



W.P.(MD)No.8789 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.04.2024

CORAM

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN**

**W.P(MD)No.8789 of 2024
and
W.M.P.(MD)Nos.8011 and 8012 of 2024**

A.Muthukrishna Pandi

... Petitioner

VS

**1.The Registrar,
The Debts Recovery Tribunal,
IV Floor, Kalyani Towers,
Melur Road, Madurai.**

**2.The Authorised Officer,
Indian Bank,
Avaniapuram Branch,
Madurai-625 012.**

**3.The Branch Manager,
Indian Bank,
Avaniapuram Branch,
Madurai-625 012.**

4.V.Karuppaiah

...Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the second respondent executed the impugned sale certificate in Document No.85 of 2024, dated 05.01.2024 in favour of the fourth respondent and to quash the same and to direct the second respondent to receive the auction amount from the petitioner and release his property.

For Petitioner : Mr.R.Manickam

ORDER

(Order of this Court was made by **G.ARUL MURUGAN, J.**)

This Writ Petition is filed challenging the impugned sale certificate executed by the second respondent in Doc.No.85 of 2024, dated 05.01.2024 in favour of the fourth respondent and to quash the same and to direct the second respondent to receive the auction amount from the petitioner and release the property.

2.The petitioner is involved in the business of manufacturing plastic suitcase beeding in the name and style of “M/s.Santhosh Plastic” at Pottapalayam Village, Sivagangai District. For the purpose of his business,



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he had availed a working capital loan to the tune of Rs.7.50 lakhs, a term loan of Rs.7.03 lakhs, working capital under PMEGP for Rs.1.50 lakhs and emergency credit line scheme during COVID-19 for Rs.2.59 lahs and in all, has availed a sum of Rs.18.62 lakhs. Due to intervening COVID-19 situation, the petitioner incurred huge loss and therefore, was not able to service the interest properly, which resulted in initiation of the proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “SARFAESI Act”). Notice under Section 13(2) of the Act was issued on 18.06.2022 demanding a sum of Rs.11,91,853/-. The Bank, without issuing any possession notice, has issued the sale notice, dated 24.01.2023, claiming a sum of Rs.13,71,857/- followed by another sale notice, dated 02.02.2023 fixing the auction date for sale of the property on 28.02.2023.

3.As the sale notice issued was not in compliance with the SARFAESI Act and Rules, the petitioner had filed a Writ Petition in W.P(MD)No.4596 of 2023. As the post of Presiding Officer was vacant in the Debts Recovery Tribunal, Madurai, this Court had entertained the Writ Petition and passed a conditional order for depositing of a sum of Rs.



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5,00,000/- and further directed the Bank to consider the one time settlement.

The petitioner has paid the sum of Rs.5,00,000/- and approached the Bank for one time settlement, but however, without considering the proposal, again a sale notice, dated 19.10.2023 was issued and since this sale notice was also not as per the SARFAESI Act and Rules, the petitioner has challenged the same before the Debts Recovery Tribunal in S.A.No.666 of 2023, wherein, an order of interim stay was passed on condition to pay a sum of Rs.1,28,000/- each in three equal monthly instalments. As the said order was not communicated in time by his Counsel to the petitioner, he was not able to pay the first instalment within the prescribed time. However, when he approached the third respondent Bank on 22.02.2024, with three demand drafts, the Bank has refused to receive the same and informed that the property has already been sold in an auction and the sale certificate has also been executed in favour of the fourth respondent on 05.01.2024 and as such, the petitioner has come up with the present Writ Petition challenging the sale certificate.

4.The learned Counsel appearing for the petitioner reiterated the averments made in the affidavit and submitted that even though the interim



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order was passed by the Debts Recovery Tribunal, since the same was not communicated to the petitioner in time, the petitioner was not able to make the payments, but however, he had approached the Bank on 22.02.2024 with three demand drafts to comply with the interim orders granted by the Tribunal, but however, the Bank had informed that already property has been sold in the auction and also, a sale certificate has been executed on 05.01.2024 in favour of the fourth respondent. The learned Counsel contended that when the interim order was granted and the SARFAESI application is still pending before the Debts Recovery Tribunal, the auction conducted by the Bank and the impugned sale certificate executed in favour of the fourth respondent are not sustainable and therefore, sought to quash the sale certificate and to direct the Bank to receive the payments.

