BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.08.2022

CORAM

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

C.R.P.(MD)No.1620 of 2022
and
C.M.P.(MD)No.7032 of 2022

1.S.R.Ratheesh
2.M.R.Madhavi Devi ... Petitioners

Vs.

1.The Authorized Officer/Chief Manager,
M/s.Cholamandalam Investment
and Finance Company Limited,
DARE House, 1st Floor, No.2, N.S.C.Bose Road,
Parrys, Chennai-600 001.

2.Arulanandham Bersyril Antow ... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the return endorsement order made by the Registrar, Debts Recovery Tribunal, Madurai, in S.A.S.R.No.4259 of 2022, dated 02.08.2022 and consequently, to direct the Registrar, Debts Recovery Tribunal, Madurai to number the same.

For Petitioners :Mr.M.Arun Murugan

For R1 :Mr.P.Pethu Rajesh

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ORDER

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

The applicants before the Debts Recovery Tribunal in an unnumbered SARFAESI Application filed by them under Section 17(1) of SARFAESI Act, 2022, are the petitioners herein.

2.Heard Mr.G.Mohan Kumar, learned Counsel for the petitioners and Mr.P.Pethu Rajesh, learned Counsel for the first respondent. By consent of both parties, the present Civil Revision Petition is taken up for final disposal at admission stage itself.

3.The grievance of the petitioners is that the petitioners, as borrowers, facing sale of secured asset by the respondent bank pursuant to a sale notice issued by the first respondent. It is stated that a public auction was conducted in respect of the petitioners' property on 15.06.2022 and the said sale was also confirmed in favour of the second respondent. It is in the said circumstances, the petitioners have filed SARFAESI Application for the following reliefs:

"In view of the facts mentioned in paragraphs above, the Applicant prays for the following relief(s):

1.To set-aside the First Defendant's alleged Public Auction Sale conducted on the Applicant's schedule of property on 15.06.2022 and consequent sale confirmation in favour of the *second Defendant as illegal, defective and invalid.*

2.It is therefore prayed that this Hon'ble Tribunal may be pleased to set-aside the AUCTION SALE on 15.06.2022 and declare the same as void, arbitrary, illegal and perverse and

3.to direct the 1st defendant to receive the entire auction amount of the 2nd Item of property from the applications and its expenses and by giving opportunity to redeeming the residential property and;

4.To declare the entire auction proceedings as illegal and violation of mandatory provisions of law and

5.It is prayed that this Honble Tribunal may be pleased to restore the possession to the applicant and

6.Pass such other orders as this deem fit as to facts and circumstances of the case and render justice."

4.However, the said application was returned by the Section Officer of the Tribunal on the first occasion by stating that the SARFAESI Application challenging the confirmation of sale vide letter, dated 15.06.2022 is not maintainable. Though the papers were re-presented after making necessary correction in the prayer in the SARFAESI Application and the Section Officer also found that the said application is in order and that the same may be numbered, the Registrar in-charge of the Tribunal returned the application on the ground that the application challenging the sale is not maintainable. The return was also on the following endorsement:

"The application has been filed challenging the sale, which is not maintainable. Hence, this application may be returned. Since only sale notice could be challenged, which is hit by limitation."

5.Challenging the endorsement for returning the application, the above Civil Revision Petition is filed.

6.This Court, while going through the prayer in the SARFAESI Application and the impugned order of endorsement, is unable to find an application of mind by the Registrar in-charge. When several prayers are made in the application, the Registrar has returned the application as not maintainable, as the application which ought to have been filed challenging the sale notice is beyond the period of limitation. This Court is unable to sustain the said order merely because the observation of the Registrar that the sale notice alone can be challenged is not only illegal and inappropriate but also without an application of mind, as to the relevant provisions of the statute.

7.As regards the sale proceedings initiated by the respondent bank, the borrower is entitled to file an application under Section 17 of SARFAESI Act, challenging every measures referred to in Sub Section 4 of Section 13 of the Act taken by the secured creditor or the authorised officer. Section 13(4) of the SARFAESI Act reads as follows:

> ***"13. Enforcement of security interest***
> ***(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover*** *his secured debt, namely:--*
> *(a) take possession of the secured assets of the borrower including*

the right to transfer by way of lease, assignment or sale for realising the secured asset;
(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:
PROVIDED that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:
PROVIDED FURTHER that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt.
(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;
(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt."

8.The word "Sale" includes every steps. The sale may be initiated by mere issuance of notice. However, if there is an irregularity, it is open to the borrower or mortgagor to challenge every irregularities at every stage of the sale. In that view of the matter, this Court is unable to sustain the order of learned Registrar returning the application. Therefore, the impugned order by way of the endorsement returning the application filed by the petitioners by Registrar of Debts Recovery Tribunal, Madurai, is set aside the matter is remitted back to the Tribunal. This Court is unable to find any defects in the prayer, that was sought by the Revision Petitioners. Therefore, the Registrar is directed to number the SARFAESI Application and place the matter before the

Tribunal within a period one week from the date of receipt of a copy of this order. The respondents shall not finalise the sale in the meanwhile and directed to maintain status quo for a period of three weeks.

9.With the above directions, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed. It is open to the respondents to raise any objection as to the maintainability of application and the same shall be considered by Tribunal uninfluenced by any of the observation made in this order.

10.The Registry is directed to return the original papers that are now filed along with this Civil Revision Petition to the petitioners forthwith.

[S.S.S.R., J.] **[S.S.Y., J.]**
10.08.2022

Index : Yes / No

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

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