BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2024

CORAM

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

C.R.P.(MD)No.1239 of 2024 and
C.M.P.(MD)No.7132 of 2024

R.Jayanthi ... Petitioner

vs

1.The Authorized Officer,
Asset Recovery Branch,
Union Bank of India,
Old No.816, New P.B.No.8,
No.235, First Floor,
Oppanakara Street, Coimbatore – 641 001.

2.M/s.ES.R.ES.Mills,
represented by its Proprietor,
S.R.Shanmugam,
Tiruppur District- 641 662.

3.V.Eswaramoorthy ...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order, dated 22.02.2024 made in I.A.No.802 of 2022 in T.S.A.No.2 of 2023 on the file of the Debts Recovery Tribunal, Madurai.

For Petitioner : Mr.P.M.Duraiswamy

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ORDER

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

The Civil Revision Petition is filed challenging the order passed by the Debts Recovery Tribunal, Madurai, dated 22.02.2024 rejecting I.A.No. 802 of 2022 in T.S.A.No.02 of 2023.

2.Heard the learned Counsel for the petitioner and perused the materials available on record.

3.The petitioner has stood as a guarantor in respect to the loan availed by the second respondent herein and had admittedly, mortgaged her land in Ganapathipalayam Village, Palladam Taluk, Tiruppur District in favour of Andhra Bank in the year 2010, which was subsequently amalgamated with the Union Bank of India/first respondent. As there was default in repayment of the loan account, proceedings were initiated under the Securitization and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act"), and a demand notice under Section 13(2) of SARFAESI Act was issued on 14.02.2014 calling upon the petitioner and the borrower to pay a sum of Rs. 7,91,02,959/- as on 14.02.2014. As the said amount was not paid within the stipulated time, possession notice under Section 13(4) of the Act came to be issued on 24.05.2014. Admittedly, the possession notice was not challenged and the secured creditor issued e-auction sale notice on 23.11.2020 fixing the e-auction date on 15.12.2020. The petitioner challenging the auction notice filed an appeal under Section 17(1) of the SARFAESI Act before the Debts Recovery Tribunal, Coimbatore, on 10.12.2020 in S.A.(SR)No.8000 of 2020. By order, dated 14.12.2020, the appeal filed by the petitioner was dismissed at the SR stage itself, as the petitioner has not filed the necessary documents including 13(2) and 13(4) notices issued by the secured creditor.

4.Thereafter, auction was proceeded and the third respondent was declared as successful bidder for a sum of Rs.2,71,00,000/- and the sale was also confirmed by the first respondent Bank in favour of the third respondent on 16.12.2020. The petitioner had challenged the order passed by the Debts Recovery Tribunal, Coimbatore before this Court in W.P.No.

661 of 2021, wherein, the petitioner had alleged that no notices under Sections 13(2) and 13(4) has been served on her and also she had alleged several allegations against the proceedings taken by the Bank. The Hon'ble Division Bench of this Court, after extensively going into the issue, by order dated 25.03.2021, dismissed the Writ Petition by imposing a cost of Rs. 50,000/- and the conduct of the petitioner was also very much deprecated by the Court. After rendering detailed findings, this Court also observed follows:

> *"22.There is no merit in the petition. The audacity of this petitioner warranted a conclusive finding to be rendered on the dishonest stand taken as far as the petitioner s acknowledgments are concerned so that the matter could be followed up to the hilt and perjury proceedings instituted. However, the heavy board of this Court does not permit such time to be expended on one matter, though the petitioner would have deserved every bit of it.*
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> *23. If it is the petitioner s contention that the signatures furnished by the petitioner earlier to Andhra Bank had been misused by the Bank in showing service of the notice of demand and the notice of possession, such submission has to be rejected out of hand. The notice of possession was served through registered post with acknowledgment due and it cannot be the case of the petitioner that he also previously signed the acknowledgment card of the Department of Posts. At any rate, when a person makes over a blank signed paper to another, it amounts to a blanket authority to the other to fill up the blank page in the manner the other chooses."*

