IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA ,
CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.21546 of 2023

1. Star Trace Engineering Division
   Rep. by its Propretrix P.Ponnal

2. Ponnal P. .. Petitioners

Versus

1. The Registrar,
   Debts Recovery Tribunal - II,
   Shastri Bhawan Annexe Building VI Floor,
   Haddows Road, Chennai - 600 006.

2. The Authorized Officer,
   State Bank of India,
   Stressed Assets Management Branch,
   Red Cross Building, Montieth Road,
   Egmore, Chennai - 600 008.

3. M.M.M.Thiagarajan
4. M.Sivakumar .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, to call for the records in order, dated 31.05.2023 made in T.S.A.No.35 of 2023 (Old S.A.No.145 of 2022) on the file of the Debts Recovery Tribunal-II, Chennai, the first respondent herein and quash the same and direct the 2nd respondent to return the title deeds by closing the loan account.

For Petitioner	: Mr.S.R.Rajagopal, for Mr.M.A.Aruneshe
For Respondents	: R1 - Tribunal
	: Mr.Om Prakash, Senior Counsel, for Mr.B.Raghavulu Naidu, for R2
	: Mr.T.Mohan, Senior Counsel, for Mr.S.P.Sudalaiyandi, for RR-3 and 4

ORDER

(Order made by the Hon'ble Mr.Justice D.Bharatha Chakravarthy)

The brief facts leading to the filing of this Writ Petition are that the writ petitioners are engaged in the business of manufacturing, exporting and supplying massive assemblage of Industrial Separators and Magnetic

Equipment. For their business purpose, they had availed Cash Credit facility to a tune of Rs.1,82,24,183/-, Common COVID - 19 Emergency Credit Line facility to a tune of Rs.10,25,369/- and Guaranteed Emergency Credit Line to a tune of Rs.36,96,715/-, in all totaling to Rs.2,30,45,715/-. In view of default in repayment, the account was classified as Non-Performing Asset (NPA) with effect from 30.09.2021.

2. A notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as '*SARFAESI Act*'), was issued on 08.10.2021 and the notice under Section 13(4) of the *SARFAESI Act* was issued on 11.01.2022. Thereafter, a sale notice was issued under Rule 8(6) of the *Security Interest (Enforcement) Rules, 2002* on 18.02.2022 fixing auction on 28.03.2022. The auction was to bring for sale the mortgaged property by fixing a reserve price of Rs.2.58 crores. The respondent Nos.3 and 4, in the Writ Petition, jointly participated in the bid and were the successful bidders for a sum of Rs.3,03,00,000/-. Their highest bid was accepted and they were

directed to pay 25% amount on or before 29.03.2022. They were also advised to pay the balance amount of Rs.2,27,25,000/- within a period of 15 days i.e., on or before 12.04.2022. As per the directive of the second respondent bank, the respondent Nos.3 and 4 paid the 25% of the amount on 29.03.2022.

3. It is at this stage, the writ petitioners filed S.A.No.145 of 2022 on the file of the Debts Recovery Tribunal - I, Chennai and on 31.03.2022, the following interim order was passed :-

> " *Hence the respondent bank is directed to maintain status quo on condition that the applicant remitting a sum of Rs.1.00 Crore today and on further condition that the applicant remitting a further sum of Rs.85.00 Lakhs on or before 04.04.2022. It is made clear that if any of these conditions are not complied with by the applicant, the respondent is free to proceed further in accordance with law. Applicant to implead auction purchaser as a party to the proceedings. Ld. Counsel for the bank undertakes to file a memo furnishing details of the auction purchaser within a week's time after serving a copy to the applicant.*"

4. However, the amounts were not paid exactly as per the conditional order. The writ petitioners were directed to remit a sum of Rs.1,00,00,000/- on the same day of the order i.e., on 31.03.2022 and were directed to pay another sum of Rs.85,00,000/- on or before 04.04.2022. The writ petitioners paid a sum of Rs.89,00,000/- on the same day of the order i.e., on 31.03.2022 and thus, there was a deficit of Rs.11,00,000/-. On 01.04.2022, they paid a sum of Rs.15,73,000/-. On 02.04.2022, they paid a sum of Rs.20,77,500/-. On 05.04.2022, the petitioners made another deposit of Rs.70,08,000/-. Thus, even though there was one day delay, the petitioners had even paid the sums over and above the conditional order of the Tribunal and as a matter of fact, the entire outstanding stood paid as on 05.04.2022. It is in this background, when the appeal filed by the writ petitioners before the Tribunal came up for further hearing, the Tribunal recorded the said fact and passed the following order :-

" ….

