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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.01.2023

CORAM:

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

W.P(MD)No.21580 of 2022
and
C.R.P(MD)No.1826 of 2022
and
W.M.P(MD)Nos.15724 & 15725 of 2022
and
C.M.P(MD)No.8222 of 2022

W.P(MD)No.21580 of 2022:-

M/s.Velavan Polymers Private Limited,
Represented by its Managing Director A.Amutha,
Viralipatti Village,
Batlagundu Via,
Nilakottai Taluk,
Dindigul District – 624 202. ... Petitioner

vs.

1.The Authorized Officer,
The Canara Bank,
ARM Bench,
Madurai.

2.The Authorized Officer,
The Canara Bank,
Dindigul SME Branch,
67/7-4, Municipal Colony,
Nehruji Nagar,

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80 Feet Road,
Dindigul – 624 001.

3.R.Manoharan
4.R.Rajendran
5.K.Murugesan
6.R.Saravanan ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order of the learned Chief Judicial Magistrate, Dindigul in Cr.M.P.No.9390 of 2022, dated 29.07.2022 and quash the same.

For Petitioner : Mr.Veera.Kathiravan
Senior Counsel
for M/s.Veera Associates

For RR 1 & 2 : Mr.N.Dilip Kumar
Standing Counsel

For R – 3 : Mr.J.Barathan

For R – 4 : Mr.M.Ajmal Khan
Senior Counsel
for Mr.A.Sivasubramanian

C.R.P(MD)No.1826 of 2022:-

M/s.Velavan Polymers Private Limited,
Represented by its Managing Director A.Amutha,
Viralipatti Village,
Batlagundu Via,
Nilakottai Taluk,
Dindigul District – 624 202. ... Petitioner/Applicant

vs.

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1.The Authorized Officer,
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2.The Authorized Officer,
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Dindigul SME Branch,
67/7-4, Municipal Colony,
Nehruji Nagar,
80 Feet Road,
Dindigul – 624 001. ... Respondents 1 & 2/Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the impugned orders of the Debts Recovery Appellate Tribunal, Chennai in AIR (SA)No.107 of 2020 in I.A.No.979 of 2020 in S.A.No.225 of 2020, dated 16.03.2021.

For Petitioner : Mr.Veera.Kathiravan
Senior Counsel
for M/s.Veera Associates

For Respondents : Mr.N.Dilip Kumar
Standing Counsel

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COMMON ORDER

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

Since the issue involved in the Writ Petition and the Civil Revision Petition is one and the same, they have been clubbed, heard together and are being disposed of by this common order.

2.The prayer in W.P(MD)No.21580 of 2022 is for issuance of a Writ of Certiorari, to quash the impugned order passed by the learned Chief Judicial Magistrate, Dindigul in Cr.M.P.No.9390 of 2022, dated 29.07.2022.

3.The prayer in C.R.P(MD)No.1826 of 2022 is to set aside the impugned orders of the Debts Recovery Appellate Tribunal, Chennai in AIR (SA)No.107 of 2020 in I.A.No.979 of 2020 in S.A.No.225 of 2020, dated 16.03.2021.

4.The learned Senior Counsel appearing for the petitioner submitted that the petitioner has availed various loans from the respondent Bank and repaid the loans regularly to the tune of Rs.3,84,19,320/-. Since

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the unit has incurred heavy financial loss since 30.06.2018, the petitioner was not able to pay the EMIs regularly. Hence, the respondent Bank has classified the loan as Non-Performing Asset on 01.04.2018 and subsequently, issued a demand notice under Section 13(2) of the SARFAESI Act on 18.09.2018. Thereafter, the respondent Bank has issued a possession notice, dated 09.01.2019 under Section 13(4) of the SARFAESI Act and further issued a e-auction sale notice, dated 14.08.2020.

5.The learned Senior Counsel appearing for the petitioner further submitted that challenging the auction sale notice, dated 14.08.2020 issued by the respondent Bank, the petitioner preferred an application under Section 17(1) of the SARFAESI Act in S.A.No.25 of 2020 for the reason that the respondent Bank, without any proper valuation from the registered valuers and without inspecting the property, has undervalued the mortgaged property. The Debts Recovery Tribunal, Madurai, by order dated 18.09.2020, in I.A.No.979 of 2020 in S.A.No.225 of 2020, had passed the following order:-

> *"4.Admittedly, the petitioner availed various credit facilities and term loans in the second respondent Bank. It*

