IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2023

CORAM

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

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Writ Petition No.1882 of 2023
and W.M.P.Nos.1987 and 1988 of 2023

1.M/s.KPK Oils and Proteins India Pvt Ltd.,
Rep.by its Managing Director P.Kuppuraj
S.F.No.475/3, Chitharavuthanpalayam
Alangiayam Road, Kondarasampalayam Post
Dharapuram Taluk, Tiruppur District-638 656.

2.P.Vallinayagi

3.P.Kuppuraj

4.K.Akila

Vs.

1 The Authorised Officer
M/s.Tamil Nadu Mercantile Bank Ltd.,
R.S.Puram Branch, 539-540, D.B.Road
Coimbatore – 641 002.

2 The Sub Registrar

Dharapuram SRO
Dharapuram
Tiruppur District.

3 M.Rajendran

4 M.Velusamy

5. M.Mani

6. M.Selvamani

7. V.Rajeswari

8. R.Amirthaveni

9. R.Sanjay

10.R.Surya

11.M.Palaniammal .. Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus to call for the records of the impugned sale certificate dated 22.03.2021 issued by the 1st respondent in favour of the respondents 3 to 11 quash the same and further direct the 1st respondent to close Loan Account No.136700150950167 after receiving the balance dues.

For the Petitioners : Mr.I.Abrar Md.Abdullah

For the Respondents : Mr.V.Chandrasekar – for R1

For the Petitioners : Mr.I.Abrar Md.Abdullah

Mrs.R.Anitha
Special Government Pleader-
for R2

Mr.Om Prakash
Senior Counsel – for R3 to R11

ORDER
(Made by the Hon'ble Acting Chief Justice)

This writ petition is filed challenging the impugned sale certificate dated 23.03.2021 issued by the 1st respondent in favour of respondents 3 to 11 to quash the same and further direct the respondents to close the Loan A/c.No. 136700150950167 after receiving the balance dues.

2. Primarily, though the the petitioners will be liable to approach only the Debts Recovery Tribunal (hereinafter referred to as 'DRT'), it was brought to our notice that when S.A.No.160 of 2021 was already filed by the petitioners challenging the sale notice dated 22.01.2021, the same was dismissed on the ground that the appellants have no right of redemption under Section 13(8) of the SARFAESI Act as no

money is paid by the appellants till the sale process is complete under the SARFAESI Act. It is pertinent to state here that the sale certificate remained unregistered and the petitioners who are the mortgagors were ready to pay the entire balance amount and redeem the property. In view of the above, considering that in spite of the authoritative pronouncement of the Hon'ble Supreme Court of India, that the mortgagor has got the right to redeem his properties till the sale deed is registered, repeatedly the DRT is refusing the right of redemption in view of Section 13(8) of the SARFAESI Act, this writ petition was entertained.

3. It is now represented by the petitioners that they have paid the entire amount due to the respondent bank and that in view of the fact that the sale certificate is yet to be registered, they may be permitted to redeem the property. The objection of the respondent Bank as well as the auction purchasers is three fold.

4. Firstly it is contended by the respondent bank that, after the auction sale of the subject property for a sum of Rs.1,25,60,000/- the petitioner remitted a sum of Rs.2,88,00,000/- during the month of

March 2021 and Rs.62,74,123.74/- on 17.05.2021 towards the balance outstanding after the realisation of the sale proceeds and got the other properties released on 13.05.2021 and the account is accordingly closed. Now belatedly the petitioners again pray for the redemption of the property which is sold. The second objection on behalf of the respondents is that, in any event the writ petitioners/ mortgagors have to question the sale certificate only before the DRT and cannot approach this Court directly under Article 226 of the Constitution of India. The third objection on behalf of the respondents is that once the auction sale is completed and the sale certificate is issued, thereafter the writ petitioners have lost the right of redemption.

