 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.25317 of 2022
and
WMP(MD)No.19406 of 2022

Mr.Ponselvaraj ... Petitioner

vs.

1. The Authorized Officer,
The Punjab National Bank,
Circle Office-Trichy,
PNB House, Trichy-Tanjore Road,
Kailasapuram,
Trichy-620014.

2. Venkatachalam Balamurali ... Respondents
(R2 is impleaded vide Court order dated 22.11.2022 in WMP(MD)No. 19945/2022 in W.P(MD)No.25317/2022)

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned sale held on 14.10.2022 in connection with the E-Auction Sale Notice dated 26.09.2022 issued by the respondent Bank and set aside the same as illegal.

For Petitioner : Mr.G.Vishnuram
For R1 : Mr.V.Veerapandian, Standing Counsel

ORDER

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

Challenging the impugned sale held on 14.10.2022 in connection with the E-Auction Sale Notice dated 26.09.2022 issued by the respondent Bank, the petitioner has filed this writ petition to quash the same.

2. Learned counsel for the petitioner submitted that the petitioner availed housing loan for Rs.56 Lakhs from the respondent Bank and was repaying the loan regularly. However, due to loss in his business on account of Covid-19, and other incidental reasons, the petitioner was unable to pay the loan and hence, his loan account was declared as non performing asset. Despite the request of the petitioner for one time settlement, the impugned sale was held. Hence, the petitioner has filed this writ petition.

3. Learned standing counsel appearing for the respondent Bank submitted that e-auction sale was conducted on 14.10.2022, in which, the 2nd respondent purchased the secured property and after payment of entire sale consideration, sale deed was executed by the Bank in his favour on 03.11.2022. 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.
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> 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 14.10.2022 and the sale deed was executed on 03.11.2022 in favour of the 2nd respondent/auction purchaser, but the petitioner has chosen to file the present writ petition only on 07.11.2022, 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 03.11.2022 itself and therefore we find no merits in the contentions of the petitioner.

7. Learned counsel for the petitioner submitted that movable articles of the petitioner are kept inside the secured property at the time of lock and seal and therefore, he seeks permission to take back the said movable articles.

8. Learned standing counsel for the respondent Bank

submitted that after taking possession of the property, the entire possession has been handed over to the Authorised Officer of the Bank.

9. In view of the said submission, the petitioner is directed to approach the respondent Bank requesting to take back his movable articles. If any such request is made by the petitioner, the respondent Bank shall consider the same. If the respondent Bank has not considered his request, it is open to the petitioner to file an appropriate application before the learned Chief Judicial Magistrate concerned seeking permission to take back the articles kept inside the secured property.

7. With the above direction, 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.25317 of 2022
DATED : 25.01.2023