



W.P(MD)No.14867 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.07.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.P(MD)No.14867 of 2023
and
W.M.P(MD)Nos.12545 and 12546 of 2023**

Mr.S.Shivakkumar

... Petitioner

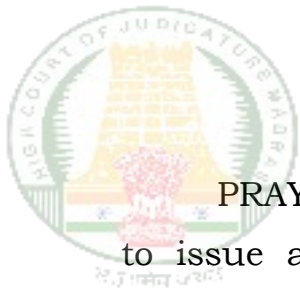
-VS-

1. The Authorised Officer,
Indian Bank, Zonal Office,
Jenne Plaza Complex,
5F, II Floor, Bharathiyar Salai,
Trichy District-620 001.

2. The Branch Manager,
Indian Bank,
Perambalur Branch,
22/47, Sanjeevarayankoil Street,
Perambalur,
Perambalur District-621 701.

3. NSK Trading Company,
Represented by its Proprietor/Managing Director,
Mr.Gopal Sivakumar,
No.119B, Main Road,
Kalumangalam,
Ariyalur-621804.

4. P.Senthilkumar ... Respondents
(Respondents 3 and 4 are impleaded as per the order dated 05.07.2023
made in WMP(MD)No.13615 of 2023)



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned E-Auction sale notice dated 18.05.2023 issued by the 1st respondent and quash the same holding that the auction notice and the auction held on 12.06.2023 as per the impugned auction notice are all illegal and unsustainable in law.

For Petitioner : Mr.M.Sricharan Rangarajan, Senior Counsel
for Mr.G.Mohankumar
For Respondents : Mr.R.Pandivel, Standing Counsel

ORDER

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

This writ petition is filed challenging the sale notice dated 18.05.2023 issued under Rules 6(2) and 8(6) of the Security Interest (Enforcement Rules) 2002, proposing to bring the secured properties of the petitioner for sale under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. Heard Mr.M.Sricharan Rangarajan, learned Senior Counsel appearing for Mr.G.Mohankumar, learned counsel for the petitioner and Mr.R.Pandivel, learned standing counsel appearing for the respondent Bank.



3. Learned Senior Counsel appearing for the petitioner would submit that firstly, this is an exceptional case where the matter has to be gone into under Article 226 of the Constitution of India, since fraud is alleged on the part of the Banker as well as the erstwhile partner of the partnership firm. It is his contention that in spite of the petitioner's intimation to the respondent Bank about the retirement of a partner, the Bank has wilfully permitted operations of the bank account by the said retired partner. Secondly, even though a representation has been made pursuant to the notice under Section 13(2) of the SARFAESI Act, without disposing of the same indicating the reasons in writing as mandated under Section 13(3A) of the SARFAESI Act, the possession notice has been issued and subsequently, sale notice has also been issued. According to the learned Senior Counsel, this would amount to violation of principles of natural justice and therefore, if principles of natural justice is violated, this Court should entertain the writ petition under Article 226 of the Constitution of India and should not relegate the parties to the Debts Recovery Tribunal.

4. Per contra, learned standing counsel appearing on behalf of the respondent Bank would submit that firstly, it is factually incorrect to say that the consideration of the representation is not made. As a matter of fact, the representation has been considered and reasons are communicated as per Section 13(3A) of the SARFAESI Act, by a



communication dated 31.01.2022. The retired partner as well as the current partner have entered into a memorandum of understanding and the same was also submitted to the Bank. According to the learned standing counsel, the pleading that the other partner has retired from the partnership firm is incorrect and both of them are operating the partnership firm. He would also stoutly deny the allegations of fraud against the respondent Bank

5. Be that as it may, when the proceedings initiated under the SARFAESI Act are challenged by filing this writ petition, this Court entertained the writ petition, because, there was no Presiding Officer in the Debts Recovery Tribunal, Madurai. Now, the Presiding Officer has been appointed and he has also taken charge from 30.06.2023 onwards. Therefore, the petitioner has got effective alternative remedy before the Debts Recovery Tribunal, Madurai. The allegation of non consideration of the petitioner's representation or the allegation of retirement of a partner are all factual disputes which cannot be decided by this Court under Article 226 of the Constitution. Therefore, this case cannot be treated as an exceptional case so as to entertain the writ petition.

6. Hence, the writ petition is dismissed, however, with liberty to the petitioner to approach the Debts Recovery Tribunal, Madurai. Registry is directed to return the original impugned order, if available with it, after



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getting attesting copies of same. For the purpose of approaching the Debts Recovery Tribunal, the period from 20.06.2023 till the receipt of the copy of this order shall stand excluded from the period of limitation. Needless to state that the Debts Recovery Tribunal will independently consider all the questions raised on behalf of both the parties. No costs. Connected miscellaneous petitions are closed.

[S.V.N., J.] [D.B.C., J.]
05.07.2023

Index : Yes / No
Neutral Citation : Yes / No
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