5. We have considered the rival submissions made on behalf of either side and perused the material records of the case.

6. As far as the question as to whether the petitioners have a right of redemption is concerned, the matter is no longer *res integra*. Even though Section 13(8) of the SARFAESI Act provides that the right of redemption will stand extinguished upon the issue of sale notice,

the Hon'ble Supreme Court of India in **"Mathew Varghese -Vs- Amritha Kumar and Others [(2014) 5 SCC 610]** held as follows and we extract Para 38 as hereunder:

> " *?38. On a reading of the above paragraphs, we are able to discern the ratio to the effect that a mere conferment of power to sell without intervention of the court in the mortgage deed by itself will not deprive the mortgagor of his right to redemption, that the extinction of the right of redemption has to be subsequent to the deed conferring such power, that the right of redemption is not extinguished at the expiry of the period,* ***<u>that the equity of redemption is not extinguished by mere contract for sale and that the mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed.</u>*** *The ratio is also to the effect that the power to sell should not be exercised unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. The above proposition of law of course was laid down by this Court in Narandas Karsondas while construing section 60 of the tp act. But as rightly contended by Mr Shyam Divan, we fail to note any distinction to be drawn while applying the abovesaid principles, even in*

respect of the sale of secured assets created by way of a secured interest in favour of the secured creditor under the provisions of the Sarfaesi Act, read along with the relevant Rules. We say so, inasmuch as, we find that even while setting out the principles in respect of the redemption of a mortgage by applying section 60 of the TP act, this Court has envisaged the situation where such mortgage deed providing for resorting to the sale of the mortgage property without the intervention of the Court. Keeping the said situation in mind, it was held that the right of redemption will not get extinguished merely at the expiry of the period mentioned in the mortgage deed. It was also stated that the equity of redemption is not extinguished by mere contract for sale and the most important and vital principle stated was that the mortgagor-s right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. The completion of sale, it is stated, can be held to be so unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. Therefore, it was held that until the sale is complete by registration of sale, the mortgagor does not lose the right of redemption. It was also made clear that it was erroneous to suggest that the mortgagee would be acting as the agent of the mortgagor in selling the

property.?
Though the recovery of public dues should be made expeditiously, it should not frustrate the constitutional right and human right of a person to hold a property, when the borrower pays the entire money before the registration of the sale deed."

7. Secondly, this Court also in the earlier judgment in the case of **M/s.Sri International -Vs- State Bank of India and Others (2023:MHC:1780),** after considering the judgment of the Andhra Pradesh High Court in **Concern Readymix** as well as the Punjab and Haryana High Court in **Pal Alloys & Metal India Private Limited,** held as follows and it is essential to quote Para 5.10.

" *5.10. Further, we are also in complete agreement with the judgments of the Andhra Pradesh High Court in Concern Readymix, as well as the Punjab and Haryana High Court in Pal Alloys & Metal India Private Limited, (cited supra), which hold that the amended Section 13(8) of the SARFAESI Act, is only a restriction on the right of the mortgagee to deal with the property, and is not exactly the same as the equity of redemption available to the Mortgager. The said rights of redemption are governed by the relevant provisions of the Transfer of*

Property Act, which do not stand expressly excluded by the operation of Section 13(8) and also Rule 9 of the rules."

8. Thus, it can be seen that even though SARFAESI Act in Section 13(8) provides that the right of redemption will be lost once the property is advertised for sale, it has been held that the SARFAESI Act itself is a device to enforce the security interest and realise the dues without the intervention of the Court while the basic law relating to mortgage and the right of the mortgagor under the Transfer of Property Act is not curtailed by the SARFAESI Act.

9. In any event, the matter is no longer *res integra* as the issue has been considered once again in detail by the Hon'ble Supreme Court of India in **"S.Karthick -Vs- N.Subash Chand Jain** reported in **2022 (10) SCC 641"** and it is essential to extract Para 115, 118 and 119 which reads thus,

" 115. Even if viewed from another angle, the claim of the appellants is not sustainable. The two-judge Bench of this Court in ***Mathew Varghese*** *has heavily relied on*

the judgment of the three-judge Bench of this Court in ***Narandas Karsondas****.* *It has been held by this Court in* ***Narandas Karsondas*** *that the right of redemption, which is embodied in Section 60 of the Transfer of Property Act is available to the mortgagor unless it has been extinguished by the act of parties. It has been held, that execution of the conveyance and registration of transfer of mortgagor's interest by registered instrument, that the mortgagor's right of redemption will be extinguished.*

....

118. It is further relevant to note that this Court in ***Dwarika Prasad*** *and in* ***Shakeena*** *held that the right of redemption stands extinguished on the sale certificate getting registered.*

....

119. We will have to take into consideration the purpose with which the SARFAESI Act came to be enacted. Unlike international banks, the banks and financial institutions in India did not have power to take the possession of securities and sell them. It was, therefore, noticedthat it had resulted in slow pace of recovery and defaulting loans and mounting levels of non-performing assets of banks and financial institutions."