The Ld. Counsel for the applicant submits that the transactions are not clear to the bank *though the entire amount is paid. In the circumstance the bank, to verify and confirm the transactions as regards the submissions made today by 14.07.2022. Let the same be verified and confirmed by the bank by 14.07.2022. Thus IA/821/2022 stands disposed of by cancelling the earlier date 15.09.2022 assigned.*"

5. Thereafter, the matter was further taken up for hearing on 14.07.2022, 05.09.2022 and 10.02.2023. In all these dates, inspite of memo filed by the second respondent bank that the condition was not complied in time, the Debt Recovery Tribunal extended the interim order specifically. The relevant portion of the order, dated 14.07.2022 reads as follows :-

"*…. Put up this matter for counter by the auction purchaser and the Bank which be filed within six weeks. Put up for further proceedings by 05.09.2022. Interim order extended.*"

6. The relevant portion of the order, dated 05.09.2022 reads as follows:-

"*…. The auction purchaser and the applicants may explore the possibility of settlement and report the same by 07.11.2022. Interim order is extended.*"

7. The entire order, dated 10.02.2023 reads as follows :-

> " *Counsel for both sides present. Applicant to carry out amendments in the course of the day and file amended SA. Post this matter on 22.02.2023 for further proceedings. Interim order extended till posting date.*"

8. But, however, when the matter was further taken up on 22.02.2023 and was adjourned for filing counter, the interim order was not extended. The said order is extracted hereunder :-

> " *Counsel for both sides present. Respondent undertakes to file counter by next posting date. Post this matter on 21.3.2023 for counter of the respondent.*"

9. Thereafter also, the interim order was not extended in any of the further orders, dated 21.04.2023 and 18.05.2023. Finally, on 31.05.2023, the appeal itself was dismissed by the Tribunal. The Tribunal found that the writ petitioners were not able to point out any infirmity in the sale notice. Even though the Tribunal pointed out that the bank was conducting the

proceedings in a reckless manner, however, dismissed the Securitisation Appeal. Nothing was stated about the amount paid by the petitioners and about the fact that they have paid the entire loan amount and nothing was outstanding to the bank. It is at this stage, without filing an appeal before the Appellate Tribunal, the writ petitioners approached this Court by way of the present Writ Petition on 17.07.2023.

10. After dismissal of the Securitisation Appeal, the respondents received the certified copy of the final order of the Tribunal on 06.06.2023. As per the joint affidavit of the auction purchasers furnished to the second respondent bank, the bank directed them to pay the balance of 75% by its communication dated 07.06.2023. Upon their request for extension of time, by letter dated 01.07.2023, time was extended upto 18.07.2023. In the meanwhile, the fourth respondent withdrew from the consortium and both the respondent Nos.3 and 4 jointly requested that sale certificate be issued only in the same of the third respondent. The third respondent paid the entire sale consideration on 17.07.2023 and the sale certificate was issued to

him and on 18.07.2023, the same was also registered. It is under these circumstances, counter-affidavits are filed by the second respondent bank as well as the respondent Nos.3 and 4 / auction purchasers and the matter is taken up for hearing.

11. *Mr.S.R.Rajagopal*, learned Senior Counsel appearing on behalf of the writ petitioners would submit that the contentions raised by the writ petitioners relating to the impugned order of the Debt Recovery Tribunal are that (i) the Tribunal did not even advert to the grounds raised by them in the appeal; (ii) even after finding that the bank has not even produced the documents relating to the various steps to justify its action, the Debt Recovery Tribunal still proceeded to dismiss the Securitisation Appeal; and (iii) inspite of the entire amount being already paid, the Tribunal did not even advert to the same and on the other hand, held the payment itself as a ground to reject the contentions on merits. Dehors the above contentions, the fact remains that the subsequent sale which is proceeded by the second respondent bank in favour of the respondent Nos.3 and 4, *per se*, is a nullity.

According to the learned Senior Counsel, Rule 9 of the *Security Interest (Enforcement) Rules, 2002* was amended *vide* G.S.R.1046 (E), dated 03.11.2016 with effect from 04.11.2016 and as per the amended Rule 9(4) of the *Security Interest (Enforcement) Rules, 2002*, the balance of 75% has to be paid within such extended period as may be agreed upon in writing between the purchaser and secured creditor, but, in any case, it cannot exceed three months. In this matter, the interim order of status *quo* was not extended beyond 22.02.2023. From the date of that order, the three months period expired on 21.05.2023. In this case, the auction purchasers have paid amount only on 17.07.2023 i.e., beyond the period of 90 days. Therefore, as per Rule 9(5) of the *Security Interest (Enforcement) Rules, 2002*, the second respondent bank ought to have forfeited the initial deposit amount and the property has to be resold. The property has to be resold by issuing a fresh sale notice and any time before the issue of fresh sale notice, the writ petitioners have right of redemption and therefore, the writ petitioners, having been exercised their right of redemption by paying their entire amount, this Court should set aside the sale certificate, dated 18.07.2023 issued in favour of the respondent Nos.3 and 4 and direct the second respondent bank to issue full satisfaction receipt and No Objection Certificate for cancelling the mortgage.

