



W.P(MD)No.3187 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On: 22.02.2023

Delivered On: 03.03.2023

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

W.P(MD)No.3187 of 2023

and

W.M.P(MD)Nos.2968 & 2969 of 2023

S.Kasthuri

... Petitioner

Vs.

1.The Authorised Officer,
Canara Bank, Thirunagar Branch,
Madurai-625 006,
Madurai District.

2.The Branch Manager,
Canara Bank,
Thirunagar Branch, Madurai-625 006,
Madurai District.

3.L.Veluchamy

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the impugned sale certificate issued by the first respondent



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vide his proceedings Nil, dated 02.01.2020 and consequential sale deed dated 09.01.2020 executed by the first respondent in favour of the third respondent and quash the same as illegal and pass such further or other orders as this Court.

For Petitioner : Mr.Mayilvahana Rajendran

For R-1 & R-2 : Mr.P.Pethu Rajesh
Standing Counsel

ORDER

[Order of the Court was delivered by **L.VICTORIA GOWRI, J.**]

The present Writ Petition has been filed challenging the sale certificate issued by the first respondent vide his proceedings nil, dated 02.01.2020 and consequential sale deed dated 09.01.2020 executed by the first respondent in favour of the third respondent. Hence, the petitioner has filed this Writ Petition.

2. Heard Mr.Mayilvahana Rajendran, the learned Counsel for the petitioner and Mr.P.Pethu Rajesh, learned Standing Counsel for the first



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and second respondents carefully and perused the materials available on record.

3. The learned Counsel for the petitioner submitted that her husband Mr.Sivan was running a business in the name and style of M/s.Kasthuri Industries and availed credit facilities to develop and promote the business, approaching the respondent bank for business loan during the year 2004. The respondents bank sanctioned the business loan of TL-OCC to the tune of Rs.6,50,000/- on 22.01.2004, in the name of the petitioner and her husband Mr.Sivan stood as a guarantor to the said loan. Later the loan account was declared as NPA by the respondent bank. In furtherance to the same, the first respondent bank issued demand notice under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 for an outstanding loan due of Rs.6,67,465/-. Subsequently on 29.05.2009, the first respondent bank issued the possession notice under Section 13 (4) of the SARFAESI Act, 2002. Thereafter, the first and second respondents colluded with the third

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respondent to proceed with the sale of the writ petitioner's house property by means of an illegal sale proceedings and she came to know the same through the reply under Right to Information Act dated 28.09.2015 from the second respondent. That apart, even as on date, the writ petitioner is in possession of her residential house and that the first respondent bank did not auction the property under Section 14 of the SARFAESI Act, 2002.

4. Per contra, the learned Counsel for the first and second respondent's bank submitted that the first respondent bank issued the sale notice as early as on 16.08.2016 under Section 13 (4) of the SARFAESI Act, 2002. In the meanwhile, the first respondent bank proceeded to sell the secured property under the provisions of SARFAESI and the auction of the said property was notified by public notice dated 21.07.2014. On the date of auction, the third respondent turned to be a successful bidder and he made a payment of Rs.9,00,000/- as consideration for the auction mortgaged house building bearing door No.2/28A in R.S.No.73/8 situated in Madurai South Registration District. And thus, the same was

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confirmed. On 02.01.2020, the first respondent issued the sale certificate with respect to the said property in favour of the third respondent. Pursuant to the same on 09.01.2020, the sale deed bearing document No. 229/2020 of Madurai South Sub Registry was executed by the first respondent in favour of the third respondent there by confirming the sale.

5. Having slept over for all these years from the date of issuance of sale certificate to the third respondent, now the writ petitioner has no *locustandi* to file this writ petition and the same is liable to be dismissed.

6. It is pertinent to observe that the writ petitioner is aware of the demand notice issued by the respondent bank on 26.11.2018 and the subsequent symbolic possession notice under Section 13 (4) of the SARFAESI Act, 2002 dated 29.05.2009. Thereafter, the bank has proceeded under the SARFAESI Act to sell the mortgaged property through the auction held on 21.07.2014 after public notice in favour of the third respondent. Even after the date of auction on 21.07.2014, the bank issued the sale certificate in favour of the third respondent only on

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02.01.2020 and the sale deed was registered in his favour only on 09.01.2020.