10. Thus, in spite of the authoritative pronouncement of the Hon'ble Supreme Court of India, the DRT has been time and again holding that the right of redemption is lost on the fall of the hammer as per Section 13(8) which is legally unsustainable and therefore only in the extraordinary circumstances, as the question of law has to be made clear this writ petition is entertained by this Court and therefore, the objection on the ground of alternative remedy, though is a valid objection and is also followed by this Court generally in relegating the parties only to the DRT, in view of the above peculiar and extraordinary circumstance, and because the contention of the borrower / guarantors was not on air, but by paying the entire sum outstanding to the bank, as an exceptional case this writ petition is entertained by this Court and accordingly we over rule the said objection raised on behalf of the respondents.

11. It is the objection of the respondent bank that initially when the petitioners paid a sum of Rs.2,88,00,000/- in the month of March 2021 and thereafter Rs.62,74,123.74/- on 17.05.2021, by accepting

the sale of the property and by closing the loan account is concerned, except for the bald averment in Para 5 of the counter affidavit, no material whatsoever is produced before this Court. If such is the case, there would have been written communications to that effect on either side. Besides, it could be seen that even in the interim order dated 26.03.2021 was passed by the DRT, the following has been stated;

> *"Learned counsel for the Respondent Bank submitted that the property is sold on the scheduled date of auction and the Sale Certificate is also issued. However, the Sale Certificate is not registered as of now. The Applicant also paid substantial amount of dues of about 50% of the amount claimed.*
>
> *The Applicant having paid a substantial amount of about 50% of the claim amount, this Tribunal is of the view that a status-quo order is required to be passed in the interest of justice. Hence, there shall be an order of status quo as of today. Meanwhile, the Applicant directed to initiate steps to implead the auction purchaser in this case."*

12. Therefore, had the petitioner agreed for the same and remitted Rs.2,88,00,000/- in the month of March 2021, the same would have been brought to the notice of the DRT also and an order of status quo not to register the sale certificate would not have been granted. Therefore when the borrower, for some reasons, did not repay the loan promptly, but however manages to pay the entire amount as claimed by the respondent bank even at the last minute, the same cannot be rejected on technical reasons, as the very purpose of the law of mortgage is to create security for the loan and not to result in the ownership of the property being transferred.

13. While we overrule the objections on behalf of the respondents, we hold that the auction purchasers will be entitled for the return of the entire sum of Rs.1,25,60,000/- paid by them and they will also be entitled to interest at the rate of 9% per annum from the date of remitting the amounts till the date of repayment. It goes without saying that it is only the writ petitioners / borrowers who have to make good the said interest amount.

14. In the result,

(a) The writ petition is allowed and the impugned sale certificate dated 22.03.2021 issued by the first respondent in favour of the respondents 3 to 11 stands quashed.

(b)The first respondent is directed to close the Loan A/c No.136700150950167 as the entire due amount is already paid;

(c)The first respondent shall also issue due receipt for the discharge of mortgage and the same shall be presented before the appropriate Sub Registrar;

(d)The first respondent bank is directed to refund the entire sum of Rs.1,25,60,000/- to the respondents 3 to 11 within one week from the date of receipt of a copy of this order;

(e)The first respondent bank shall also calculate the interest at the rate of 9% per annum on the said amount paid by the auction purchasers from the date of the respective remittance of the amount till the date of repayment and intimate the same by writing to the petitioners within one week thereafter.

(f) Upon receipt of the written communication from the first respondent bank, the entire interest amount shall be remitted to the first respondent bank within one week therefrom by the writ petitioners and the first respondent bank shall pay out the same to the respondents 3 to 11;

(g) It is made clear that if the writ petitioners default in the payment of interest as aforesaid within the aforesaid time the writ petition shall stand dismissed automatically without any further reference to this Court.

15. The writ petition is allowed on the above terms. No costs.

Consequently, connected W.M.P.Nos.1987 and 1988 of 2023 are closed.

(T.R., ACJ.) (D.B.C., J.)
24.04.2023
1/2

Index : Yes/No
Neutral Citation : Yes/No

kst

To

1 The Authorised Officer
M/s.Tamil Nadu Mercantile Bank Ltd.,
R.S.Puram Branch, 539-540, D.B.Road
Coimbatore – 641 002.

2 The Sub Registrar
Dharapuram SRO
Dharapuram
Tiruppur District.

T.RAJA, ACJ,
and
D.BHARATHA CHAKRAVARTHY,J

(kst)

W.P.No.1882 of 2023

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