5.The petitioner having availed loan from the second and third respondents Bank for the purpose of his business, has not re-paid the loan and therefore, the account was classified as non performing asset on 30.03.2022 and thereafter, proceedings were initiated under the SARFAESI Act. The Bank had issued a notice under Section 13(2) of the Act on 18.06.2022 calling upon the petitioner to pay a sum of Rs.11,91,853/-



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within a period of sixty days and since the petitioner has not made the payment, the Bank had taken possession of the property on 15.09.2022 as per Section 13(4) of the Act. Thereafter, the sale notice was issued on 02.02.2023 by fixing the sale on 28.02.2023.

6.During that time, the post of Presiding Officer was vacant in the Debts Recovery Tribunal, Madurai. Hence, the sale notice was challenged before this Court in W.P.(MD)No.4596 of 2023 and the Division Bench by order, dated 03.03.2023 had directed the petitioner to pay a sum of Rs.5,00,000/- within two weeks and a liberty was given to the petitioner to approach the Bank for one time settlement or for re-structuring the loan amount.

7.Even though the Division Bench had, by order, dated 03.03.2023, directed the petitioner to pay a sum of Rs.5,00,000/- within a period of two weeks, ie., within 17.03.2023, the petitioner had not complied with such direction by making the payment and thereafter, a fresh sale notice has been issued on 19.10.2023. Challenging the sale notice, the petitioner has filed an application in S.A.No.666 of 2023 before the Debts Recovery Tribunal,



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Madurai and the Debts Recovery Tribunal, by an order, dated 22.11.2023, granted an interim stay not to confirm the sale till 23.02.2024, subject to payment of 40% of the amount, ie., Rs.9,59,451/- in three equal monthly instalments. In effect, the petitioner was directed to pay a sum of Rs. 1,28,000/- each on 22.12.2023, 22.01.2024 and 22.02.2024, failing which, the interim order granted shall stand vacated automatically. The petitioner has not complied with the interim order by making payments, as directed by the Tribunal, but however, it is contended that on 22.02.2024, he approached the Bank with three demand drafts, but the Bank has refused to receive the payments and have informed him that already the sale has been confirmed and a sale certificate has been executed in favour of the fourth respondent on 05.01.2024.

8. When the petitioner approached the Debts Recovery Tribunal, Madurai, and obtained an order of interim stay on 22.11.2023, whereby, the petitioner was directed to pay a sum of Rs.1,28,000/- in three equal monthly instalments commencing from 22.12.2023 and further, the Tribunal has specifically imposed a condition that in the event of failure to pay any of the instalments, as ordered, the respondent Bank are at liberty to proceed further



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and the interim order shall stand vacated automatically. As the petitioner, admittedly, has not complied with the condition by making the payment of instalment, the interim order stood automatically vacated and the respondent Bank have confirmed the auction and the sale certificate has also been executed in favour of the fourth respondent on 05.01.2024. Admittedly, when the SARFAESI application filed by the petitioner is pending and if at all the petitioner has any grievance, it is for the petitioner to proceed further with the case pending before the Debts Recovery Tribunal, Madurai and the present Writ Petition challenging the sale certificate issued in favour of the fourth respondent is not maintainable.

9.The petitioner, as a borrower, has a right to redeem the property only till the property is sold and the sale certificate is executed in favour of the auction purchaser and when it is a settled proposition of law that once the sale certificate is executed in favour of the auction purchaser, the right of the borrower to redeem his property stands extinguished. When the property has been sold in an auction and the sale certificate has been executed in favour of the fourth respondent on 05.01.2024, the petitioner has lost his right to redeem the property and his right over the property



stands extinguished.

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10.It is useful to refer the judgment of the Hon'ble Supreme Court in the case of ***Dwarika Prasad vs State of Uttar Pradesh and others***, reported in ***(2018) 5 SCC 491***, wherein, the Hon'ble Supreme Court held as follows:

“8. Section 13(8) of the SARFAESI Act provides as follows:

“13. (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 [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254] . Dwelling on Section 60 of the Transfer of the Property Act, 1882 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 : (SCC p. 638, para 39)

“39. When we apply the above principles stated with reference to Section 60 of the TP 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



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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 TP 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 abovestated principles apply on all fours in respect of a transaction as between the debtor and secured creditor under the provisions of the SARFAESI Act.”