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appears that since the petitioner committed default in repayment of the outstanding loan due, the account was classified as NPA and SARFAESI proceedings have been initiated against him by the first respondent. Be that it may so, this Tribunal is of the considered view that one more opportunity has to be given tot he applicant/petitioner to show his bona fides *in payment of the outstanding loan dues to the second respondent Bank. Hence, Ad interim stay is granted not to confirm the sale till 18.12.2020, with respect to the petition schedule mentioned properties, against the respondents, if the sale is so held, subject to payment of Rs.2,17,36,000/- directly to the second respondent Bank on or before 19.10.2020 as 1st instalment and another sum of Rs.2,17,36,000/- directly to the second respondent Bank on or before 17.11.2020 as second instalment and a further sum of Rs.2,17,36,000/- directly to the second respondent Bank on or before 17.12.2020 as third instalment. However, in the event of failure to pay any one of the instalments as ordered above, the Ad-interim stay granted not to confirm the sale till 18.12.2020 against the respondents, shall stand vacated automatically and the I.A.No.979 of 2020 shall stand dismissed. Call on 18.12.2020."*

6.Aggrieved over the above said order of the Debts Recovery Tribunal, Madurai, the petitioner preferred an appeal under Section 18(1) of the SARFAESI Act, before the Debts Recovery Appellate Tribunal, Chennai in

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AIR (SA)No.107 of 2020. The Debts Recovery Appellate Tribunal, Chennai, by order dated 15.02.2021, has enhanced the pre-deposit amount of Rs. 6,52,08,000/- to Rs.12,00,00,000/-. Challenging the same, the petitioner preferred the above Civil Revision Petition.

7.The learned Senior Counsel appearing for the petitioner further submitted that without any revaluation undervalued property and the first respondent on 16.11.2020 had issued a sale notice under Section 13(4) of the Act, in which the property No.5 was auctioned on 04.12.2020 to the value of Rs.30,65,000/- and the sale certificate was issued after the lapse of two months, in which, the reserve price as per the sale notice, dated 14.08.2022 is Rs.30,55,000/- which is challenged before the DRT, Madurai and DRAT, Chennai and the market value of the property is Rs.64,80,000/- and the first respondent registered the sale certificate in favour of the fifth respondent. Further, the first respondent on 09.12.2020 issued a sale notice under Section 13(4) of the SARFAESI Act, in which, the property No.6 was auctioned on 29.12.2020 to the value of Rs.21,60,000/-, in which, the original reserve price as per the sale notice, dated 14.08.2022 is Rs.21,50,000/-. On 16.02.2021, after a lapse of two months, the sale certificate has been issued and on 30.03.2021, the first respondent had

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registered the sale in favour of the sixth respondent. Further, the first respondent on 29.12.2021, issued a sale notice under Section 13(4) of the SARFAESI Act in which the property No.2 was auctioned on 01.02.2022 to the value of Rs.59,50,000/- in which the reserve price as per the sale notice dated 14.08.2022 is Rs.68,50,000/- and the sale certificate was registered on 16.02.2022 in favour of the respondents 3 and 4.

8.The learned Senior Counsel appearing for the petitioner submitted that the respondent Bank has undervalued the properties and have auctioned in favour of private persons with a reduced value of the reserve price. As of now, property Nos.5, 6, 7, 3 and 2 have been auctioned and the left out properties is property No.1, which is a land and building of the Velavan Polymers, property No.4 is a dwelling house in Viralipatti Village and property No.8 is machineries. The respondent Bank has issued a sale auction notice, dated 12.08.2022 with regard to the property Nos.1, 4 and 8, which is scheduled on 01.09.2022, wherein, there were no bidders. Hence, the sale has not been taken place. Hence, the respondent Bank filed an application under Section 14 of the SARFAESI Act in Cr.M.P.No.9390 of 2022 before the learned Chief Judicial Magistrate, Dindigul, for taking possession of the above said properties including the dwelling house,

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agricultural property, plant and machineries. The learned Chief Judicial Magistrate, Dindigul, by order dated 29.07.2022, appointed an Advocate Commissioner for taking possession by break open the buildings of the mortgaged properties. Challenging the same, the petitioner has filed W.P(MD)No.21580 of 2022.

