IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2023

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA , CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

WP No.7868 of 2023
and WMP No.8117 of 2023

R.Ravichandran ... Petitioner

-vs-

1. V.Ayyappan
2. A.Chithra
3. City Union Bank Limited,
   Credit Recovery and Management
   Department, "Narayana", Administrative
   Office, No.24-B, Gandhi Nagar,
   Kumbakonam 612 001. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of R.A. (SA) No.21 of 2022 on the file of the Hon'ble Debt Recovery Appellate Tribunal, Chennai, preferred against the order of the Debt Recovery Tribunal III, Chennai, in S.A.No.87 of 2022 dated 20.05.2022 and to quash the order dated 29.12.2022 in R.A. (SA) No.21 of 2022 on the file of the Debt Recovery Appellate Tribunal, Chennai.

For the Petitioner	:	Mr.A.Navaneetha Krishnan Senior Counsel for Mr.Pandi Thennavan
For the Respondents	:	Mr.Om Prakash, Senior Counsel for M/s.Abitha Banu for RR 1 and 2

: Mrs.Anantha Gomathi Murugesan for R-3

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ORDER

(Made by the Hon'ble Chief Justice)

We have heard Mr.A.Navaneetha Krishnan, learned senior counsel for the petitioner, Mr.Om Prakash, learned senior counsel for respondent Nos. 1 and 2 and Mrs.Anantha Gomathi Murugesan, learned counsel for respondent No.3.

2. The petitioner assails the order passed by the Debt Recovery Appellate Tribunal thereby confirming the judgment and order passed by the Debts Recovery Tribunal.

3. The present respondent Nos.1 and 2 filed Securitisation Application bearing No.87 of 2022 before the Debts Recovery Tribunal-III, Chennai, thereby challenging the sale notice issued by respondent No.3 herein under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the SARFAESI Act'). The Debts Recovery Tribunal allowed the same. The present petitioner, who was the

highest bidder in the auction, aggrieved thereby filed a Securitisation Appeal bearing No.21 of 2022 before the Debt Recovery Appellate Tribunal, Chennai. The Debt Recovery Appellate Tribunal, Chennai, dismissed the appeal. Aggrieved thereby, the present petition.

4. Shorn of details, the facts necessary to decide the present lis are culled out as under:

The present respondent Nos.1 and 2 are the borrowers and they had obtained loan from respondent No.3/bank. The account was declared as a non-performing asset. The bank initiated proceedings under the provisions of the SARFAESI Act by issuing notices under Sections 13(2) and 13(4). Thereafter, the bank proceeded to auction the secured asset of respondent Nos.1 and 2 herein. On or about 01.02.2022, sale was conducted and the present petitioner was declared as the highest bidder having offered a sum of Rs.2,52,00,000/- (Rupees two crore fifty two lakhs only). The petitioner deposited 25% of the amount viz., Rs.64,00,000/- (Rupees sixty four lakhs only). The petitioner was required to deposit the remaining 75% within fifteen days. The petitioner sought extension of time to deposit the amount. The extension was granted to the petitioner to deposit the amount till 02.03.2022. The petitioner could not deposit the amount by 02.03.2022, as such, again applied for extension of time to deposit the remaining amount and the time was extended by the bank upto 20.03.2022.

5. On or about 04.03.2022, on an application filed by the present respondent Nos.1 and 2, the Debts Recovery Tribunal passed an interim order. The Debts Recovery Tribunal permitted the present respondent Nos.1 and 2 to deposit a sum of Rs.30,00,000/- (Rupees thirty lakhs only) to the credit of the borrowers' loan account on or before 10.03.2022 and on compliance of the same, the respondent bank was directed to maintain status quo as on the date of the compliance. The present respondent Nos.1 and 2 were also directed to deposit a further sum of Rs.35,00,000/- (Rupees thirty five lakhs only) to the credit of the loan account within three weeks thereof and in any case not later than 31.03.2022. On compliance of the second condition, the Debts Recovery Tribunal observed that there shall be an interim stay of further proceedings under the SARFAESI Act. It appears that the present respondent Nos.1 and 2 deposited the amount as directed by the Debts Recovery Tribunal. On 20.05.2022, the Securitisation Application of the present respondent Nos.1 and 2