7. Considering the facts and circumstances of this case, we are of the considered view that there is also an efficacious alternative remedy available before the Debts Recovery Tribunal to the petitioner under the SARFAESI Act. Without availing such remedy, the petitioner has filed this writ petition. Moreover, the writ petitioner has never shown her *bonafide* by making any payment with respect to the said loan. Normally, the writ petition under Article 226 of the Constitution of India against the proceedings under the SARFAESI Act is not maintainable.

8. This writ petition is not maintainable in view of the following judgments as follows:-

(i) In ***Dwarika Prasad Vs. State of Uttar Pradesh, reported in AIR 2018 SC 1286***, the Hon'ble Supreme Court in paragraph No.9 has observed as follows:

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“9. 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”.

(ii) In ***United Bank of India Vs. Satyawati Tondon*** reported in ***AIR 2010 SC 3413***, the Hon'ble Supreme Court in paragraph Nos.41 to 43 has held as follows:

“41. The facts of the present case show that even after receipt of notices under Section 13(2) and (4) and order passed under Section 14 of the SARFAESI Act, respondent Nos.1 and 2 did not bother to pay the outstanding dues. Only a paltry amount of Rs.50,000/- was paid by the first respondent on 29.10.2007. She did give an undertaking to pay the balance amount in installments but did not honour her commitment. Therefore, the action taken by the appellant for recovery of its dues by issuing notices under Section



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13(2) and 13(4) and by filing an application under Section 14 cannot be faulted on any legally permissible ground and, in our view, the Division Bench of the High Court committed serious error by entertaining the writ petition of the first respondent.

42. There is another reason why the impugned order should be set aside. If first respondent had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression 'any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.

43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain



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a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves in as much as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.”

(iii) In ***Kanaiyalal Lalchand Sachdev and Others Vs. State of Maharashtra and Others reported in 2011 (2) SCC 782***, the Hon'ble Supreme Court in paragraph Nos.22 to 24 has held as follows:



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“22. We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action under Section 14 of the Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by providing for an appeal before the DRT.

*23. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the Appellants under Section 17 of the Act. It is well-settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See: **Sadhana Lodh v. National Insurance Co. Ltd. and Anr.** MANU/SC/0080/2003 : (2003) 3 SCC 524; **Surya Dev Rai v. Ram Chander Rai and Ors.** MANU/SC/0559/2003 : (2003) 6 SCC 675; **State Bank of India v. Allied Chemical Laboratories and Anr.** (2006) 9 SCC 252.*



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24. *In City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla and Ors.* MANU/SC/8250/2008 : (2009) 1 SCC 168, this Court had observed that:

The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the Petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors”.

(iv) In *ICICI Bank Limited and Others Vs. Umakanta Mohapatra and Others reported in 2019 (13) SCC 497*, the Hon'ble Supreme Court in paragraph Nos.2 & 3 has held as follows:



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“2. Despite several judgments of this Court, including a judgment by Hon'ble Mr. Justice Navin Sinha, as recently as on 30.01.2018, in Authorized Officer, State Bank of Travancore and Anr. v. Mathew K.C., MANU/SC/0054/2018 : (2018) 3 SCC 85, the High Courts continue to entertain matters which arise under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), and keep granting interim orders in favour of persons who are Non-Performing Assets (NPAs).

