IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 05.09.2024
DELIVERED ON : 29.10.2024

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR,

AND
THE HON'BLE MR.JUSTICE P.B.BALAJI

W.P.No.23804 of 2024
and WMP.No.26053 & 26054 of 2024

Chandru Enterprises ... Petitioner

-vs-

1.The Authorized Officer,
ICICI Bank Limited,
3rd Floor, No.1, Cenotap Road,
Teynampet, Chennai-600 018.

2.Sri Venkateswara Educational Trust,
Rep. By the Chairman, Mr.G.Selvakumar,
Door No.52, Jaison Pothini Apartment,
Pallavan Nagar, Kancheepuram.

3.J.R.Super Speciality Hospital Pvt. Ltd.
Rep by Mr.Kuppan,
No.29, Tilak Street, Parthasarathipuram,
T.Nagar, Chennai-600 017.

4.The Inspector of Police,
B5, Police Station, Walajabad,
Kanchipuram District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the Sale Certificate of the 1st respondent / Bank in favour of the 3rd respondent in respect of the land comprised in Survey No.811/1, situated at Uthukadu Village, Walajabad, Kanchipuram Taluk and District in pursuant to the order passed in CMP.No.5208 of 2022 by the Chief Judicial Magistrate, Chengalpattu on 14.07.2022 both issued under the SARFAESI Act, 2002 and Rules, 2005 and quash the same.

For Petitioner : Mr.V.Raghavachari, Senior Counsel
for Mr.J.Lingeswaran

For Respondents : Mr.A.K.Sriram, Senior Counsel
for M/s.Shivakumar & Suresh for R1
Mr.P.Muthukumarasamy for R3
Mr.R.Muniyapparaj,
Additional Public Prosecutor for R4

JUDGEMENT

KRISHNAKUMAR, J.

Challenging the sale certificate issued by the first respondent in favour of the third respondent in pursuant to the order passed by the Chief Judicial Magistrate, Chengalpattu dated 14.07.2022 in CMP.No.5208 of 2022, the present writ petition has been filed.

2. Brief facts of the case reads as follows:

2.1. The petitioner is carrying on the business of Man Power Service and the land belonging to the second respondent was leased out to the petitioner and a lease agreement was also executed between the petitioner and the second respondent, which expires on 14.01.2025.

2.2. The second respondent had availed a term loan of Rs.5,32,00,000/- between the years 2011 to 2013, by mortage of properties from the first respondent bank for putting up additional construction. Since the second respondent had defaulted in repayment of loan, the first respondent/bank had initiated proceedings under the SARFAESI Act, 2002 against the mortgaged properties by issuing a demand notice on 18.01.2019 under Section 13(2) of the SARFAESI Act and symbolic possession was also taken by the first respondent on 05.12.2019. Thereafter e-auction notice was issued on 11.03.2021.

2.3. The third respondent had participated in the e-auction and became the successful bidder and consequently a Sale Certificate dated 04.05.2022 was issued in favour of the third respondent. However, the possession of the mortgaged property i.e., secured assets in respect of the term loan was with the second respondent. The second respondent by supressing the fact of mortage subsisting with the first respondent bank had entered into a lease agreement with the petitioner for the period from 15.01.2021 to 14.01.2023 (for 3 years) which was subsequently renewed for another two years upto 14.11.2025 and received a sum of Rs.2 Crores.

2.4. According to the petitioner, eventhough the lease in respect of the mortgage property was created after the mortgage between the first respondent and the second respondent, the petitioner's right to hold or keep possession of the property is protected under Section 65A of the Transfer of Property Act and Section 17 (4A) of the SARFAESI Act, 2002. According to the petitioner, the respondent Bank without ascertaining who is in possession of the mortgaged property and without issuing notice to them, had auctioned the mortgaged property through e-auction on 10.01.2020 and 09.02.2021, despite the fact that the petitioner as a lessee is in possession and enjoyment of the property. The respondent Bank has filed CMP.No.5208 of 2022 before the Chief Juducial Magistrate, Chengalpattu and obtained an order on 14.07.2022 in and by which warrant was issued to the Advocate Commissioner, but the same has not been executed since the petitioner is in possession of the property and hence, he has filed the instant writ petition with the aforesaid relief.

3. The first respondent Bank has filed a counter affidavit refuting the averments made in the writ petition by stating that when the writ petition came up for admission on 21.08.2024, the respondent Bank has informed the Court that physical possession of the property was taken over by the first respondent through the Advocate Commissioner appointed in the application filed under Section 14 of the SARFAESI Act by the Hon'ble Chief Judicial Magistrate, Chengalpattu and the same has been handed over to the Auction Purchaser / third respondent. It is further stated in the counter affidavit that in pursuant to the warrant issued by the Hon'ble Chief Judicial Magistrate, Chengalpattu in CMP.No.5208 of 2022, the Advocate Commissioner along with the assistance of police and revenue officials has taken physical possession of the mortgaged

property including the land in S.No.811/1, Uthukadu Village Walajabad and the Advocate Commissioner has handed over the same to the first respondent on 12.08.2024, being the Authorized Officer of the first respondent bank and thereafter physical possession of the entire property was handed over to the third respondent on 12.08.2024 and the acknowledgement given by the third respondent after having received the physical possession of the entire property is filed along with the affidavit. Thus, according to the first respondent Bank, as of now the physical possession of the property is in the custody of the first respondent and the request for occupation of the property by the petitioner cannot be considered by the first respondent.

