BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2024

CORAM

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

W.P(MD)No.13768 of 2024
and
W.M.P.(MD)No.12110 of 2024

M/s.AGI Milk,
represented by its
Proprietor G.Akilandeswari
Thanjavur – 613 401. ... Petitioner

vs

The Authorised Officer,
State Bank of India,
Stressed Assets Recovery Branch,
Red Cross Building, II Floor,
No.32, Montieth Road Egmore,
Chennai – 600 008. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records the e-auction sale notice, dated 20.05.2024 issued by the respondent Bank by fixing the date of e-auction on 29.06.2024 and quash the same and consequently, to direct the respondent Bank to extend the one time settlement scheme in respect of the petitioner dues in the loan accounts.

For Petitioner : Mr.V.R.Kamalanathan
for Mr.C.Jeyakumaran
For Respondent : Mr.N.Dilipkumar
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ORDER

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

The Writ Petition is filed by the petitioner/borrower challenging the e-auction notice, dated 20.05.2024 by bringing the mortgaged property for e-auction on 29.06.2024 and for a further direction to the respondent to extend the one time settlement scheme.

2.By consent of parties, the Writ Petition is taken up for final hearing at the admission stage itself.

3.The petitioner had availed loan from the respondent Bank for a sum of Rs.1,75,00,000/- through both cash credit and term loan by mortgaging the immovable properties. There had been some defaults in repayment of the dues, but, however, the petitioner had approached the respondent Bank for one time settlement scheme, which was considered and granted on 21.02.2022 for a sum of Rs.1,55,38,016/-. Even though a sum of

Rs.36,00,000/- was paid, the petitioner did not make the balance payment of the one time settlement and the respondent Bank had issued a demand notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act"), on 06.04.2023. As the payments were not made, possession notice under Section 13(4) of the SARFAESI Act, was issued on 12.06.2023 for the outstanding of Rs.2,09,04,707/-. The petitioner had challenged the possession notice before the Debts Recovery Tribunal-II, Chennai in S.A.No.399 of 2023. While so, the respondent Bank had issued the impugned e-auction sale notice on 20.05.2024 fixing the e-auction on 29.06.2024 for the outstanding liability of Rs.2,46,58,634/-, as covered under the sale notice. Challenging the impugned sale notice, the petitioner preferred the above Writ Petition.

4.Mr.V.R.Kamalanathan, learned Counsel appearing for the petitioner argued that one time settlement was earlier granted by the Bank and they had paid a sum of Rs.36,00,000/- and only a sum of Rs.1,19,38,016/- was balance to be payable at that time and therefore, if some time towards the one time settlement scheme is extended, the petitioner will be able to make the payment. The learned Counsel also submitted that when they already challenged the possession notice issued under Section 13(4) of SARFAESI Act and during pendency of the same, the respondent had issued the impugned e-auction sale notice by not complying with the mandatory provisions under the SARFAESI Rules. The learned Counsel further submitted that the amount covered under the impugned sale notice is much higher than the actual due amount to be paid and further, the respondent had failed to take a proper valuation of the property before going for public auction, as mandated under Rule 8(5) of the SARFAESI Rules. Therefore, he sought for allowing of the Writ Petition.

5.Mr.N.Dilip Kumar, learned Counsel, who takes notice on behalf of the respondent Bank, submitted that the Writ Petition filed challenging the impugned sale notice is not maintainable, when there is a statutory appeal provided before the Debts Recovery Tribunal. The learned Counsel also, by relying on the judgment of the Hon'ble Supreme Court in the case of ***PHR Invent Educational Society vs UCO Bank and others***, reported in 2***024 SCC OnLine SC 528***, submitted that the High Court shall not entertain a petition under Article 226 of Constitution of India, when an effective and alternative remedy is available under Statute. The learned Counsel further submitted that even though the Bank had extended the one time settlement in 2022, the petitioner had failed to avail the same by making the payment and when the petitioner had already challenged the possession notice before the Debts Recovery Tribunal-II, Chennai, the Writ Petition filed challenging the sale notice is not sustainable and when a huge sum of Rs.2,46,58,634/-, as covered under the impugned notice, is due, the petitioner had even though received the notice nearly a month ago, had approached this Court at the eleventh hour only to stifle the auction process taken by the respondent Bank and sought for dismissal of the Writ Petition.