3. The writ petition itself was not maintainable, as a result of which, in view of our recent judgment, which has followed earlier judgments of this Court, held as follows:

17. We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. and Anr. MANU/SC/0639/1997 : (1997) 6 SCC 450, observing:



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32. *When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops”.*

(v) In ***Agarwal Tracom Private Limited Vs. Punjab National Bank and Others*** reported in ***AIR 2017 SC 5562***, the Hon'ble Supreme Court in paragraph Nos.33 & 34 has held as follows:



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33. *In the light of foregoing discussion, we are of the considered opinion that the Writ Court as also the Appellate Court were justified in dismissing the Appellant's writ petition on the ground of availability of alternative statutory remedy of filing an application Under Section 17(1) of SARFAESI Act before the concerned Tribunal to challenge the action of the PNB in forfeiting the Appellant's deposit under Rule 9(5). We find no ground to interfere with the impugned judgment of the High Court.*

34. *The Appellant is, accordingly, granted liberty to file an application before the concerned Tribunal (DRT) Under Section 17(1) of the SARFAESI Act, which has jurisdiction to entertain such application within 45 days from the date of this order. In case, if the Appellant files any such application, the Tribunal shall decide the same on its merits in accordance with law uninfluenced by any of the observations made by this Court and the High Court in the impugned judgment”.*

(vi) In ***C.Bright Vs. The District Collector and Others reported in***



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AIR 2020 SC 5747, the Hon'ble Supreme Court in paragraph No.22 has held as follows:

“22. Even though, this Court in United Bank of India v. Satyawati Tondon and Ors. MANU/SC/0541/2010 : (2010) 8 SCC 110 held that in cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which will ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Hindon Forge Private Limited has held that the remedy of an aggrieved person by a secured creditor under the Act is by way of an application before the Debts Recovery Tribunal, however, borrowers and other aggrieved persons are invoking the jurisdiction of the High Court Under Articles 226 or 227 of the Constitution of India without availing the alternative statutory remedy. The Hon'ble High Courts are well aware of the limitations in exercising their jurisdiction



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when affective alternative remedies are available, but a word of caution would be still necessary for the High Courts that interim orders should generally not be passed without hearing the secured creditor as interim orders defeat the very purpose of expeditious recovery of public money”.

(vi) In ***S.Ganesamoorthi Vs. The Branch Manager and Others in W.P(MD)No.22536 of 2021*** dated 20.12.2021, the Hon'ble First Bench of this Court in paragraph No.2 has held as follows:

“2. In view of the above, we dispose of this writ petition with a direction to the Debts Recovery Tribunal, Coimbatore, to hear both the parties on 24.12.2021 and for that, the matter would be remitted by the Debts Recovery Tribunal, Madurai, to the Debts Recovery Tribunal, Coimbatore, for hearing on 24.12.2021. The petitioner would be at liberty to press the application on all the available grounds”.



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9. Hence, there is no justification or reason on the part of the writ petitioner for the prolonged delay in taking necessary steps to redeem her house property. That apart, the writ petitioner failed to comply with the provisions of Section 13 (8) of the SARFAESI Act, 2002 which provides as follows:

“13(8). Where the amount of the dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,-

(i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor;”

10. Thus the right of redemption was always available to the writ petitioner till the date of sale. Having slept over, her right of redemption for more than 12 years, that is, from 29.05.2009 the date of symbolic possession notice under Section 13 (4) of the SARFAESI Act, 2002, now the petitioner has knocked the doors of this Court after her right stand

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extinguished by the execution of the sale deed in favour of the third respondent on 09.01.2020.

11. In view of the aforesaid decisions and for the reasons mentioned *supra*, we are not inclined to entertain this writ petition. Therefore, this writ petition stands dismissed. At this juncture, the learned counsel appearing for the petitioner made a submission that the petitioner has filed an appeal in S.A.S.R.No.8691 of 2021 before the Debts Recovery Tribunal, Madurai and if the same may be directed to be disposed of, the petitioner would be satisfied. It is for the petitioner to workout her remedy before the Debts Recovery Tribunal, Madurai. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

(D.K.K.J.,)

(L.V.G.J.,)

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NCC : Yes
Index : Yes
Internet : Yes
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- 1.The Authorised Officer,
Canara Bank, Thirunagar Branch,
Madurai-625 006,
Madurai District.
- 2.The Branch Manager,
Canara Bank,
Thirunagar Branch, Madurai-625 006,
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D.KRISHNAKUMAR, J.
and
L.VICTORIA GOWRI, J.

Btr

order made in
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