BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.01.2023

CORAM :

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

W.P(MD)No.25176 of 2022
and
WMP(MD)No.19273 of 2022

P.Francis Raja ... Petitioner

vs.

1. The Authorized Officer,
State Bank of India,
Stressed Assets Recovery Branch (SARB),
Vinayaga Nagar Branch Upstairs,
No.8, Dr.Ambedkar Road,
Madurai-625020.

2. K.Navamani

3. M.Palaniappan

4. R.Dheenan

5. G.Ramalingam ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the E-auction sale notice dated 22.07.2022 issued by the 1st respondent and consequential sale deed dated 26.09.2022 executed by the 1st respondent in favour of the respondents 2 to 5 and quash the same as illegal.

For Petitioner	: Mr.R.Rajaraman
For R1	: Mr.D.Sivaraman
For R2 to R5	: No appearance

ORDER

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

Challenging the E-auction sale notice dated 22.07.2022 issued by the 1st respondent and the consequential sale deed dated 26.09.2022 executed by the 1st respondent in favour of the respondents 2 to 5, the petitioner has filed this writ petition to quash the same.

2. Learned counsel for the petitioner submitted that earlier, when the respondent Bank had issued an auction notice to bring his property for sale, the petitioner filed W.P(MD)No.13483 of 2017

challenging the same and this Court disposed of the said writ petition by order dated 14.07.2021 granting liberty to the petitioner to submit a detailed representation along with their offer and place the same for consideration before the appropriate authority of the State Bank of India, with a direction to the respondent Bank to consider and dispose of such representation in accordance with relevant regulations. As per the said direction of this Court, though the petitioner made a representation dated 24.08.2021 to the respondent Bank seeking one time settlement and also paid 10% of the outstanding amount on 10.08.2022, the respondent Bank without considering the OTS proposal of the petitioner, has executed the sale deed in favour of the auction purchasers on 26.09.2022. According to the learned counsel, non consideration of the OTS proposal of the petitioner would amount to injustice caused to him and therefore, the impugned sale notice and the consequential sale deed are liable to be set aside.

3. Learned standing counsel appearing for the respondent Bank submitted that e-auction sale was conducted on 11.08.2022, in

which, the respondents 2 to 5 purchased the secured properties and after payment of entire sale consideration, sale deed was executed by the Bank in their favour on 26.09.2022. He further submitted that once the sale deed is executed, right to redemption is extinguished and therefore, the writ petition is liable to be dismissed. In support of the said contention, he relied upon a judgment of the Hon'ble Supreme Court reported in **2018 (3) CT8C 877, Dwarika Prasad vs. State of Uttar Pradesh and others**.

4. Heard the learned counsel for the petitioner as well as the 1st respondent and perused the materials available on record.

5. As rightly contended by the learned standing counsel appearing for the 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 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, e-auction sale held on 11.08.2022 and the sale deed was executed on 26.09.2022 in favour

of the auction purchasers, but the petitioner has chosen to file the present writ petition only on 03.11.2022, after the execution of the sale deed. As per the aforesaid Apex Court's judgment, right to redemption stands extinguished on the execution of the registered sale deed i.e., on 26.09.2022 itself and therefore we find no merits in the contentions of the petitioner.

7. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K.,J.] & [R.V.,J.]
25.01.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
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D.KRISHNAKUMAR, J.
and
R.VIJAYAKUMAR, J.

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ORDER MADE IN
W.P(MD)No.25176 of 2022
DATED : 25.01.2023