BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2024

CORAM

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

W.P(MD)No.9057 of 2024 and
W.M.P.(MD)No.8259 of 2024

ZakirHussain ... Petitioner

vs

1.The Authorised Officer,
Canara Bank,
Kelleys Corner Branch, Chennai – 600 007.

2.J.Arifa Begam ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the 1st respondent herein to receive the amount of auction purchase from petitioner in respect of the item No. 4 of the property and to direct the 1st respondent to redeem the property more fully described as item No. 4 in E-Auction Sale notice dated 09.02.2024 published by the 1st respondent bank on 13.03.2024 upon the payment of auction amount paid by the petitioner to bank and further direct the respondents to redeem the said property in favour of the petitioner.

For Petitioner : Mr.A.Shajahan

For R1 : Mr.K.Muraleedharan

ORDER

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

This Writ Petition is filed seeking for a direction to the first respondent to receive the amount of auction purchase in respect of Item No. 4 of the property and to direct the first respondent to allow to redeem the property more fully described as item No.4 in e-auction sale notice, dated 09.02.2024, published by the first respondent Bank, upon the payment of auction amount by the petitioner to the Bank.

2.According to the petitioner, he is having the business in the name and style of "JB Leather Exports" and for the purpose of his business, he has availed loan in the form of cash credit facility with the respondent Bank to tune of Rs.8,50,00,000/- in Loan Account No.0907261010407 in the year 2018. Even though the petitioner was promptly paying the instalment amounts, during the year 2020 due to COVID-19 outbreak and due to recession, he was not able to pay the instalments, therefore, the account was classified as non performing asset on 29.09.2020. Pursuant to which, the respondent Bank initiated proceedings under the SARFAESI Act and a demand notice under Section 13(2) of the Act was issued on 08.04.2021 calling up the petitioner to pay a sum of Rs.11,65,57,601.20/- and as the same was not repaid, possession notice under Section 13(4) of the Act was issued on 17.07.2021. Thereafter, a sale notice, dated 09.02.2024 was issued for conducting e-auction on 13.03.2024. The auction was proceeded and the second respondent was the successful bidder in respect of Item No.4 of the property for a sum of Rs.26,40,000/- and in respect of other properties, there was no bidders. Since the petitioner was contemplating to pay the dues to the Bank, the auction proceeded is not proper and therefore, the Petitioner has come with the present Writ Petition.

3.Heard Mr.A.Shajahan, learned Counsel appearing for the petitioner and Mr.K.Muraleedharan, learned Counsel appearing for the first respondent and perused the materials available on record.

4.The learned Counsel for the petitioner by reiterating the averments made in the affidavit contended that when the petitioner was taking steps to settle the dues to the respondent Bank, the auction sale conducted for the properties is not proper and therefore, the petitioner is ready to pay the auction amount and therefore, sought for a direction to direct the respondent

Bank to receive the payment.

5.Mr.K.Muraleedharan, learned Counsel, who takes notice on behalf of the respondent Bank, on instructions, submitted that when the auction has been conducted on 13.03.2024 itself, the present Writ Petition filed is not maintainable.

6.It could be seen from the records that admittedly, the petitioner has availed loan in the form of credit facility to the tune of Rs.8,50,00,000/- in the year 2018. Since there was a default in repayment of the loan amount, the loan account was classified as non performing asset on 29.09.2020 and the respondent Bank initiated proceedings under the SARFAESI Act and issued demand notice under Section 13(2) of the Act on 08.04.2021 calling upon the petitioner to pay a sum of Rs.11,65,57,601.20/- as on 31.03.2021 within a period of sixty days. Since dues were not paid, possession notice, dated 17.07.2021 was issued under Section 13(4) of the Act by taking symbolic possession of the property.

7.Pursuant to the possession notice, the respondent Bank has issued sale notice, dated 09.02.2024 bringing the mortgaged property for e-auction.

The auction was proceeded and one item of the property has been sold in the auction. The petitioner has come forward with the present Writ Petition contending that since he is ready to pay the auction price, the respondent Bank should receive the auction amount from the petitioner and allow him to redeem the property.

8.As against the sale notice issued by the respondent Bank, if at all the petitioner has any grievance, he has an efficacious and alternative remedy to challenge the same before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. Further, admittedly, auction has been conducted and the second respondent was the successful bidder in respect of Item No.4 of the property for a sum of Rs.26,40,000/-. The claim of the petitioner that he is ready to deposit this amount and therefore, he must be allowed to redeem the property cannot be sustained, as once the sale has been conducted, the right of the petitioner to redeem the property gets extinguished.

9.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:*
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> > *"**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."*
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> *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)*
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> > *"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 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] .

10.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.

(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."

11.In view of the above, since already sale has been confirmed in favour of the second respondent, the present Writ Petition filed by the petitioner is not maintainable. However, if, according to the petitioner, there are any procedural irregularities in the sale notice and auction conducted, it is open to the petitioner to agitate his claim before the Debts Recovery Tribunal. 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]
12.04.2024

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

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R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

cmr

Order made in
W.P(MD)No.9057 of 2024

12.04.2024