BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2023

CORAM:

THE HONOURABLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD) Nos.21843 of 2018 & 11460 of 2019
and
W.M.P.(MD) Nos.19762, 19763 & 19764 of 2018 & 8724 of 2019

W.P.(MD) Nos.21843 of 2018:

M.Kanaga Raaja ... Petitioner

-vs-

1.The Chairperson
The Debt Recovery Appellate Tribunal
Chennai

2.The Presiding Officer
The Debt Recovery Tribunal, Madurai

3.The Authorised Officer
Punjab National Bank
20/174, SKC Towers
East Car Street
Dindigul-624 001

4.R.Lakshmikanthan (died)

5.Agalya

6.J.Sumathi

7.Narendakanth

8.Monika @ Mirunalini ... Respondents
[R5 to R8 are substituted *vide* Court order dated 30.11.2023 in W.M.P.(MD) No.2502 of 2023]

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records of the first respondent passed in R.A.(S.A.)-144/2012, dated 02.04.2018 reversing the order passed by the second respondent in S.A.No.166 of 2008, dated 04.08.2011 and quash the same as illegal, arbitrary and unenforceable.

For Petitioner	:	Mr.T.Lenin Kumar
For Respondents	:	R1 & R2 - Tribunal Mr.V.Veerapandian for M/s.Vast Law Associates for R3 Mr.S.Suresh for R5 to R8

W.P.(MD) Nos.11460 of 2019:

The Authorised Officer
Punjab National Bank
20/174, SKC Towers
East Car Street
Dindigul-624 001 ... Petitioner

-vs-

1.The Debts Recovery Appellate Tribunal
4th Floor, Indian Bank Circle Office
55, Ethiraj Salai, Chennai-600 008

2.The Debts Recovery Tribunal
III & IV Floor, Kalyani Towers
4/162, Madurai-Melur Road
(Near Meenakshi Mission Hospital)
Uthangudi Post, Madurai-625 107

3.R.Lakshmikanthan

4.M.Kanaga Raaja ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records pertaining to order dated 02.04.2018 made in RA (SA) No.114/2012, on the file of the first respondent reversing the order dated 04.08.2011, made in S.A.No.166 of 2008, on the file of the second respondent and quash the same.

For Petitioner	:	Mr.V.Veerapandian for M/s.Vast Law Associates
For Respondents	:	R1 & R2 – Tribunal Mr.S.Suresh for R3 Mr.T.Lenin Kumar for R4

COMMON ORDER

[Order of the Court was made by The Hon'ble CHIEF JUSTICE]

The petitioner in W.P.(MD) No.11460 of 2019 is the Bank and the petitioner in W.P.(MD) No.21843 of 2018 is the auction purchaser.

2. The account of the respondent – borrower was declared as non-performing asset. After issuance of notice under Sections 13(2) and 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter, referred to as "the SARFAESI Act"), the petitioner – Bank proceeded to sell the mortgaged property. The public notice for sale was published in the newspaper on 15.07.2008 and the date of auction was fixed as 19.08.2008. The mortgaged property of the borrower was sold for Rs.5,80,000/- (Rupees five lakhs and eighty thousand only). The petitioner - auction purchaser has deposited the said amount.

3. The respondent – borrower challenged the said sale before the Debts Recovery Tribunal by filing a securitization application. The Debts Recovery Tribunal rejected the said application. Aggrieved thereby, the borrower filed an appeal before the Debt Recovery Appellate Tribunal bearing RA(SA) No.114 of 2012. The Chairperson, Debt Recovery Appellate Tribunal, Chennai, allowed the said appeal.

4. Learned counsel appearing for the petitioner - Bank and the learned counsel for the petitioner - auction purchaser strenuously contend that it is only on a technical ground, the sale has been set aside. The 30 days clear public notice was issued. Rule 9(1) of the Security Interest (Enforcement) Rules, 2002 (hereinafter, referred to as "the Rules, 2002), prescribes 30 days public notice. The same has been complied with. No other irregularity has been observed by the Debt Recovery Appellate Tribunal. The lapse regarding date of possession notice is not relevant and material, while considering the legality of the same.

5. Learned counsel for the respondent – borrower submits that Rule 8(6) of the Rules, 2002, has not been followed. 30 days clear notice for sale is required to be given to the borrower. The notice was despatched only on 21.07.2008 and the same was served on 22.07.2008 and the sale was conducted on 19.08.2008. 30 days clear notice, as required under Rule 8(6) of the Rules, 2002 is not adhered to. Even the possession notice is faulted. No further proceedings could have been taken on the basis of the erroneous notice under Section 13(4) of the SARFAESI Act.

6. We have considered the submissions canvassed by the learned counsel for the parties.

7. It is not disputed that till date the petitioner – borrower is in possession of the mortgaged property. The mortgaged property is a residential house. It is only after the amendment of the year 2016, the right of redemption, after the sale notice, is lost. Prior to the amendment to Section 13(8) of the SARFAESI Act, the right of redemption subsisted, after the purchase notice also.

8. It appears that Rule 8(6) of the Rules, 2002, has not been adhered to. The Debt Recovery Appellate Tribunal has taken a plausible view. The mortgaged property is a residential house. The respondent – borrower has shown bonafides in paying the amount and redeeming the property. Rs.2,72,000/- (Rupees two lakhs and seventy two thousand only) is deposited with the Debt Recovery Appellate Tribunal.

9. Considering the above, we pass the following order:

(i) The petitioner – Bank may withdraw the amount of Rs.2,72,000/- (Rupees two lakhs and seventy two thousand only) deposited by the respondent – borrower with Debt Recovery Appellate Tribunal, with accrued interest, if any.

(ii) The respondent – borrower shall deposit the amount of Rs.3,08,000/- (Rupees three lakhs and eight thousand only) with interest at the rate of 9% per annum from September, 2008 till the date of payment to the petitioner – Bank, within a period of six weeks from today.

(iii) It is submitted that order under Section 14 of the SARFAESI Act has been passed. In case, the respondent – borrower fails to deposit the amount, as directed above, then the petitioner – Bank, on the basis of the order under Section 14 of the SARFAESI Act, may take possession of the mortgaged property.

(iv) The petitioner – Bank shall refund the amount of Rs.5,80,000/- to the petitioner - auction purchaser along with interest, as directed by the Tribunal, within a period of six weeks from today.

10. With these observations and directions, the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

[S.V.G., .C.J.] **[L.V.G., J.]**

30.11.2023

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

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THE HONOURABLE CHIEF JUSTICE
and
L.VICTORIA GOWRI, J.

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and
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30.11.2023

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