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.9099 of 2024
and
W.M.P.(MD)Nos.8287 and 8289 of 2024

M.Chinnasamy ... Petitioner

vs

The Authorized Officer,
State Bank of India,
Ayyampalayam Branch,
Dindigul District. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records in pertaining to the impugned order of the learned Chief Judicial Magistrate, Dindigul in Cr.M.P.No.4420 of 2024 dated 01.04.2024 passed under Section 14 of the SARFAESI Act and to quash the same.

For Petitioner : Mr.A.Azhageson
For Respondents : Mr.N.Dilip Kumar

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ORDER

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

The Writ Petition is filed challenging the impugned order passed by the learned Chief Judicial Magistrate, Dindigul, in Cr.M.P.No.4420 of 2024, dated 01.04.2024, passed under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act").

2.It is the case of the petitioner that he is the proprietor of "M/s.Sumathi Agro Farms" and engaged in the business of poultry farm. For the purpose of development of business, he had borrowed a sum of Rs.90,00,000/- and even though he had been paying the EMI regularly from the year 2013 and had almost paid around a sum of Rs.40,00,000/- till 19.01.2019, due to intervening COVID-19 and loss in the business, he was not able to make the payments. As such, the account was classified as non performing asset on 07.03.2016 and the respondent Bank initiated proceedings under the SARFAESI Act and issued demand notice under

Section 13(2) of SARFAESI Act on 07.03.2019 calling upon the petitioner to pay a sum of Rs.1,38,00,556/-. As payments were not made, possession notice under Section 13(4) of SARFAESI Act was issued on 20.05.2016 and the same was also published in the Tamil and English daily newspapers on 26.05.2016.

3.Thereafter, the respondent Bank issued e-auction sale notice, dated 18.07.2023 for recovery of a sum of Rs.2,65,55,881/-, as on 18.07.2023 and the same was challenged by the petitioner in W.P.(MD)No.21240 of 2023 and the Writ Petition was disposed of on 30.08.2023 giving liberty to the petitioner to challenge the notice before the Debts Recovery Tribunal, Madurai. The petitioner had also preferred SAFAESI Application in S.A.No.453 of 2023 before the Debts Recovery Tribunal, Madurai and the Tribunal, by order dated 18.07.2023 granted an interim order on condition that the petitioner pays a sum of Rs.1,50,00,000/- to the respondent Bank in two instalments, out of which, a sum of Rs.1,12,00,000/-should be paid on or before 22.09.2023 as first instalment and a sum of Rs.38,00,000/- has to be paid on or before 23.10.2023 as second instalment.

4.Since the petitioner has not made the payment and complied with the conditions imposed by the Tribunal in the interim order, the Bank had conducted an auction and thereafter, confirmed the sale and issued sale certificate to the auction purchaser on 26.09.2023. Thereafter, the Bank/secured creditor filed an application before the learned Chief Judicial Magistrate, Dindigul, in Cr.M.P.No.4420 of 2024 under Section 14 of the SARFAESI Act for taking physical possession of the property and the learned Chief Judicial Magistrate, Dingidul, by the impugned order, dated 01.04.2024, has passed orders appointing an Advocate Commissioner for assisting the secured creditor to take physical possession of the property. Challenging the impugned order, the petitioner has preferred the above Writ Petition.

5.Heard the learned Counsels on either side and perused the materials available on record.

6.It could be seen that the petitioner had availed loan from the respondent Bank to a tune of Rs.90,00,000/- as early as in September 2012 and since, admittedly, there was a default in repayment of the loan amount, the loan account was classified as non performing asset on 07.03.2016 and the Bank has initiated proceedings under the SARFAESI Act. Notice under Section 13(2) of the SARFAESI Act, dated 07.03.2019 was issued calling upon the petitioner to make payment and since the same was not made, further possession notice under Section 13(4) of the SARFAESI Act, has also been issued on 20.05.2016 and the same has also been published in Tamil and English daily newspapers on 26.05.2016. As neither payment was made or there was any challenge to the possession notice, the Bank had proceeded further and issued e-auction sale notice, dated 18.07.2023 for recovery of a sum of Rs.2,65,55,881/-, as on 18.07.2023.

7.The Writ Petition preferred by the petitioner challenging the sale notice was not entertained, but however, liberty was given to the petitioner to challenge the same before the Debts Recovery Tribunal, Madurai, and the petitioner has also filed SARFAESI Application in S.A.No.453 of 2023 before the Debts Recovery Tribunal, Madurai, wherein, a conditional interim order was passed directing the petitioner to pay a sum of Rs. 1,12,00,000/-, on or before 22.09.2023 as first instalment and a sum of Rs. 38,00,000/- on or before 23.10.2023 as second instalment. Admittedly, the petitioner did not make any payment and failed to comply with the interim orders passed by the Tribunal.

8.Thereafter, the sale was proceeded with and the sale was confirmed and a sale certificate has also been executed in favour of the auction purchaser on 26.09.2023. Thereafter, the respondent Bank/secured creditor have filed an application before the learned Chief Judicial Magistrate, Dindigul in Cr.M.P.No.4420 of 2024 under Section 14 of the SARFAESI Act for taking physical possession of the property. The learned Chief Judicial Magistrate, Dindigul, vide impugned order, dated 01.04.2024, has passed orders appointing an Advocate Commissioner to assist the secured creditor for taking physical possession of the property.

9.As against the order passed under Section 14 of the SARFAESI Act, the petitioner is having an efficacious and alternative remedy before the Debts Recovery Tribunal by filing appropriate application under Section 17 of the Act. In the decision reported in ***(2010) 8 SCC 110*** in the case of ***Union Bank of India -vs- Satyawadi Tondon and others***, the Hon'ble Supreme Court has held that the party aggrieved by any orders passed under

Section 14 of SARFAESI Act, had to file an appeal before the Debts Recovery Tribunal and held as follows:

> *"**42.**There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression "any person" used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.*
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> ***43.**Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.*
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> ***44.**While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide*

and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45.*It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.*

.....

55.*It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."*

10.The dictum laid down by the Hon'ble Supreme Court was also reiterated by the Hon'ble Supreme Court in the case of ***South Indian Bank Limited and others vs Naveen Mathew Philip and another***, reported in ***2023 SCC OnLine (SC) 435.***

11.As such, the Writ Petition is not maintainable, accordingly, the Writ Petition stands dismissed. However, there shall be 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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To

The Chief Judicial Magistrate, Dindigul.

R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

cmr

Order made in
W.P(MD)No.9099 of 2024

12.04.2024