5.The petitioner had also filed a Review Application in (Writ)No.76 of 2021, which also came to be ultimately dismissed by order, dated 22.07.2021. Challenging the order passed in the Writ Petition and also the subsequent order passed in the Review Application, the petitioner had preferred a Special Leave Petition before the Hon'ble Supreme Court and by order, dated 20.09.2021, the Hon'ble Supreme Court directed the petitioner to deposit a sum of Rs.2 crores within two weeks to show her *bona fide*, as condition precedent for issuing notice. The order is extracted hereunder for ease reference:

> *"The question now posted before us during the argument was not raised before the High Court. Nevertheless, if the petitioner wants this Court to show any indulgence in the fact situation of the present case, we deem it appropriate to direct the petitioner to deposit a sum of Rs.2,00,00,000/- (Rupees two crores only) within two weeks from today to show his bona fide as condition precedent for issuing notice on the special leave petition, failing which, the special leave petition shall stand dismissed for non-prosecution without further reference to the Court. Ordered accordingly.*
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> *If the amount is deposited, notice be issued to the respondent (s), returnable in two weeks thereafter."*

6. Even though the deposit was not made as directed, however the petitioner had filed an application for extension of time. The Hon'ble Supreme Court, by order, dated 08.10.2021, as last opportunity, extended the time till 08.11.2021 to enable the petitioner to deposit the amount of Rs. 2 crore, failing which, the conditional order passed earlier will take effect forthwith. The Hon'ble Supreme Court also made it clear that pendency of the appeal will not come in the way of the respondent Bank to proceed against the petitioner. Even thereafter, the petitioner has not made the payment to comply with the conditional order.

7. In the mean time, the first respondent/secured creditor had filed an application under Section 14 of the SARFAESI Act before the learned Chief Judicial Magistrate, Tiruppur, in Crl.M.P.No.694 of 2021 for securing physical possession of the property, as the auction purchaser/third respondent made the entire payment of the bid amount and the sale having been confirmed and the secured creditor also issued the sale certificate on 02.01.2021 in favour of the third respondent and the same was also registered in the Office of the Sub Registrar, Palladam in Doc.No.16510 of 2021. The learned Chief Judicial Magistrate, Tiruppur, by order, dated 20.12.2021, allowed the petition by appointing an Advocate Commissioner

to take possession and handing it over to the secured creditor.

8.Thereafter, the petitioner had filed an appeal in S.A.No.222 of 2022 before the Debts Recovery Tribunal, Coimbatore, praying to set aside the sale certificate executed in favour of the third respondent and also to set aside the order passed under Section 14 of the SARFAESI Act by the Chief Judicial Magistrate, Tiruppur. Along with the appeal, the petitioner preferred I.A.No.802 of 2022 seeking for an order of stay of all further proceedings pursuant to the order for taking physical possession of the property. The petitioner seems to have further moved before the Debts Recovery Appellate Tribunal for transfer of the proceedings, which ultimately came to be ordered and the SARFAESI Appeal was transferred from the Debts Recovery Tribunal, Coimbatore to the Debts Recovery Tribunal, Madurai and re-numbered as T.S.A.No.2 of 2023. The Debts Recovery Tribunal, Madurai, by order, dated 22.02.2021, dismissed the application for stay, against which, the petitioner had preferred the above Civil Revision Petition.

9.The learned Counsel for the petitioner argued that when the appeal filed before the Tribunal is pending, wherein, they have sought for declaring the sale deed as null and void, the Tribunal ought to have stayed further proceedings, as the possession is sought to be secured from the petitioner in view of the order passed by the learned Chief Judicial Magistrate, Tiruppur. The learned Counsel also submitted that the petitioner being a guarantor, the secured creditor Bank had not followed the procedures, as contemplated under the SARFAESI Act and in fact, no notices under the SARFAESI Act has been issued to the petitioner.

