



W.P.No.14301 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

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M/s.Thilak International,
rep. by its Partner D.Joseph Raja,
4C/5, 4C/7, Mani Nagar,
Tuticorin-628 003.

.. Petitioner

Vs

1.UCO Bank,
Regional Office,
Chennai-600 024
rep. by the Authorised Officer.

2.UCO Bank,
Tuticorin Branch,
208, C.D., V.E. Road,
Tuticorin-628 003
rep. by its Branch Manager.

3.G.Saravanan

4.Dr.J.Saravanan

.. Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records and order of the Debt Recovery Appellate Tribunal, Chennai, dated 3.4.2023 passed in R.A.(S.A) No.62 of 2018 and quash the same as illegal and further directing the respondents 1 and 2 to receive entire dues from the petitioner.

For the Petitioner	: Mr.T.Mohan Senior Counsel for M/s.J.Antony Jesus
For the Respondents	: Mr.K.S.Viswanathan Senior Counsel for M/s.T.Hemalatha for respondent Nos.1 and 2
	: Mr.N.Alagu Narayanan for M/s.RRN Legal for respondent No.3
	: R4 – No Appearance

ORDER

(Order of the court was made by the Hon'ble Chief Justice)

We have heard Mr.T.Mohan, learned Senior Counsel for M/s.J.Antony Jesu, learned counsel for the petitioner; Mr.K.S.Viswanathan, learned Senior Counsel for M/s.T.Hemalatha,



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learned counsel for respondents 1 and 2; and, Mr.N.Alagu Narayanan for M/s.RRN Legal, learned counsel for respondent No.3.

2. The petitioner is challenging the order passed by the Debt Recovery Appellate Tribunal dated 3.4.2023 in R.A. (S.A) No.62 of 2018.

3. Learned Senior Counsel for the petitioner submits that the petitioner has filed Securitisation Application bearing No.50 of 2016 before the Debts Recovery Tribunal, Chennai and subsequently, the said Securitisation Application was transferred to the Debts Recovery Tribunal, Madurai and numbered as TSA No.60 of 2007. The Debts Recovery Tribunal, Madurai, allowed the said application. The bank had filed an appeal before the Debt Recovery Appellate Tribunal bearing R.A. (S.A) No.111 of 2008. The said appeal was allowed on 10.3.2011. The borrower had challenged the order of the Debt Recovery Appellate Tribunal by filing a writ petition bearing No.18753 of 2011. This Court upheld the order of the Tribunal and remanded R.A. (S.A) No.111 of 2008 to the Debts



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Recovery Tribunal, Madurai for fresh consideration. After remand, the Debts Recovery Tribunal, Madurai, dismissed the T.S.A.No.60 of 2007 on 17.11.2017. Aggrieved thereby, the petitioner had filed appeal before the Debt Recovery Appellate Tribunal in R.A. (S.A) No.62 of 2018. The Debt Recovery Appellate Tribunal dismissed the appeal. Aggrieved thereby, the present writ petition is filed.

4. Learned Senior Counsel for the petitioner strenuously contends that the sale was conducted in contravention of the provisions of the Security Interest (Enforcement) Rules, 2002, inasmuch as 30 days notice was not issued. On or about 31.01.2007, stay was granted to the sale. The said stay order was also communicated to the bank on 01.02.2007. However, in spite of the order of stay, the bank had proceeded to auction the property. The auction could not have been conducted in violation of the order of stay.

5. Learned Senior Counsel further submits that the Tribunal has failed to consider that the sale was in flagrant violation of the



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provisions of the Security Interest (Enforcement) Rules, 2002. The procedure was not followed. The sale was conducted during the operation of the order of stay. In view of that, the auction is void *ab initio*.

6. The right of redemption to the borrower is not available after the auction sale notice is issued. Reliance can be had to the judgment of the Apex Court in *Civil Appeal Nos.5542 – 5543 of 2023, dated 21.09.2023 (Celir LLP v. Bafna Motors (Mumbai) Pvt. Ltd. and others)*.

7. Prior to the amendment of sub-section (8) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "*the Act of 2002*") in the year 2016, the borrower had right of redemption of mortgage until the execution of the conveyance of the secured asset by way of a registered instrument. In the present case, the conveyance is executed way back in January, 2008.



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8. The petitioner had challenged the auction sale notice by filing writ petition bearing No.3318 of 2007. In the said writ petition, this Court observed that all steps under Section 13 of the Act of 2002 have been taken by the respondent UCO bank and the notice which is impugned in the writ petition is the auction sale notice dated 20.1.2007, which has been published pursuant to the earlier statutory notice dated 15.9.2006 issued under Rule 8(5) of the Security Interest (Enforcement) Rules, 2002. The said judgment has become final.

9. It is stated that the petitioner had deposited only pre-deposit of Rs.10.00 lakh. The property was sold in the auction for Rs.42.00 lakhs.

10. The sale has been conducted. The petitioner had only challenged the auction sale notice. The petitioner has never challenged the auction sale and the issuance of sale certificate. The Debt Recovery Appellate Tribunal has properly considered the said aspect.



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11. With regard to the pre-deposit made by the petitioner with the Debt Recovery Appellate Tribunal, the petitioner may make necessary application for refund of the same. Naturally, the Debt Recovery Appellate Tribunal will call for the say of the bank and consider about the amount outstanding and may pass appropriate orders.

12. In the light of the above, no interference is called for. The writ petition is dismissed. There will be no order as to costs. Consequently, W.M.P.No.13808 of 2023 is closed.

(S.V.G., CJ.)

(P.D.A., J.)

27.09.2023

Index : Yes/No
Neutral Citation : Yes/No
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To:

WEB COPY

- 1.The Authorised Officer,
UCO Bank,
Regional Office,
Chennai-600 024.
- 2.The Branch Manager,
UCO Bank,
Tuticorin Branch,
208, C.D., V.E. Road,
Tuticorin-628 003.



WEB COPY



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

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