IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2023

CORAM

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

WP No.21830 of 2023
WMP Nos.21156 to 21158 of 2023

1. M/s.Petro Plast Industries Ltd.,
Rep. by its Director Mr.Om Prakash Agarwal,
A-68, A Block, 11th Street, Anna Nagar East,
Chennai 600 040.

2. Om Prakash Agarwal
3. Raj Kumar Agarwal
4. Ajay Kumar
5. Amit Kumar Agarwal ... Petitioners

-vs-

1. The Authorised Officer,
Tamil Nad Mercantile Bank Ltd.,
George Town Branch, STS Complex,
First Floor, No.194, Anna Pillai Street,
Broadway, Chennai.

2. Shahul Hameed Haja Mohideen Ahamed Ali

3. M/s.Velammal Chennai Educational Trust,
Rep. by its Trustee, No.21A,
T.S.Krishna Nagar, Mogappair,
Chennai 600 037. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to quash the order dated 22.02.2023 passed by the Debt Recovery Appellate Tribunal in RA Nos.16 of 2021 and 17 of 2021 and restore the order dated 04.02.2021 passed by the Debts Recovery Tribunal in SA No.243 of 2019.

For the Petitioners : Mr.Satish Parasaran

For the Respondents : Mr.A.Arokia Sathish
for Mr.S.Sethuraman for R-1

* * * * *

ORDER

(Made by the Hon'ble Chief Justice)

We have heard Mr.Satish Parasaran, learned Senior Counsel for the petitioners.

2. The present petitioners are the borrowers of respondent No.1. The petitioners defaulted in payment of the loan amount. Proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the SARFAESI Act') were undertaken by respondent No.1. Eventually, e-auction notice was issued in respect of the secured assets of the petitioners. E-auction was conducted and the sale was confirmed on 16.08.2019. The auction purchasers deposited 25% of the amount on

17.08.2019. On or about 19.08.2019, the petitioners approached the Debts Recovery Tribunal by filing Securitisation Application. On 19.08.2019, the Debts Recovery Tribunal passed an interim order thereby granting stay on condition that the petitioners deposit Rs.10,00,00,000/- (Rupees ten crores only) on or before 26.08.2019 and further Rs.10,00,00,000/- (Rupees ten crores only) on or before 31.08.2019. The said stay order was a conditional one, upon default being committed, the stay would axiomatically stand vacated. The petitioners did not comply with the first condition of deposit of Rs.10,00,00,000/- (Rupees ten crores only) on or before 26.08.2019. The stay stood vacated. On 26.08.2019, the bank issued a communication to the auction purchasers that the auction purchasers shall not deposit the amount until further communication. On or about 03.09.2019, the bank communicated the auction purchasers that the borrowers did not comply with the condition imposed for grant of interim order and that the balance payment be made. On 10.09.2019, the auction purchasers made the payment of 75% of the amount.

3. The Debts Recovery Tribunal allowed the Securitisation Application filed by the present petitioners on the ground of non-

compliance of Rule 9(4) of the Security Interest (Enforcement) Rules, 2002, inter alia observing that there is no written agreement for extending the time. The Debt Recovery Appellate Tribunal, on an appeal filed by the bank, allowed the appeal and set aside the judgment of the Debts Recovery Tribunal holding that the compliance is made by the auction purchasers. Aggrieved thereby, the present writ petition.

4. Mr.Satish Parasaran, learned Senior Advocate for the petitioners, strenuously contends that the Debts Recovery Tribunal had rightly come to the conclusion that Sub-Rule (4) of Rule 9 of the Security Interest (Enforcement) Rules has not been complied with. There is no agreement in writing between the auction purchasers and the bank extending the time to deposit the amount. The learned Senior Advocate, to buttress his submission, relies upon the judgment of the Division Bench of Telangana High Court in a case of ***P.Sudha Lakshmi vs. Bank of India*** reported in ***2018 (4) ALT 518***. The learned Senior Advocate further submits that when Rule 9(4) contemplates agreement between the parties, the borrower also is to be included in it as the borrower is to be made known about the time being extended so that the borrower can bring a better

prospective purchaser. It is further contended that the bank in clear terms had averred that the confirmation of sale was revoked and once the confirmation of sale is revoked, there is no further fresh auction conducted. On this count also, the appeal deserved to fail.

5. We have considered the submissions and also heard Mr.A.Arokia Sathish learned counsel for the first respondent.

6. The chronology of dates and events as narrated above are not disputed.

7. It is not disputed that the auction purchasers had deposited 25% of the amount as contemplated under law in time. Before lapse of 15 days, the borrowers had approached the Debts Recovery Tribunal and obtained an order of stay. The said order of stay operated at least till 26.08.2019, that is, the date when the borrowers committed default of the condition to deposit Rs.10 crores. On 26.08.2019, the bank on its own communicated to the auction purchasers that they may not deposit the amount until further communication and the further communication was made by the bank on 03.09.2019 and the auction purchasers deposited the balance

amount on 10.09.2019.

8. The Debt Recovery Appellate Tribunal had relied upon the judgment of the Apex Court in the case of ***Varimadugu Obi Reddy vs. B.Sreenivasulu*** reported in ***(2023) 2 SCC 168***. In similar set of facts, the Apex Court had considered that the interregnum period was in incomplete phase of flux as to what will be the fate of the auction purchaser pending proceedings before the Tribunal, more so when the application was filed by the borrowers seeking extension of time and that being the situation, 75% of the bid amount was deposited on 15.04.2015 and sale certificate was issued. In the extended time, the borrowers failed to deposit the amount. The four days' delay that was caused because of the interregnum state of flux was considered by the Apex Court. In the said case also, the bank (secured creditor) has requested the auction purchaser to wait for some time as the borrowers were negotiating with the bank. In the present case also, the bank had requested the auction purchasers to wait for some time as the matter was pending before the Debts Recovery Tribunal and interim orders were passed on 19.08.2019, though because of the non-observance of the condition, the same stood vacated on

26.08.2019. It is because of the communication of the bank that the auction purchasers could not deposit the amount. It is not the case that the auction purchasers sought for extension of time to deposit the amount.

9. In view of the aforesaid facts, the Debt Recovery Appellate Tribunal has not committed any error in passing the impugned order.

10. The writ petition as such stands disposed of. There will be no order as to costs. Consequently, WMP Nos.21157 and 21158 of 2023 are closed.

WMP.No.21156 of 2023 filed to permit the petitioners to file a single writ petition is allowed and disposed of, inasmuch as the petitioners have paid separate court fee.

(S.V.G., CJ.) **(P.D.A., J.)**
03.08.2023

Index : Yes/No
Neutral Citation : Yes/No

sra

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

(sra)

To

1. The Authorised Officer,
   Tamil Nad Mercantile Bank Ltd.,
   George Town Branch, STS Complex,
   First Floor, No.194, Anna Pillai Street,
   Broadway, Chennai.
2. The Registrar,
   Debts Recovery Tribunal-I, Chennai.
3. The Registrar,
   Debt Recovery Appellate Tribunal,
   Chennai.

WP No.21830 of 2023

03.08.2023