10.We are not impressed with the submission made by the learned Counsel for the petitioner for the simple reason that in fact, all these issues had already been gone into by this Court in the Writ Petition and in fact, the conduct of the petitioner had been deprecated and the relevant portion has also been extracted above. This Court had also found that necessary notices under the SARFAESI Act has been issued to the petitioner and further, exemplary costs were also imposed on the petitioner for her conduct. Even the Review Application filed by her also came to be dismissed.

11.When admittedly, the petitioner is a borrower, who had mortgaged the property securing the loan availed by the second respondent in favour of the respondent Bank and the borrower had not repaid the amount and the proceedings have been initiated under the SARFAESI Act, the petitioner cannot deny her liability. The possession notice issued by the secured creditor has also not been challenged by the petitioner and the sale of the petitioner's property had been conducted through e-auction and the third respondent herein had been the successful bidder and the sale was confirmed after making the entire payment of Rs.2,71,00,000/- and the sale certificate has also been executed and registered in favour of the third respondent on 02.11.2021. The secured creditor had also obtained an order from the learned Chief Judicial Magistrate, Tiruppur, in Crl.M.P.No.694 of 2021, on 20.12.2021 for securing physical possession of the property.

12.The petitioner in the affidavit filed in support of this Writ Petition had averred that the first respondent Bank through the Advocate Commissioner hurriedly had taken physical possession of the property upon closing outer gate of the property and fixing the seal on 26.10.2023. She also further stated that even though possession has been taken by the first respondent Bank, still it has not been handed over to the third respondent/auction purchaser. When once the actual possession of the property has been taken over from the petitioner by the secured creditor pursuant to the orders passed by the learned Chief Judicial Magistrate, under Section 14 of the SARFAESI Act, the prayer in I.A.No.802 of 2022 cannot be sustained. Moreover the sale certificate executed by the first respondent Bank in favour of the third respondent makes it clear that the secured creditor had handed over and delivered the physical possession of the property to the auction purchaser.

13.In fact, as referred earlier, even though the Hon'ble Supreme Court passed a conditional order as against the petitioner to deposit a sum of Rs.2 crores within two weeks from 20.09.2021 and also the time was further extended to 08.11.2021, the petitioner admittedly has not made any payment and failed to comply with the directions passed by the Hon'ble Supreme Court.

14.Further as against the present impugned order passed by the Debts Recovery Tribunal, Madurai, rejecting the stay petition, the petitioner has preferred an appeal before the Debts Recovery Appellate Tribunal, Chennai in Diary No.454 of 2024. But however, the same was not entertained, as the petitioner did not make the pre-deposit for entertaining the appeal, as required under Section 18 of SARFAESI Act and that the petitioner had voluntarily filed a withdrawal memo on 07.05.2024 and had withdrawn the appeal filed by her. When once the petitioner had preferred an appeal before the statutory appellate forum and had voluntarily withdrawn the appeal, the present Revision Petition filed by the petitioner challenging the very same impugned order of Debts Recovery Tribunal, Madurai, is not sustainable.

15.When an alternative efficacious remedy is available to the petitioner and also the petitioner had availed the alternative remedy by filing an appeal, the petitioner cannot be allowed to file the present Civil Revision Petition only to circumvent the pre-deposit to be made in the statutory appeal. The Hon'ble Supreme Court had repeatedly held that when an alternative and efficacious remedy is available under the SARFAESI Act, the High Courts shall not entertain any petition under Article 226/227 of Constitution of India, invoking the extraordinary jurisdiction. For all the above stated reasons, this Court is unable the entertain the above Civil Revision Petition.

16.In view of the same, the Civil Revision Petition deserves to be dismissed and accordingly, dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J] & [G.A.M., J]
07.06.2024

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

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To

1.The Debts Recovery Tribunal, Madurai.

2.The Chief Judicial Magistrate, Tiruppur.

R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

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Order made in
C.R.P.(MD)No.1239 of 2024

07.06.2024