was allowed. It appears that the petitioner deposited an amount of Rs.1,49,00,000/- (Rupees one crore forty nine lakhs only) on or about 04.03.2022, however, could not deposit the entire amount. He deposited the remaining amount in his own savings account on 25.03.2022, that is, Rs.1,03,00,000/- (Rupees one crore three lakhs only). The Debts Recovery Tribunal, under its judgment and order dated 20.05.2022, allowed the Sarfaesi Application filed by respondent Nos.1 and 2. In an appeal filed by the present petitioner, the Debt Recovery Appellate Tribunal confirmed the order of the Debts Recovery Tribunal and dismissed the appeal.

6. The learned Senior Advocate for the petitioner strenuously contends that as per Section 13(8) of the SARFAESI Act, the borrower loses his right to redeem the property after the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets. In the present case, the date of sale was 01.02.2022. Till that date, no amount was deposited by respondent Nos.1 and 2, as such, respondent Nos.1 and 2 lost the right to redeem the property. After the public notice was issued, respondent Nos.1 and 2 could not have subsequently deposited the amount for redemption of the

property. The Debts Recovery Tribunal and the Debt Recovery Appellate Tribunal failed to consider this aspect in proper perspective and thereby, arrived at an erroneous conclusion. The learned Senior Advocate for the petitioner to substantiate his contentions, relies upon the judgment of the Apex Court in a case of ***ARCE Polymers Private Limited vs. Alphine Pharmaceuticals Private Limited***, reported in ***(2022) 2 SCC 221***. Relying upon the same, it is contended that the borrower did not have any right once the public notice has been issued and the amount is not deposited by the borrower till the issuance of the public notice. Reliance is also placed on the judgment of the Kerala High Court in a case of ***Sree Gokulam Chit and Finance Co. Pvt. Ltd. vs. Emil and Eric Hospitality Services***, reported in ***(2021) 6 KLT 673***, so also in a case of ***Shakeena vs. Bank of India***, reported in ***2019 SCC OnLine SC 1059***.

7. Mr.Om Prakash, learned Senior Advocate for respondent Nos.1 and 2 and the learned counsel for the third respondent/bank support the judgment passed by the Debt Recovery Appellate Tribunal and Debts Recovery Tribunal and submit that the petitioner himself had not deposited the amount and the respondent Nos.1 and 2 complied with the orders passed by the Debts Recovery Tribunal scrupulously and no

default was committed by them and as such, the Debts Recovery Tribunal and the Debt Recovery Appellate Tribunal rightly passed the orders. It is further submitted by the learned Senior Advocate for the borrowers (respondent Nos.1 and 2) that the auction sale was also challenged on the ground that the valuation of the property was much less. When the loan was obtained by respondent Nos.1 and 2 in the year 2015, the valuation of the property was Rs.3.15 crores and the upset price fixed in the year 2022 was Rs.2.40 crores and the said property was sought to be sold at Rs.2.52 crores. The same is absolutely illegal. It is further submitted that the right to redeem is not lost. No right was created in favour of the petitioner as sale certificate was never executed. Reliance is also placed on the judgment of the Hyderabad High Court in a case of ***Concern Readymix vs. Authorised Officer***, reported in ***(2019) 1 ALT 698 (DB)***.