9.The learned Senior Counsel appearing for the petitioner submitted that the respondent Bank has undervalued the properties of the petitioner and brought it for auction and the request of the petitioner before the respondent Bank, DRT, Madurai and DRAT, Chennai is to set aside the reserve price by the respondent Bank arbitrarily in the sale notice dated 14.08.2020 and to obtain proper valuation of the property from an approved valuer. Without looking into the same, further process of sale and the impugned order of the learned Chief Judicial Magistrate, Dindigul ordering to take possession is highly illegal and the same is liable to be set aside. The total sale value of the properties 1 to 8 as per the sale notice, dated 14.08.2022 is Rs.15,86,35,000/- and the DRAT, Chennai passed the impugned order enhancing the pre-deposit condition of Rs.12 crores, which is near the entire sale value, is arbitrary illegal and subsequent to the same, the respondent Bank's act of taking possession of the property is highly

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illegal and the same is liable to be set aside. The respondent Bank in collusion with the purchaser has undervalued the price of the properties of the petitioner, in which, the reserve price have been undervalued.

10.The learned Standing Counsel appearing for the respondents 1 and 2/Bank submitted that subsequent to the aforesaid sale notice issued by the respondent Bank, dated 14.08.2020, fresh auction sale notices have been issued on 16.11.2020 and 09.12.2020 and the respondents 3 to 6 are the successful bidders in respect of the properties auctioned and sale certificates have also been issued and the same have also been registered in favour of the respective bidders. Further, the petitioner has not challenged the subsequent sale notices, dated 16.11.2020 and 09.12.2020 before the Debts Recovery Tribunal or before this Court. Therefore, the Civil Revision Petition and the Writ Petition are not maintainable and the writ petitioner has the remedy in the appeal which is pending before the DRT.

11.Heard the learned counsel appearing on either side and perused the materials available on record.

12.On a perusal of the materials available on record, it is seen

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that challenging the auction sale notice, dated 14.08.2020 issued by the respondents Bank, the petitioner preferred an application in S.A.No.25 of 2020 before the Debts Recovery Tribunal, Madurai and the Debts Recovery Tribunal, Madurai, by order dated 18.09.2020, in I.A.No.979 of 2020 in S.A.No.225 of 2020 passed a conditional interim order. Since the said conditional order has not been complied with, sale notice dated 16.11.2020, has been issued by the respondent Bank. Without challenging the sale notices, dated 16.11.2020 and 09.12.2020, aggrieved over the order, dated 18.09.2020, the petitioner had preferred an appeal before the Debts Recovery Appellate Tribunal, Chennai in AIR (SA) No.107 of 2020. The Debts Recovery Appellate Tribunal, Chennai, by order dated 15.02.2021, directed the petitioner to make a pre-deposit of Rs.12 crores in two instalments and listed the case on 16.03.2021 for confirmation of the first instalment. On 16.03.2021, the Debts Recovery Appellate Tribunal, Chennai has passed the following order:-

> *"Counsel for the appellant fairly concedes that the order of pre-deposit passed by this Tribunal on 15.02.2021 under the proviso to Section 18(1) of the SARFAESI Act, 2002, has not been complied with by the appellant.*

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In view of the fact that this Tribunal cannot entertain any appeal filed by any aggrieved person unless and until the appellant complies with the pre-deposit, the Appeal AIR (SA)No.107 of 2020 stands dismissed for want of compliance of order, dated 15.02.2021 of pre-deposit."

13.Considering the above facts and circumstances of the case, we are of the view that since the conditional order of pre-deposit under the proviso to Section 18(1) of the SARFAESI Act, 2002, is a mandatory provision and the petitioner has to deposit the said amount, but the petitioner has not complied with the said conditional order. As rightly contended by the learned counsels appearing for the respondents 1 and 2/Bank that the petitioner has not challenged the subsequent sale notices, dated 16.11.2020 and 09.12.2020 before the Debts Recovery Tribunal, the earlier appeal filed by the petitioner has become infructuous. Accordingly, we are not inclined to entertain the Civil Revision Petition and if the petitioner is so aggrieved over the same, he can seek his remedy which is pending before the Debts Recovery Tribunal, Madurai. There is no merit in the Civil Revision Petition and the same is liable to be dismissed. Consequently, the Writ Petition is also liable to be dismissed.

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14.Granting such liberty, the Civil Revision Petition and the Writ Petition are dismissed. If any appeal is preferred by the petitioner, it is for the petitioner to satisfy the appellate forum for excluding the period of limitation during the period on which the Writ Petition is pending before this Court. No costs. Consequently, connected Miscellaneous Petition is closed.

[D.K.K.,J.] [R.V.,J.]
09.01.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

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ARM Bench,
Madurai.

2.The Authorized Officer,
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D. KRISHNAKUMAR,J.
and
R.VIJAYAKUMAR,J.

ps

ORDER MADE IN
W.P(MD)No.21580 of 2022
& C.R.P(MD)No.1826 of 2022

DATED : 09.01.2023

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