vide order dated 08.08.2019 permitted the petitioner to deposit a sum of Rs.2 Crores in addition to the sum of Rs.1.36 crores already deposited with the Bank for redemption of the secured asset and the petitioner also complied with the said conditional order. In the meanwhile, the petitioner also entered into a one time settlement with the respondent Bank on 04.12.2019 for a sum of Rs.8.76 Crores and had also paid a sum of Rs.1.39 Crores during the Covid'19 pandemic period. However, the respondent Bank has issued the fresh sale notice dated 16.05.2022 fixing the auction sale on 02.06.2022 for recovery of a sum of Rs.20,20,97,528/-. The said sale notice was again put to challenge in S.A.No.258 of 2022 and the Debts Recovery Tribunal-III, Chennai has also permitted the petitioner to deposit a sum of Rs.1.25 Crores to the credit of



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the loan account before 10.30 A.M., on 02.06.2022, vide the order dated 01.06.2022, and on compliance of the same, there shall be an interim stay of all further proceedings under the SARFAESI Act. The conditional order dated 01.06.2022 also made it clear that non-compliance would entitle the respondent Bank to proceed further in accordance with law. The learned counsel for the petitioner further submitted that the petitioner has complied with the said condition by depositing a sum of Rs.1.25 Crores on 02.06.2022 and thus, he has totally paid a sum of Rs.6.5 Crores. In addition to the above amount, the petitioner has once again paid a sum of Rs.50,00,000/- on 31.10.2022 to the respondent Bank. Therefore, the sale notice dated 01.06.2022 should have been quashed and opportunity should have been given to the petitioner to settle the outstanding amount. He also submitted that the petitioner is also ready for OTS, if the respondent Bank comes forward to make a reasonable offer. But the Debts Recovery Tribunal-III, Chennai, by the impugned order, has disposed of the S.A.No.258 of 2022 on the ground that the sale notice has become infructuous, however, with liberty to the petitioner to approach the



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respondent Bank for an amicable settlement on or before 10.10.2022, failing which the respondent Bank would be entitled to proceed further in accordance with law.

3. But we are unable to entertain this writ petition, for two reasons. Firstly, when the petitioner is having an effective, statutory and alternative remedy before the Debts Recovery Appellate Tribunal against the impugned order, he cannot come to this Court. Secondly, the learned counsel appearing for the petitioner submitted that filing an appeal before the Debts Recovery Appellate Tribunal would consume substantial time, in the meanwhile, the properties in question belonging to the petitioner would be sold, as a result, the endeavours and efforts taken by the petitioner would also become futile. But we are unable to agree with the argument advanced by the learned counsel appearing for the petitioner. In the case on hand, the petitioner has admittedly received the copy of the order impugned herein on 17.10.2022 and he has still got 10 days time to file an appeal before the Debts Recovery Appellate Tribunal, Chennai. Therefore, the petitioner is



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given liberty to file an appeal before the Debts Recovery Appellate Tribunal against the impugned order. If any such appeal is filed by the petitioner, the Debts Recovery Appellate Tribunal, Chennai shall consider and dispose of the same on its own merits and in accordance with law expeditiously. With this observation, the writ petition stands disposed of accordingly. Consequently, W.M.P.No.28817 of 2022 is closed. However, there is no order as to costs.

Speaking/Non speaking order

(T.R.,A.C.J.) (D.K.K.,J.)

Index : yes/no

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To

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