12. Per *contra*, *Mr.Om Prakash*, learned Senior Counsel appearing on behalf of the second respondent bank would submit that right from the beginning, the writ petitioners were offering to make payment, but, however, did not keep up their promise. Even after issue of possession notice under Section 13(4) of the *SARFAESI Act*, they did not take any steps. Therefore, when the sale notice dated 18.02.2022 was issued, as per the amended Section 13(8) of the *SARFAESI Act*, the right of redemption was lost and therefore, the auction which took place on 28.03.2022 was valid. The respondent Nos.3 and 4 were the highest bidders and have deposited the initial 25% on 29.03.2022 as directed by the second respondent bank. Before they could pay the balance amount within a period of 15 days as directed originally, the writ petitioners approached the Debt Recovery Tribunal and obtained the order of status *quo* on 31.03.2022. Even though

the second respondent bank filed a memo of non-compliance, the interim order was extended by the orders, dated 14.07.2022, 05.09.2022 and 10.02.2023. Even thereafter, in the order, dated 22.02.2023, there was no express observation that the order of status *quo* stood vacated or not extended. In the absence of the same, the bank as well as the respondent Nos.3 and 4 had to await the final orders to be passed by the Debt Recovery Tribunal and once the final orders are passed on 31.05.2023, the respondent Nos.3 and 4 paid the balance amount within a period of three months from the said date of order on 17.07.2023 and accordingly, the sale certificate is also issued and is registered on 18.07.2023.

13. In this context, he would rely upon the judgment of the Hon'ble Supreme Court of India in ***Varimadugu Obi Reddy Vs. B.Sreenivasulu and Ors.***[1], specifically, by relying upon paragraph Nos.41, 42 and 43 of the said judgment to contend that in the context of the present case, where the amount was received after the final order in S.A was passed, the same cannot

1 (2023) 2 SCC 168

be held to be fatal. By placing strong reliance on the judgment of the Hon'ble Supreme Court of India in ***Celir LLP Vs. Bafna Motors (Mumbai) Pvt. Ltd. and Ors.***[2], the learned Senior Counsel would submit that once the borrowers have lost their right of redemption and the sanctity of public auction being specifically stressed upon by the Hon'ble Supreme Court of India in paragraph Nos.83 and 88 of the said judgment, the Writ Petition is bound to fail.

14. *Mr.T.Mohan*, learned Senior Counsel appearing on behalf of the respondent Nos.3 and 4 / auction purchasers, would submit that firstly, in this case, they were ready and willing to deposit their amount whenever the bank insisted. As a matter of fact, the bank has brought to the notice of the Debt Recovery Tribunal by filing a memo and thereafter, they were impleaded in the proceedings before the Debt Recovery Tribunal. The order of status *quo* was never refused to be extended expressly. In that view of the matter, placing reliance on the judgment of a learned Single Judge of this

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2 2023 SCC OnLine SC 1209

Court in ***K.Jayaraman Vs. Union of India and Ors.***[3], more specifically on paragraph No.32, he would submit that when the Court does not take up the matter on the question of vacating the order and when the said prayer is closed only on the final day, it cannot be said that there was vacation of interim order and therefore, the payment made by them is within the mandatory period of three months and there is no illegality in the sale.

15. He would further contend that in any event, as per the dictum of the Hon'ble Supreme Court of India in ***Celir LLP***'s case (cited *supra*), in view of the amended Section 13(8) of the *SARFAESI Act*, once the sale notice is issued, the right of redemption is permanently lost. It cannot once again eclipse or enure to the borrowers. Therefore, in any event, have lost their right of redemption cannot now plead about the payment of entire loan outstanding. In any event, the sale has taken place and the sale certificate has been issued. The petitioners have got every right to challenge the said measures by way of filing a fresh application under Section 17 of the

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SARFAESI Act before the Debt Recovery Tribunal. In the absence of the same, in the present proceedings arising out of the challenge to the sale notice, the same cannot be set aside. He would also rely upon the order passed by this Court in W.P.No.14301 of 2023 in ***M/s.Thilak International, rep. by its Partner D.Joseph Raja Vs. UCO Bank and Ors.***

