BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.1705 of 2022
and
W.M.P(MD)No.1503 of 2022

The Authorized Officer,
State Bank of India,
Stressed Assets Recovery Branch (SARB),
Vinayaga Nagar Branch Upstairs,
1^{st} Floor, No.8, Dr.Ambedkar Road,
Madurai – 625 020,
Rep. by its Authorised Officer,
S.Hemanth Kumar ... Petitioner

Vs.

1.The Debts Recovery Tribunal,
Madurai.

2.V.Veluchami
3.R.Selvendran ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the entire proceedings of the first respondent in S.A.No.571 of 2021 dated 17.12.2021 and quash the same.

For Petitioner : Mr.P.Pethu Rajesh
For R-1 : Mr.V.Malaiyendran
For R-2 : Ms.Indira
For R-3 : Mr.S.Mahesh Babu

O R D E R

(Order of the Court was made by S.S.SUNDAR.J.,)

Heard Mr.P.Pethu Rajesh, learned counsel for the petitioner/bank, Mr.V.Malaiyendran, learned counsel for the first respondent/Tribunal, Ms.Indira, learned counsel for the second respondent/borrower and Mr.S.Mahesh Babu, learned counsel for the third respondent/purchaser.

2. The above writ petition is filed by the Authorised Officer of the State Bank of India, challenging the proceedings of the Debts Recovery Tribunal, Madurai in S.A.No.571 of 2021, dated 17.12.2021, in and by which, an order of status-quo was granted by the Tribunal in the application filed by the second respondent/borrower.

3. Brief facts that are necessary for the disposal of the writ petition are as follows:

For the loan obtained by the second respondent/borrower, the Authorised Officer of the bank, proceeded with the sale of the secured assets. It is to be noted that as against a sum of Rs.28,44,848/-, the upset price for the property is fixed at Rs.73,22,000/- by the bank. The peculiar circumstance in this case is that the properties mortgaged by the borrower consists of three items. In respect of three different properties with reference to three different title deeds and three different boundaries, the sale notice indicates that the entire property is shown as a single property by fixing the upset price at Rs.73,22,000/-. The bank has issued the sale notice on 04.10.2021 and the date of auction was fixed on 22.10.2021. On the date of sale, the purchaser deposited the EMD. It is not in dispute that subsequently, the sale was confirmed and the sale certificate was issued on 30.10.2021. It is also admitted that the sale was registered on 01.11.2021 vide document No.4289/2021. In such circumstances, the second respondent/borrower filed an application before the Tribunal seeking to set aside the auction held on 22.10.2021, in which, the Tribunal granted an interim order to maintain status-quo. Challenging the same, the present writ petition is filed.

4. It is admitted before this Court that the second respondent/borrower has challenged the auction sale notice, dated 04.10.2021 and the consequent sale certificate, dated 01.11.20221, issued in favour of the auction purchaser in S.A.No.571 of 2021. After considering the payments, the Tribunal has also directed the parties to maintain status-quo as on the date and

further directed the applicant to take fresh notice to the auction purchaser and file proof of service.

5. It is the grievance of the borrower that the bank suppressing the fact that the borrower had paid substantial amounts pursuant to the earlier interim order, proceeded with the auction sale and the sale was confirmed in favour of the third respondent ignoring the payments showing the bonafides of the borrower.

6. The learned counsel appearing for the borrower submitted that in S.A.No.537 of 2019, challenging the possession notice, the Tribunal passed an order on 08.11.2019, granting interim stay till 08.01.2020 on condition that a sum of Rs.4,76,000/- should be paid by the applicant/borrower directly to the bank on or before 09.12.2019 as first installment and a further sum of Rs.4,76,000/- should be paid on or before 07.01.2020 as second installment. There was a default clause. The second respondent borrower paid a sum of Rs.6,26,000/- on 10.12.2019 (one day delay) and paid a sum of Rs.24,000/- on 31.12.2019 and a further sum of Rs.3,26,000/- to the bank on 07.01.2020.

7. It is stated before this Court by the counsel for the borrower that the interim order passed by the Tribunal had been complied with by the borrower and therefore, the order of stay was believed to be in force when the public auction was conducted by the bank on 04.10.2021. However, it is contended by the petitioner that the appeal along with the interlocutory application were posted for hearing on 08.01.2020 before the Tribunal and the Tribunal was pleased to close the application as the borrower did not file proof of payment. It is relevant to extract the order passed by the Tribunal on 08.01.2020 as found in Page 11 of the paper book filed by the petitioner bank.