6.Heard the rival submissions of the learned Counsels and perused the materials available on record.

7.The petitioner had, admittedly, availed the cash credit and term loan from the respondent Bank for a sum of Rs.1,75,00,000/- by mortgaging the immovable properties. Even though there had been defaults in repayment of the dues, based on the request of the petitioner, the proposal for one time settlement was accepted by the respondent Bank on 21.02.2022 for a sum of

Rs.1,55,38,016/- and the petitioner though had paid a sum of Rs.36,00,000/- initially, failed to make the balance payments and thereby, one time settlement scheme was withdrawn.

8.Pursuant to which, the respondent Bank initiated proceedings under the SARFAESI Act and a demand notice under Section 13(2) of SARFAESI Act was issued on 06.04.2023 and, as the petitioner failed to make the payments, possession notice under Section 13(4) of the SARFAESI Act, was issued on 12.06.2023 in respect of the dues for Rs.2,09,04,707/- and the possession notice was challenged by the borrower before the Debts Recovery Tribunal-II, Chennai in S.A.No.399 of 2023 and the respondent Bank had taken further proceedings by issuing the impugned sale notice, dated 20.05.2024 by fixing the e-auction on 29.06.2024.

9.As far as the present Writ Petition challenging the impugned sale notice is concerned, the petitioner is having an alternate efficacious remedy by filing an appeal under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal. As rightly contended by the learned Counsel for the respondent Bank, the Hon'ble Supreme Court in repeated decisions including the UCO Bank's case, referred earlier, had held that the High Court shall not entertain a petition under Article 226 of Constitution of India, when there is an efficacious remedy available under the Statute.

10.The contention of the learned Counsel for the petitioner that if time is granted, they will be able to make the payment under the one time settlement is rejected for the simple reason that already the one time settlement scheme granted had been withdrawn in the year 2022 itself, as the petitioner has failed to make the payments under the one time settlement, as sanctioned by the respondent Bank. Further, this Court cannot extend the time or issue any direction in respect of the one time settlement, as it is for the respondent Bank/secured creditor to consider the same or otherwise.

11.At this juncture, the learned Counsel for the petitioner submitted that they are ready to pay the entire dues within a period of two weeks to the respondent Bank and since the auction is fixed on 29.06.2024, sought indulgence of this Court to allow the petitioner to make the payment.

12.However, the learned Counsel for the respondent Bank objected to the said submission made by the learned Counsel for the petitioner.

13.The petitioner having received the sale notice as on 20.05.2024 had waited for nearly a month and had approached this Court at the eleventh hour and is making a request to pay the entire dues. Be that as it may, now, as the learned Counsel for the petitioner on instructions, expresses their willingness to settle the entire dues within a period of two weeks and close the loan accounts pending with the respondent Bank/secured creditor, we are inclined to pass the following order:

(1)The respondent Bank is at liberty to proceed with the e-auction on 29.06.2024, as per the impugned e-auction notice.

(2)The petitioner shall pay a sum of Rs.1,00,00,000/- (Rupees One crore) to the respondent Bank prior to the e-auction on 29.06.2024 at 01.00 pm .

(3)If the sum of Rs.1,00,00,000/-, as directed above, is paid prior to the e-auction, the respondent Bank shall defer the confirmation of e-auction in favour of the auction purchaser for a period of two weeks from the date of e-auction.

(4)The petitioner shall pay the entire balance dues of the impugned notice to the respondent Bank within a period of two weeks from the date of e-auction and settle the entire loan accounts.

(5)In case, if there is any defaults in the above payments to be made by the petitioner, the respondent Bank is at liberty to confirm the sale in favour of the auction purchaser and proceed further without reference to any further orders of this Court.

14.With the above directions, this Writ Petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J] & [G.A.M., J]
26.06.2024

Internet :Yes/No
Index :Yes/No
NCC :Yes/No
Note: Issue order copy by 27.06.2024.
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R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

cmr

Order made in
W.P(MD)No.13768 of 2024

26.06.2024