16. We have considered the rival submissions made on either side and perused the material records of the case. The first point that would arise for consideration is as to whether there was any interim order by the Debt Recovery Tribunal after 22.02.2023 ? All the relevant orders are extracted *supra*. It can be seen from the order, dated 10.02.2023, the interim order was specifically extended till the posting date only. When the interim order is extended specifically till the next date and on the next date i.e., on 22.02.2023, when the matter is taken up and the interim order is not further extended, then, the same cannot be construed to be extended beyond the particular date. Therefore, the period of time of 90 days specifically started running from 22.02.2023. Obviously, the deposit of balance of 75% was not

made within a period of three months. As a matter of fact, this point was specifically considered by this Court in ***Sri International, Represented by its Partner, N. Ramalingam and Another Vs. Central Bank of India and Ors.***[4], wherein, it was specifically held that once there was no impediment by way of a prohibitory order passed by the Court, the time for payment would start running from thereon. The relevant portion of the said judgment is extracted as hereunder :-

> " ***28.****...The parties cannot be permitted to read or interpret the orders of this Court in their own way, that too in a way so as to render any particular direction in order otiose and redundant. As a matter of fact, if the entire order is read in total, this Court had even taken into account the entire sale consideration to be paid by the auction purchasers while calculating the waiver amount and the condition to be imposed.*"

17. As a matter of fact, the decision relied upon by the *Mr.T.Mohan*, the learned Senior Counsel in ***K.Jayaraman*** (Supra) arise in the context of Writ Petition where limited interim order which was granted upto a date where the court does not take up the matter for hearing. On the contrary, the

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hearing procedure is followed by the tribunal and on the next adjourned date, the matter was taken up for hearing and orders were passed posting the matter to a further date for the purposes mentioned therein, however, without extending the interim order.

18. The contention of *Mr.Om Prakash*, the learned Senior Counsel that in the instant case, since the matter was pending Court, the ninety days period need not be strictly adhered to cannot be countenanced. The language used in Rule 9(4) of the *Security Interest (Enforcement) Rules, 2002* is "...in any case not exceeding three months". When a statute uses a negative language and commands loud and clear, it cannot be interpreted that in the context of any factual situation, it can be extended. Useful reference in this regard, can be made to the Judgment of the Supreme Court of India in ***Lachmi Narain Vs. Union of India***[5] and the relevant portion of paragraph 68 reads thus :

> "***68.*** *....If the provision is couched in prohibitive or negative language, it can rarely be directory,*

[5] (1976) 2 SCC 953

the sue of preemptory language in a negative form is per se indivative of the intent that the provision is to be mandatory...”

19. The second contention of *Mr.T.Mohan*, learned Senior Counsel appearing on behalf of the respondents 3 and 4 / the auction purchasers, is that once the sale notice under Section 13(8) of the *SARFAESI Act*, is issued and the right of redemption is lost, thereafter, it will never accrue to the mortgagors. The said contention is absolutely fallacious. Firstly, the title in respect of the property vests with the mortgagor. It gets divested only upon a sale. Secondly, the Hon'ble Supreme Court of India in ***Celir LLP***'s case (cited *supra*) has categorically held that the statutory regime has to be strictly followed only to avoid the sale being set at naught. It is relevant to quote paragraph No.82 which reads as follows :-

" ***82.*** *Thus, it is necessary to interpret the amended Section 13(8) of the SARFAESI Act in such a manner where a legal sanctity is attached to an auction process and a bright line is drawn where a mischievous borrower is told ‘no more and no further’ and precluded from hastily exercising its right of redemption from nowhere at the very end of the process and thereby set the*

> *<u>entire auction process at naught</u>. If permitted to do so then all auctions under the SARFAESI Act would be meaningless and simply rendered otiose and the very object of Section 13 and the overall scheme of the SARFAESI Act of enabling the banks from recovering its dues in a timely manner without intervention of the courts would be simply defeated.*"
>
> (emphasis supplied)

20. Therefore, in a case where there is no sale at all, it goes without saying that once again the matter remains at large at the pre-sale notice stage and the borrower can very well pay the amount and redeem the property. Similarly, if auction purchaser does not pay the amount in time, then, Rule 9(5) of the *Security Interest (Enforcement) Rules, 2002* comes into play. The entire Rule 9(4) and 9(5) of the *Security Interest (Enforcement) Rules, 2002*, are extracted hereunder for ready reference :-

> " ***9. Time of sale, Issue of sale certificate and delivery of possession, etc.-***
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> .
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> .
>
> *(4) The balance amount of purchase price payable shall be paid by the purchaser to the*

