BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.07.2024

CORAM

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

W.P(MD)No.14841 of 2024 and
W.M.P.(MD)Nos.13303, 13004 and 13006 of 2024

P.Kavitha ... Petitioner

vs

1.The Authorized Officer,
Indian Bank, SAM Branch,
100/101, East Avani Moola Veethi, Madurai.

2.The Branch Manager,
Indian Bank,
Paramakudi Branch, Ramanathapuram District.

3.Malathi ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records pertaining to the impugned order passed by the 1st respondent in his proceedings, dated 04.03.2024 and to quash the same as illegal.

For Petitioner : Mr.D.Senthil
for Mr.V.Malaiyendran
For Respondents :Mr.S.Suresh
for M/s.Aiyer and Dolia Associates

ORDER

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

This Writ Petition is filed challenging the proceedings of the first respondent, dated 04.03.2024.

2.It is the case of the petitioner that she has availed a housing loan for a sum of Rs.35,00,000/- from the second respondent Bank and has executed a memorandum of deposit of title deeds on 02.07.2015. Though monthly EMI was paid regularly, but however, due to COVID-19 pandemic, there were some defaults, due to which, the account was classified as non performing asset, pursuant to which, the respondent Bank had initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") by issuing demand notice under Section 13(2) of the SARFAESI Act and a possession notice under Section 13(4) of the SARFAESI Act.

3.A Writ Petition in W.P.(MD)No.18426 of 2022 was filed challenging the possession notice, which came to be allowed on

17.08.2022 on condition that a sum of Rs.8,00,000/- has to be paid in four installments, but however, due to difficulty in arranging the funds, the order passed was not complied with. Thereafter, the respondent Bank had issued a sale notice on 15.11.2022, which came to be challenged by the petitioner in S.A.No.415 of 2022 before the Debts Recovery Tribunal, Madurai, in which, a conditional order was passed by the Tribunal, which was also not complied with due to her ill health. Thereafter, the Bank had again issued a sale notice, dated 14.06.2023 by fixing the sale on 05.07.2023, which was also challenged in S.A.No.228 of 2023 before the Debts Recovery Tribunal, Madurai and a conditional interim order, dated 03.07.2023, was passed, which was also not complied with. Since the sale did not fructify, the respondent Bank had issued a further sale notice, dated 07.07.2023, fixing the auction sale on 28.07.2023, which was also challenged in S.A.No.305 of 2023 before the Debts Recovery Tribunal, Madurai, which was posted for hearing on 02.11.2023.

4.While so, the respondent Bank had issued a fresh sale notice on 05.10.2023 by fixing the sale on 28.10.2023 and the petitioner had also challenged this sale notice in S.A.No.562 of 2023 before the Debts

Recovery Tribunal, Madurai, and the Tribunal by an interim order, dated 20.10.2023, directed the respondent Bank not to confirm the sale till 28.12.2023 and further, directed the petitioner to pay the entire claim amount of Rs.35,81,601.22/- in three equal installments of Rs.11,94,000/- each on 25.10.2023, 27.11.2023 and 27.12.2023. Liberty was also granted to the respondent Bank that if the conditions are not complied with, they can proceed further by confirming the sale.

5.The petitioner had also paid a sum of Rs.13,56,706/- towards the first installment and claims that the respondent Bank had agreed to regularise the loan account and thereby, it was sufficient to pay the EMI amount. However, when the petitioner approached to pay the EMI for the month of January 2024, that was not received and in the meantime, the property was sold by a collusive proceedings with the third respondent, auction purchaser. Since the sale of the property has been conducted for a lower price, challenging the impugned communication, the petitioner has preferred the above Writ Petition.

6.Mr.D.Senthil, learned Counsel appearing for the petitioner, by reiterating the averments made in the affidavit, submitted that since fraud and coercion is involved in the transaction of the respondent Bank in respect of selling the property of the petitioner, the petitioner can very well maintain a Writ Petition before this Court. It is his vehement contention that when fraud is alleged, the petitioner need not go before the statutory forum by approaching the Tribunal and he is entitled to question the proceedings by the Bank before this Court. The learned Counsel further submitted that since the respondent Bank had not disclosed the details of the name and address of the auction purchaser, the petitioner is not in a position to take appropriate proceedings before the Debts Recovery Tribunal and therefore, sought for interference of this Court.

