BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.13034 of 2022
and
W.M.P(MD)Nos.9242 & 9243 of 2022

Viswanathan ... Petitioner

vs.

1.The Debts Recovery Appellate Tribunal,
7th Floor,
Additional Office Building,
Shastri Bhawan,
Haddows Road,
Chennai.

2.The Authorized Officer,
Indian Overseas Bank,
Lalgudi Branch,
No.41, Popular Arcade,
Main Road,
Tiruchirappalli District.

3.Edwin Rethinam

4.The District Collector,
Tiruchirappalli District,
Tiruchirappalli.

5.The Tahsildar,
Lalgudi,
Tiruchirappalli District. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the impugned order passed by the fourth respondent dated 04.04.2022 made in K.Dis.G5/9780/2017 and quash the same as illegal.

For Petitioner	: Mr.N.Shanmugaselvam
For R – 1	: Mr.K.Ashok Kumar Ram
For R – 2	: Mr.N.Dilip Kumar
For R – 3	: Mr.R.Sundar
For RR 4 & 5	: Mr.P.T.Thiraviyam Government Advocate

ORDER

(Order of the Court was made by D. KRISHNAKUMAR, J.)

The prayer in this Writ Petition is seeking for issuance of a Writ of Certiorari, to quash the impugned order in K.Dis.G5/9780/2017 passed by the fourth respondent, dated 04.04.2022.

2.According to the petitioner, at the time of admission, this Court on 23.06.2022, has recorded the statement of the second respondent Bank that the petitioner has already sold the property in favour of a third party and he has no *locus standi* to file this Writ Petition. The learned counsel appearing for the petitioner seeks adjournment to convince the auction purchaser to enter into any sort of arrangement or agreement to save his property and the Writ Petition stands adjourned.

3.Today, when the matter was taken up for hearing, the learned counsel appearing for the second respondent Bank submitted that the third respondent has participated in the auction conducted by the second respondent and he was the successful bidder and the sale was also confirmed in favour of the third respondent and subsequently, the sale certificate has been registered in Document No.4285 of 2010. Subsequently, the second respondent Bank filed an application under Section 14 of the SARFAESI Act. Based on the same, the fourth respondent has passed the impugned order. Therefore, according to the second respondent Bank, the Writ Petition is not maintainable either on law or on facts.

4.The learned counsel appearing for the petitioner submitted that the petitioner has preferred an appeal before the Honourable Supreme Court of India and the same is pending and no interim order was granted in the aforesaid appeal.

5.As rightly contended by the learned standing counsel appearing for the first respondent Bank, the right to redemption stands extinguished on the date of execution of the registered sale deed. In this regard, the relevant portion of the judgment of the Apex Court in **Dwarika Prasad vs. State of Uttar Pradesh and others** reported in ***2018 (3) CTC 877*** 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, the e-auction sale was held and the sale deed was executed in favour of the third respondent and the same was registered in Document No.4285 of 2010. As per the aforesaid Apex Court's judgment, the right to redemption stands extinguished on the execution of the registered sale deed and therefore we do not find any merit in the Writ Petition.

7.Accordingly, the Writ Petition is dismissed. However, with liberty to the petitioner to approach the appropriate forum in the manner known to law, if he is so advised. No costs. Consequently, connected Miscellaneous Petitions are closed.

[D.K.K.,J.] [R.V.,J.]
06.02.2023

Index : Yes / No
Internet : Yes
ps

To

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D.KRISHNAKUMAR,J.
and
R.VIJAYAKUMAR,J.

ps

ORDER MADE IN
W.P(MD)No.13034 of 2022

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