BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MRS.JUSTICE L.VICTORIYA GOWRI

W.P.(MD)No.3323 of 2023
and W.M.P.(MD)Nos.3069 & 3070 of 2023

A.Ramamoorthy ... Petitioner

Vs.

1.The Authorized Officer,
UCO Bank,
K.K.Nagar Branch,
401, East 9th Street,
K.K.Nagar, Madurai – 625 020.

2.The Sub Registrar,
Chokkikulam, Madurai.

3.M.Jeyamurugan ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the sale certificate issued by the 1st respondent in favour of the 3rd respondent registered vide document No.6270 of 2022, dated 19.09.2022 on the file of the 2nd respondent and quash the same as illegal.

For Petitioner	:	Mr.M.Pitchaimuthu
For Respondents	:	Mr.V.S.Karthick, Standing Counsel for R1 Mr.N.Satheesh Kumar, Addl. Govt. Pleader for R2

O R D E R

[Order of the Court was made by D.KRISHNAKUMAR, J.]

Challenging the sale certificate dated 19.09.2022 issued by the 1st respondent in favour of the third respondent, the petitioner has filed this Writ Petition.

2. The petitioner has availed a loan for a sum of Rs.5,00,000/- from the respondent bank on 21.06.2004 and he has deposited the title deeds in respect of the house property by way of collateral security. Due to unavoidable circumstances, the petitioner was not able to pay the loan amount and hence, his loan account was declared as NPA. He has given one time settlement of the loan amount and he has deposited a sum of Rs.3,30,000/- and the balance payable amount as per compromise is at Rs.29,70,000/-. Due to financial difficulties, he was not able to pay the entire amount and therefore, the respondent bank issued the sale notice on 13.03.2020 stating that they are going to sell the property through e-mail auction on 02.04.2020. After conducting auction sale, the 1st respondent issued the sale certificate dated 19.09.2022 in favour of the third respondent. Challenging the same, the petitioner has filed this Writ Petition.

3. The learned counsel appearing for the first respondent submitted that challenging the sale notice dated 13.03.2020, the petitioner has filed an appeal before the DRT, Madurai in S.A.No.171 of 2022 and the petitioner has not obtained any interim order in the said appeal and the same is pending and therefore, this Writ Petition is not maintainable.

4. We have heard the submissions made by the learned counsel appearing on either side and perused the materials available on record.

5. On a perusal of the records, it is seen that sale was conducted and sale certificate was issued in favour of the third respondent on 19.09.2022. The Hon'ble Supreme Court in the case of ***Dwarika Prasad vs. State of Uttar Pradesh and others*** reported in ***2018 (3) CT8C 877*** has held that the right to redemption stands extinguished on the date of execution of the registered sale deed. The relevant portion of the judgment of the Apex Court is extracted below:-

> *"4. On the other hand, the learned counsel appearing on behalf of the bank and for the auction purchasers supported the order of the High Court. It was urged that despite moving the DRT, the appellant sought relief before the Allahabad High Court in proceeding under Article 226 of the Constitution. After the High Court passed an order on 15 March 2016 recording the statement that the appellant would deposit an amount of Rs 7,00,000 by 28 March 2016 and the balance by 30 April 2016 the writ petition was withdrawn on 28 March 2016 with liberty to pursue the proceedings before the Tribunal. At no stage did the Tribunal interdict the issuance of a certificate of sale. The sale certificate was issued and was followed by the registration of the sale deed in April 2016. The bank had advertised the proposed sale by auction and followed all requisite procedure under law. The appellant failed to comply with*

the provisions of Section 13(8). Having failed to do so, the appellant cannot assert an equity of redemption upon the completion of the sale and the registration of the sale deed.

5. Section 13(8) of the SARFAESI Act provides as follows:-

"(8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset."

These provisions have fallen for interpretation before this Court in Mathew Varghese (supra). Dwelling on Section 60 of the Transfer of the Property Act, this Court held that the right of redemption is available to a mortgagor unless it stands extinguished by an act of parties. The right of the mortgagor to redeem the property survives until there has been a transfer of the mortgagor's interest by a registered instrument of sale. Applying these principles in the context of the SARFAESI Act this Court held as follows:-

"39. When we apply the above principles stated with reference to Section 60 of the T.P. Act in respect of a secured interest in a secured asset in favour of the secured creditor under the provisions of the SARFAESI Act and the relevant Rules applicable, under Section 13(1), a free hand is given to a secured creditor to resort to a sale

without the intervention of the Court or Tribunal. However, under Section 13(8), it is clearly stipulated that the mortgagor, i.e. the borrower, who is otherwise called as a debtor, retains his full right to redeem the property by tendering all the dues to the secured creditor at any time before the date fixed for sale or transfer. Under Sub-section (8) of Section 13, as noted earlier, the secured asset should not be sold or transferred by the secured creditor when such tender is made by the borrower at the last moment before the sale or transfer. The said Sub-section also states that no further step should be taken by the secured creditor for transfer or sale of that secured asset. We find no reason to state that the principles laid down with reference to Section 60 of the T.P. Act, which is general in nature in respect of all mortgages, can have no application in respect of a secured interest in a secured asset created in favour of a secured creditor, as all the above-stated principles apply in all fours in respect of a transaction as between the debtor and secured creditor under the provisions of the SARFAESI Act".

6. In the present case, the appellant failed to comply with the provisions of Section 13(8). The statute mandates that it is only where the dues of the secured creditor are tendered together with costs, charges and expenses before the date fixed for sale or transfer that the secured asset is not to be sold or transferred. The appellant was aware of the proceedings initiated by the bank for asserting its right to recover its dues by selling the property. The appellant moved the DRT in Securitization Application 176 of 2015. During the *pendency of those proceedings, orders were passed by the Tribunal on 1 February 2016 and 3 February 2016. The appellant moved the Allahabad High Court which by its order dated 9 March 2016 restrained the bank and the auction purchaser from executing the sale deed until 15 March 2016. The stay was extended till 28 March 2016 by which date the appellant was to deposit an amount of Rs. 7,00,000. The balance was required to be deposited by 30 April 2016. While appellant deposited an amount of Rs.7,00,000 with the bank, he failed to deposit the balance in accordance with the provisions of Section 13(8). Even after the writ proceedings before the High Court was withdrawn, the appellant did not deposit the balance due together with the costs, charges and expenses. The sale was confirmed, a sale certificate was issued and a registered sale deed was executed on 12 April 2016. The appellant failed to ensure compliance with Section 13(8). The right to redemption stands extinguished on the execution of the registered sale deed. This is also the view which has been expressed in the judgment in Mathew Varghese (supra)."*

6. In the present case on hand, e-auction sale held on 02.04.2020 and the sale certificate was issued on 19.09.2022 in favour of the third respondent, but the petitioner has chosen to file the present writ petition only on 13.02.2023. As per the aforesaid Apex Court's judgment, right to redemption stands extinguished on the execution of sale certificate i.e., on 19.09.2022 itself and therefore we find no merits in this Writ Petition.

7. Accordingly, the Writ Petition is dismissed. It is open to the petitioner to work out his remedy in the pending S.A.No.171 of 2022 before the DRT, Madurai. No costs. Consequently, connected miscellaneous petitions are closed.

[D.K.K., J.] **[L.V.G., J.]**
20.02.2023

NCC : Yes / No
Index : Yes / No
vsm

To

The Sub Registrar,
Chokkikulam, Madurai.

D.KRISHNAKUMAR, J.
and
L.VICTORIYA GOWRI, J.

vsm

W.P.(MD)No.3323 of 2023

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