7.Mr.S.Suresh, learned Counsel appearing for the respondent Bank submitted that the property, which was admittedly mortgaged in favour of the respondent Bank, had been proceeded with under the SARFAESI proceedings and the property was sold in a public auction for a sum of Rs.70,10,000/- and after deducting the pending due amount to the Bank, the balance sum of Rs.15,32,675/- had been credited in the joint account of the petitioner and only this was communicated to the petitioner by the impugned communication, whereby, she was only informed that this amount credited in the account is put on hold, which will be removed upon the request of the petitioner.

8.The learned Counsel further submitted that, in fact, apart from filling several appeals challenging the proceedings taken by the respondent Bank, the sale notice, by which the property was sold, was also challenged by the petitioner in S.A.No.562 of 2023, wherein, a conditional interim order was passed and the petitioner did not comply with the order and further, the SARFAESI Appeal is still pending. The learned Counsel further submitted that in such circumstances, the petitioner cannot maintain the Writ Petition, more particularly, when it is only a communication crediting the balance amount to the account of the petitioner and sought for dismissal of the Writ Petition.

9.Heard the rival submissions and perused the materials available on record.

10.The petitioner had admittedly availed a housing loan from the second respondent Bank for a sum of Rs.35,00,000/- in the year 2015 and had mortgaged the property by executing a memorandum of deposit of title deeds in favour of the respondent Bank on 02.07.2015. Since there were defaults in the repayment of the loan account, the loan account was classified as non performing asset and the respondent Bank had initiated proceedings under the SARFAESI Act. A demand notice under Section 13(2) of the SARFAESI Act was issued on 19.05.2022 and as the petitioner did not discharge the dues to the Bank, a possession notice under Section 13(4) of the SARFAESI Act was also issued on 26.07.2022. The petitioner had challenged the possession notice by filing a Writ Petition in W.P(MD)No.18426 of 2022 and even though the same was allowed on 17.08.2022 by directing the petitioner to pay a sum of Rs.8,00,000/- in four installments, admittedly, the same was not complied with.

11.Thereafter, the Bank had atleast issued three sale notices for conducting auction of the property and all the three notices came to be challenged by the Writ Petitioner by filing appeals in S.A.No.415 of

2022, S.A.No.228 of 2023 and S.A.No.305 of 2023 before the Debts Recovery Tribunal, Madurai. Even though all these appeals came to be entertained and a conditional interim order was passed, the petitioner has not chosen to comply with any of those orders.

12.However, since the sale proceedings did not fructify, finally, the respondent Bank had again issued a sale notice, dated 05.10.2023 by fixing the sale on 26.10.2023. This sale notice also was challenged by the petitioner in S.A.No.562 of 2023 before the Debts Recovery Tribunal, Madurai. The Tribunal, by order, dated 20.10.2023, had passed a conditional interim order of stay from confirming the sale till 28.12.2023, which is as follows:

> *"Without going into merits, considering the submissions of both sides' counsels, AdInterim stay is granted not to confirm the sale till 28.12.2023, with respect to the petition schedule mentioned property, against the Respondent Bank, if the sale is so held subject to payment of entire suit amount (i.e., Rs.35,81,601.12p) in 3 equal instalments (Last installment with subsequent interest and cost) directly to the Respondent Bank as mentioned here under:*

Installment	*Date (on or before)*	*Amount*
1st Installment	*25.10.2023*	*Rs.11,94,000/-*
2nd Installment	*27.11.2023*	*Rs.11,94,000/-*
3rd Installment	*27.12.2023*	*Rs.11,94,000/-*

However, in the event of failure to pay any one of the installments as ordered above, the Respondent Bank is at liberty to proceed further to confirm the sale, if the sale has been held, without making any reference to this Tribunal and the Ad-Interim stay granted till 28.12.2023, against the Respondent Bank, shall stand vacated and the petition in IA No.2357/23 shall stand closed automatically."