8. We have considered the submissions.

9. The Apex Court, in the case of ***ARCE Polymers Private Limited*** (supra) has observed that on 01.08.2016, the bank issued notice to the borrower under Section 13(2) of the SARFAESI Act calling

upon the borrower to discharge its liability. Auction was held on 11.09.2018. In October 2018, the borrower approached and filed a petition before the Debts Recovery Tribunal. The matter was dismissed by the Debts Recovery Tribunal. The Apex Court, in the said case, was required to consider the issue as to whether there was a waiver on the part of the borrower, i.e., whether the borrower had waived and was estopped from challenging violation of Section 13(3-A) of the SARFAESI Act. In the said case, the Apex Court observed that the borrower wrote letters in which it accepted the default of non-payment and was requesting to grant further moratorium period of 12 months. Promise was made by the borrower to make the payment, but the payment was not made. The borrower failed to translate its promise into action and thereby, the bank issued auction notice. It was in those facts of the case that the Apex Court observed that the borrower had waived his right. In the case of ***Sree Gokulam Chit and Finance Co.Pvt. Ltd.*** (supra), the learned Single Judge of the Kerala High Court in the facts of that case observed that on the date of publication of notice for public auction, the mortgagor loses his right to redeem the secured asset. The Court observed that the statute has given a free hand to a secured creditor to enforce any security interest without the intervention of the Court. In the case of ***Shakeena vs***

Bank of India (supra), the Court observed that the borrower failed to make a valid and legal tender to the respondent bank before the issue of sale certificate on 06.01.2006, much less registration thereof on 18.09.2007.

10. In the present case, it is not disputed that before the present petitioner could make the entire payment, the respondent Nos.1 and 2 had deposited the amount as per the directions of the Debts Recovery Tribunal. A sum of Rs.30,00,000/- (Rupees thirty lakhs only) was paid as per the directions of the Debts Recovery Tribunal before 10.03.2022 and the remaining amount was deposited on 29.03.2022 as per the directions. Whereas, the petitioner had not deposited the remaining 75% of the amount till 25.03.2022. It needs to be considered that the bank had extended the period for the present petitioner to deposit the remaining 75% of the amount till 20.03.2022 in terms of Rule 9(4) of the Security Interest (Enforcement) Rules, 2002. However, the petitioner did not deposit the said amount by 20.03.2022, but deposited the amount in his own savings account on 25.03.2022. The same was not within the time prescribed by the bank. As per the interim order, the order of directing the bank to maintain status quo was only operative and the proceedings of the Sarfaesi were not

stayed. There was no impediment for the petitioner to deposit the entire amount by 20.03.2022, i.e., the extended date directed by the bank. The petitioner faulted therein.

11. The provisions of Section 13(8) of the SARFAESI Act are incorporated for the benefit of the bank. That is the right available to the bank as against the borrower. The present petitioner was the highest bidder. His rights were not conclusive as he had not deposited the entire amount and the sale certificate is not issued to him. We could have considered the case of the petitioner had the petitioner deposited the entire amount within the stipulated period. However, the petitioner failed to deposit the entire amount. The fact that twice he sought extension of time to deposit the amount itself is sufficient to conclude that the petitioner did not have funds at his disposal when he had bid in the auction.

12. Be that as it may, the Debts Recovery Tribunal and the Debt Recovery Appellate Tribunal have exercised the discretion in a plausible manner. The Debts Recovery Tribunal and the Debt Recovery Appellate Tribunal have exercised discretion in a plausible and equitable manner and also as no vested right is accrued in favour of

the present petitioner, we are not inclined to interfere with the impugned judgment. In view of the same, the judgment of the Debts Recovery Tribunal and the Debt Recovery Appellate Tribunal with regard to the refund of amount with interest to the petitioner also is upheld.

The writ petition as such is disposed of. There will be no order as to costs. Consequently, connected miscellaneous petition is closed.

(S.V.G., CJ.) **(P.D.A., J.)**
01.08.2023

Index : Yes/No
Neutral Citation : Yes/No

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To

1. The Registrar,
   Debts Recovery Tribunal-III,
   Chennai.

2. The Registrar,
   Debt Recovery Appellate Tribunal,
   Chennai.

THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESAVALU, J.

(sra)

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