> *authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months.*
> *(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited to the secured creditor and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.*"

21. Thus, it can be seen that the purchaser has to pay the balance amount within such period as may be agreed between the purchaser and the secured creditor and in any event, such period cannot be beyond three months. Thus, as per Rule 9(5) of the *Security Interest (Enforcement) Rules, 2002*, in case if there is a default in payment, the sum already deposited shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

22. What is contemplated under Rule 9(5) of the *Security Interest (Enforcement) Rules, 2002* is not postponement of sale, but, a resale. A careful consideration of Section 13(8) of the *SARFAESI Act* and Rules 8 and 9 of the *Security Interest (Enforcement) Rules, 2002*, it would be clear that once again a sale notice has to be issued, in which case, it goes without saying that from the moment the sale did not fructify and the time ripens for resale of the property, from that moment till again fresh sale notice is issued, the mortgagor has the right to redeem the property. At all times when there is no sale proceedings which are pending, the right can be exercised and it cannot be used in any manner to frustrate the sale proceedings or to stultify the sanctity of auction sale. Therefore, we specifically reject the contention raised on behalf of the auction purchaser that the right of redemption of the writ petitioners would be permanently lost.

23. Therefore, once the sale does not take place or if the sale is set aside by the Tribunal or a Court of law on material irregularities, the right of redeem automatically revives. Thus, if the writ petitioners succeed in

impugning the present sale, then, by virtue of the payment of the entire amount, the petitioners can exercise their right of redemption.

24. The question therefore, is whether the sale in favour of the respondents 3 and 4 has to set aside. In this regard, even though it is contended by *Mr.S.R.Rajagopal*, the learned Senior Counsel appearing on behalf of the writ petitioners that even in the absence of the challenge to the sale certificate, this Court should exercise its jurisdiction as the case is crystal clear, we are of the opinion that the present proceedings are filed impugning the measure of issue of sale notice. The writ petition is filed challenging the Order of the Debt Recovery Tribunal arising out of a Securitisation Appeal under Section 17 of the *SARFAESI Act* challenging the sale notice. This Court would exercise the jurisdiction under Article 226 of the Constitution of India in matters arising out of *SARFAESI Act* only if the sale has been challenged before the Debt Recovery Tribunal and the party has exhausted the appeal remedy before the Debt Recovery Appellate Tribunal. Even in the judgment in ***Celir LLP***'s case (cited *supra*), the

Hon'ble Supreme Court of India had made observations about the exercise of the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India in *SARFAESI Act* matters, more specifically, in paragraph Nos.89 to 96. In view thereof, we are of the view that the writ petitioners have to be relegated to the Debt Recovery Tribunal. However, it must be seen that the Writ Petition was filed on 17.07.2023, on which date, the sale certificate was issued and only on 18.07.2023, the same was registered. Since it is brought to the knowledge of the writ petitioners about the issue of the sale certificate only by the counter affidavits and since that technically happened pending the Writ Petition and the Writ Petition being entertained by this Court and the matter is kept pending till date, the period from 17.07.2023, till date has to be excluded for the purpose of computation of limitation for challenging the sale certificate before the Tribunal.

25. In view of our findings as above, we dispose of this Writ Petition on the following terms :-

(i) Since the second respondent bank has proceeded to complete the sale and issue sale certificate, dated 18.07.2023 being registered as Document No.11119 / 2023, at the office of the Sub-Registrar, Red Hills, Chennai, the writ petitioners may specifically challenge the same by way of an appropriate proceedings under Section 17 of the *SARFAESI Act* before the Tribunal;

(ii) The period spent in the present Writ Petition from 17.07.2023 till date shall be excluded for the purpose of computation of limitation for filing an application under Section 17 of the *SARFAESI Act*;

(iii) As and when the application is filed the same shall be considered on merits in the light of the findings above;

(iv) There shall be no order as to costs;

(v) Consequently, W.M.P.Nos.20917 and 20918 of 2023 are closed.

(S.V.G., CJ.) (D.B.C., J.)

23.11.2023

Index : yes
Speaking order
Neutral Citation : yes
grs

To

1. The Registrar,
   Debts Recovery Tribunal - II,
   Shastri Bhawan Annexe Building VI Floor,
   Haddows Road, Chennai - 600 006.

2. The Authorized Officer,
   State Bank of India,
   Stressed Assets Management Branch,
   Red Cross Building, Montieth Road,
   Egmore, Chennai - 600 008.

THE HON'BLE CHIEF JUSTICE

AND

D.BHARATHA CHAKRAVARTHY, J.

grs

W.P.No.21546 of 2023

23.11.2023