4. Mr.V.Raghavachari, learned Senior Counsel appearing for the petitioner contended that under Section 65A of the Transfer of Property Act, the petitioner's right in respect of the leasehold property is protected and the petitioner's right is also protected under Section 17 Sub Section 4A of the SARFAESI Act in the category of interested person. It is further contended that the respondent bank without ascertaining who is in the possession of the mortgaged property and

without issuing notice to them had auctioned the mortgaged property through e-auction on 10.01.2020 and 09.02.2021 and therefore, prays for setting aside the said certificate issued by the first respondent bank in favour of the third respondent in pursuant to the order of the Chief Judicial Magistrate, Chengalpattu dated 14.07.2022 in CMP.No.5208 of 2022.

5. Mr.A.K.Sriram, learned Senior Counsel appearing for the first respondent Bank would contend that once the borrower committed defaulted in repayment of loan and after having afforded sufficient opportunities, it is open to the respondent Bank to initiate action under SARFAESI Act by taking physical possession and e-auction the property in question and in the case on hand, the lease agreement was entered into between the petitioner and the second respondent while the mortgage was subsisting and the petitioner having fully known about the existence of the mortgage, cannot challenge the e-auction proceedings as well as subsequent issuance of sale certificate in favour of the auction purchaser and prayed for dismissal of the writ petition.

6. Heard the learned cousel for the parties and perused the materials on record.

7. The fact remains that the petitioner is a lessee under the second respondent, who committed default in repayment of loan availed by way of Mortgage with the first respondent bank during the years 2011 to 2013. It is also undisputed that the petitioner entered into a lease agreement with the second respondent during the subsistence of the mortgage and action was initiated under the SARFAESI Act and the property was brought into e-auction and 11.03.2021, wherein the third respondent had participated and became the successful bidder and the Sale Certificate was also issued in favour of the third respondent / auction purchaser. There were rival contentions with regard to the possession of the property under e-auction. It is the contention of the petitioner that he was unaware of the mortgage and initiation of SARFAESI proceedings and only after execution of warrant by the Advocate Commissioner based on the order of the Chief Judicial Magistrate, Chengalpattu dated 14.07.2022 made in CMP.No.5208

of 2022, he was aware of the mortgage between the second respondent and the first respondent bank.

8. The point for consideration is whether writ petition is maintainable once the sale certificate was issued in favour of the successful bidder in the e-auction conducted in pursuant to the SARFAESI proceedings?

9. The issue is no longer integra. A Division Bench of this Court, in which one of us ***[D.Krishnakumar, Acting Chief Justice]*** is a member, had an occasion to deal with a similar issue in the case of ***P.Francis Raja v. The Authorized Officer [W.P.(MD)No.25176 of 2022 dated 25.01.2023]*** and it is relevant to extract the following relevation portion of the said decision as under:

> *"5... 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 in **Dwarika Prasad v. State of Uttar Pradesh and Others [2018 (3) CTC 877]** is extracted below:-*
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> *"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".

10. The aforesaid decision squarely apply to the facts of this case. It has been clearly held in the aforesaid decision that under 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. The right to redemption stands extinguished on the date of execution of the registered sale deed. Admittedly, in the case on hand, the sale certificate has been issued in favour of the successful bidder / auction purchaser, namely the third respondent on 04.05.2022 and in pursuant to the order of the Chief Judicial Magistrate, Chengalpattu, physical possession of the property was taken over and handed over to the third respondent on 12.08.2024. While that being the case, the claim of the petitioner under the guise of lease agreement subsisting and therefore, he is entitled for protection under 65A of the Transfer of Property Act is

legally unsustainable. This Writ Petition lacks merit and it is liable to be dismissed as not maintainable.

11. This Writ Petition stands dismissed. No costs. Consequently, WMP.No.26053 of 2024 is closed. WMP.No.26051 of 2024 is ordered.

[D.K.K., J.] [P.B.B., J.]
29.10.2024

Index : Yes / No
Internet : Yes / No
Jvm

To
1.The Authorized Officer,
ICICI Bank Limited,
3rd Floor, No.1, Cenotap Road,
Teynampet, Chennai-600 018.

2.The Inspector of Police,
B5, Police Station, Walajabad,
Kanchipuram District.

D.KRISHNAKUMAR, J.

and
P.B.BALAJI, J.

Jvm

Judgment in
W.P.No.23804 of 2024

29.10.2024