Application (IP).No.206 of 2023
in
I.P.No.1 of 2023

C.SARAVANAN, J.

There is no representation on behalf of the first respondent (debtor). The application has been filed for the following relief:

> "to permit the applicant Company/secured creditor to withdraw the claim petition filed before the respondent and also take back the original documents relating to the mortgaged property from the respondent and permit the applicant to proceed further in accordance with SARFAESI Act, 2002 in respect of the mortgaged property, enabling the Applicant to realizing to their dues under the special enactment and after realizing their entire dues from the sale proceeds, permit the applicant to deposit the surplus amount if any."

2. The applicant herein is a secured creditor. The applicant leave of this Court under Section 17 of the Presidency Towns Insolvency Act, 1909 to proceed against the first respondent herein under the provisions of the SARFAESI Act, 2002. In para 6 of the affidavit filed in support of the above application, the applicant has stated as follows:-

> "6.I state that as on 12.06.2023 a sum of Rs.66,23,336/- is outstanding in the account of the insolvents. The applicant is entitled to further interest

> at the contractual rate and all other charges and cost incurred. On sale of the secured asset and after the adjustment of the entire dues in full out of the sale proceeds, the applicant would pay the surplus amount if any to the respondent on an order by this Court. It is the proceedings of the respondent herein, which is defeating the rights of the secured creditor as well as the provisions of the special enactment. If the respondent is permitted to proceed further, the applicant will be put to irreparable loss and injury and further unnecessarily third party interest will be created."

3. The learned Official Assignee submits that the property may be allowed to be sold in a public auction strictly in accordance with the provisions of the SARFAESI Act and the rules made there under and after due intimation date of again to the office of the Official Assignee. It is submitted that the property should not be sold below the market value or at Guideline value to the prejudice of the creditors.

4. The learned Official Assignee further submits that any excess amount realised from the sale of the secured property of the first respondent should be deposited with the office of the Official Assignee for being distributed to the creditors of the first respondent insolvent/debtor.

5. Having considered the submissions of the learned counsel for the applicant and the learned Official Assignee, this application is allowed by permitting the applicant to proceed against the secured asset of the first respondent strictly in accordance with the provisions of the SARFEASI Act, 2002.

6. It is made clear that the auction shall be only through a public auction strictly in accordance with he provisions of the rules made there under and after due notice in writing to the second respondent namely the Official Assignee. The excess amount after adjusting of the dues is to be transferred to the office of the Official Assignee for distribution to the unsecured creditors of the first respondent.

7. This application stands allowed with the above observations.

17.11.2023
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