> *"Counsel for the Applicants not appeared.*
>
> *Ld. Counsel Mr.T.Thevan is appearing for the Defendant Bank.*
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> *Petition in IA No.2202/19:- Proof of payment by the Applicant not filed. If the Applicants have failed to comply with the order of this Tribunal, the Respondent is at liberty to proceed further in pursuance to the possession notice dated 17.10.19. Petition closed.*
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> *For filing reply statement, call on 12.06.20."*

From the nature of order dated 08.01.2020, the counsel for the bank did not inform the Tribunal. Had the bank disclosed the payments, the Tribunal would have made the stay absolute. Further, the petitioner bank was given liberty to proceed further only if the borrower had failed to comply with the interim order of Tribunal. Though the counsel for the Bank may not have knowledge about the payment by borrower complying with the condition, this Court is unable to appreciate the conduct of Bank in proceeding with the sale by issuing a sale notice dated 04.10.2021.

8. This Court is unable to find any justification in proceeding with the auction by the bank ignoring the nature of order passed by the Tribunal and the substantial payments made by the borrower in complying with the interim order of Tribunal.

9. Though this Court is not inclined to go into the validity of the sale on the basis of serious allegation made by the learned counsel appearing for the borrower, holds that the sale is in violation of interim order of the Debts Recovery Tribunal, dated 08.01.2020 and hence, it is null and void as it has been repeatedly reiterated by this Court that Courts need not give any legal sanctity for any act in violation of the order of the Court or Tribunal which is competent to pass an order.

10. The inherent power of Court under Section 151 C.P.C, is recognized by the Full Bench of this Court in ***Century Flour Mills Ltd. vs S. Suppiah And Ors.*** reported in ***AIR 1975 Mad 270*** **,** wherein it has been held as follows:

> *"9. In our opinion, the inherent powers of this court under Section 151 C.P.C. are wide and are not subject to any limitation. Wherein violation of a stay order or injunction against a party, something has been done in disobedience, it will be the duty of the court as a policy to set the wrong right and not allow the perpetuation of the wrong doing. In our view, the inherent power will not only be available in such a case, but it is bound to be exercised in that manner in the interests of justice. Even apart from Section 151, we should observe that as a matter of judicial policy, the court should guard against itself being stultified in circumstances like this by holding that it is powerless to undo a wrong done in disobedience of the court's orders. But in this case it is not necessary to so to that extent as we hold that the power is available under Section 151. C.P.C...."*

11. Therefore, this Court under Article 226 of the Constitution of India, can exercise its power and hold that the sale is in utter disregard to the order of the Tribunal, granting stay and the further order dated 08.01.2020. The petitioner bank has taken advantage of the unfortunate situation because of the absence of counsel for the borrower on 08.01.2020.

12. As pointed out earlier, another illegality is also noticed in the sale proceedings. It is now reported before this Court that the total liability on the date of sale is Rs.28,44,848/-. However, three different properties of the

borrower, which are expected to be valued independently as a separate property, are clubbed together. The upset price was fixed for all the three properties at Rs.75,22,000/-. The properties were sold to the third respondent for a sum of Rs.73,72,000/-.

13. This Court is unable to find any reason for clubbing all the three properties for sale. Since there are three items of properties, the bank ought to have considered to save one or two items of properties from sale. Some element of fraud can also be noticed from the conduct of the bank that the properties were brought to sale in a hurried manner taking advantage of closure of application, ignoring the condition to proceed with the sale. Neither the bank nor the auction purchaser has an explanation why three different properties were clubbed together and the bank has not come forward with a case denying the statement that the sale notice was not issued to the borrower. No attempt is made by the bank to give him an opportunity to avoid sale especially when the sale is when the situation after the second wave of Covid-19 is not normal. For the above reasons, there is no other option except to set aside the sale. Accordingly, the auction sale held on 22.10.2021, is set aside.

14. In view of the above, the purchaser is entitled to get back his amount, which is lying with the bank. It is the duty of the respondent/bank to pay any reasonable amount by way of interest to the Court auction purchaser. Therefore, the bank shall pay interest at 18% from the date of deposit by the purchaser till the date when the amount is disbursed to the Court auction purchaser. It is open to the bank to bargain with the purchaser in respect of the interest portion. If the purchaser is not a bonafide purchaser, the bank may also show him that he is aware of the pendency of appeal as against the sale notice.

15. The learned counsel appearing for the borrower submitted that the borrower has deposited the entire amount towards outstanding and the bank has received the amount in entirety. The counsel for the bank has not disputed the payments by borrower towards discharge of entire liability.

16. Therefore, the bank is directed to hand over all the documents of title deed to the borrower and execute a discharge certificate in the manner as provided in law, within a period of six weeks from the date of receipt of a copy of this order.

17. In view of the findings and the conclusion reached above, the writ petition filed by the bank has no merits and accordingly, the same is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R.J.,] [S.S.Y.J.,]

23.06.2022

Index : Yes / No
Internet: Yes / No

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S.S. SUNDAR,J.,
and
S.SRIMATHY,J.,

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