9. 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 Securitisation Application No. 176 of 2015. During the pendency of those proceedings, orders were passed by the Tribunal on 1-2-2016 and 3-2-2016. The appellant moved the Allahabad High Court which by its order dated 9-3-2016 [Dwarika Prasad v. State of U.P., 2016 SCC OnLine All 2564] restrained the Bank and the auction-purchaser from executing the sale deed until 15-3-2016. The stay was extended till 28-3-2016 by which date the appellant was to deposit an amount of Rs 7,00,000. The balance was required to be deposited by 30-4-2016. While the 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 were 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 12-4-2016. 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 [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254] .



11.Further, the Hon'ble Supreme Court in ***CELIR LLP -vs- Bafna***

Motors (Mumbai) Private Limited and others, reported in ***(2023) 5 MLJ***

649 (SC), held as follows:

“105. We summarise our final conclusion as under:

(i) The High Court was not justified in exercising its writ jurisdiction under Article 226 of the Constitution more particularly when the borrowers had already availed the alternative remedy available to them under Section 17 of the SARFAESI Act.

(ii) The confirmation of sale by the Bank under Rule 9(2) of the Rules of 2002 invests the successful auction purchaser with a vested right to obtain a certificate of sale of the immovable property in form given in appendix (V) to the Rules i.e., in accordance with Rule 9(6) of the SARFAESI.

(iii) In accordance with the unamended Section 13(8) of the SARFAESI Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. In other words, the borrower's right of redemption did not stand terminated on the date of the auction sale of the secured asset itself and remained alive till the transfer was completed in favour of the auction purchaser, by registration of the sale certificate and delivery of possession of the secured asset. However, the amended provisions of Section 13(8) of the SARFAESI Act, make it clear that the right of the borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the Rules of 2002. In effect, the right of redemption available to the borrower under the present statutory regime is drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the Rules of 2002 and not till the completion of the sale or transfer of the secured asset in favour of the auction purchaser.

(iv) The Bank after having confirmed the sale under Rule 9(2) of the Rules of 2002 could not have withhold the sale certificate under Rule 9(6) of the Rules of 2002 and enter into a private arrangement with a borrower.



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(v) The High Court under Article 226 of the Constitution could not have applied equitable considerations to overreach the outcome contemplated by the statutory auction process prescribed under the SARFAESI Act.

(vi) The two decisions of the Telangana High Court in the case of Concern Readymix (supra) and Amme Srisailam (supra) do not lay down the correct position of law. In the same way, the decision of the Punjab and Haryana High Court in the case of Pal Alloys (supra) also does not lay down the correction position of law.

(vii) The decision of the Andhra Pradesh High Court in Sri Sai Annadhatha Polymers (supra) and the decision of the Telangana High Court in the case of K.V.V. Prasad Rao Gupta (supra) lay down the correct position of law while interpreting the amended Section 13(8) of the SARFAESI Act.”

12. In view of the above, since already sale has been confirmed and the sale certificate has been executed and registered on 05.01.2024 in Doc.No.85 of 2024 in favour of the fourth respondent, the present Writ Petition filed by the petitioner challenging the impugned sale certificate is not maintainable and the petitioner has lost his right to redeem the property. However, if, according to the petitioner, there are any procedural irregularities or if the sale certificate has been executed in contravention of the interim order passed by the Tribunal, it is open to the petitioner to agitate his claim in the SARFAESI application, which is already pending before the Debts Recovery Tribunal, Madurai. But, however, the present



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Writ Petition filed before this Court challenging the impugned sale notice is not sustainable.

13. Accordingly, the Writ Petition stands dismissed. However, there is no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

**[R.S.K., J] & [G.A.M., J]
08.04.2024**

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

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To

The Registrar,
The Debts Recovery Tribunal,
IV Floor, Kalyani Towers,
Melur Road, Madurai.



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R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

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Order made in
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