13.It is the case of the petitioner that she had paid a sum of Rs.13,56,706/- for the first installment, but however, since the respondent Bank had orally informed that the loan account is regularised, the petitioner had not made the balance payments and when she sought to make the payment of installment amount for the month January 2024, the respondent Bank had refused to receive the same. This stand taken by the petitioner cannot be accepted for the simple reason that when the petitioner had challenged the sale notice and also a conditional order was passed by the Tribunal, either the petitioner should have complied with the conditional payment, as directed, or the petitioner should have approached the Tribunal for modification of the order, if there had been any subsequent developments. Failing to do either of the same, the petitioner is only now trying to find out reasons for not complying with the conditional order passed by the Tribunal.

14.It is the vehement contention of the learned Counsel for the petitioner that the respondent Bank had taken collusive proceedings and have not disclosed the name of the auction purchaser and since the fraud has been committed, the petitioner is entitled to maintain a Writ Petition before this Court. This argument cannot be accepted and is rejected for the reason that, in fact, the petitioner had arrayed the auction purchaser, as third respondent in the Writ Petition and has also made allegations against the third respondent that the property has been purchased collusively. When the auction purchaser has been arrayed as third respondent in this Writ Petition, the submission of the learned Counsel for the petitioner that the details of the auction purchaser has not been disclosed by the respondent Bank and therefore, the petitioner is not able to approach the Tribunal is unsustainable and unjustified.

15.Further, when the petitioner had already filed S.A.No.562 of 2023 challenging the sale notice issued by the respondent Bank and the Tribunal had also entertained the appeal and a conditional interim order also has been passed, it is open to the petitioner to canvas all her grievances and establish before the Tribunal, as to how the sale proceedings initiated by the Bank is irregular or not lawful. The petitioner cannot take parallel proceeding in respect of the sale conducted through the sale notice, dated 05.10.2023, which is the subject matter of challenge before the Debts Recovery Tribunal, Maduari, in S.A.No.562 of 2023 and also before this Court.

16.Further, from the impugned communication, dated 04.03.2024, it could be seen that the property has been sold for a sum of Rs.70,10,000/- and after adjusting the dues towards the loan account, the balance sum of Rs.15,32,675/- had been credited to the account of the petitioner and it was put on hold and the same shall be removed simply on the request of the petitioner. The relevant portion of the impugned communication, dated 04.03.2024, is extracted hereunder:

> *"That following upon the recovery proceedings according to the orders in S.A.No.562/2023 & 563/2023, the sale was confirmed as you have not complied the direction accordingly and the bid amount of the sale the sum of Rs. 70,10,000/- was adjusted to both the loan accounts and the accounts were closed.*
> *The details of adjustment is as follows:*

Bid amount	*Rs.70,10,000/-*
1% TDS	*Rs.70,100/-*

Balance Amount	*Rs.69,39,900/-*
Delayed Period of Interest by the bidder	*Rs.57,500/-*
Final amount with including Delayed period interest	*Rs.69,97,400/-*
IBHL A/c Pandiyaraju-6344020364	*Rs.25,86,957/-*
IBHL A/c Kavitha 6344017715	*Rs.23,73,268/-*
Balance amount After Loan Clousre	*Rs.20,37,175/-*
MLE/MOI/Present and Future Law Charges	*Rs.1,25,000/-*
Recovery Agent Commission	*Rs.3,79,500/-*
Balance Amount after all exp/ra commission	*Rs.15,32,675/-*
Refund to the borrower joint account – A/c617400316	*Rs.15,32,675/-*

As such your loan account has been closed by adjusting the outstanding loan amount out of the bid amount and the remaining amount of the bid amount, after dedicating the expenditure etc., the refundable amount of Rs.15,32,675/- is remitted to your SB6174000316-Joint Account. A/c.Pandiaraju and A/c.Kavitha

As of now there is hold of Rs.15,32,675/- and the hold shall be removed upon your request."

17.As admittedly, the auction proceedings undertaken through the sale notice, dated 05.10.2023 is the subject matter of challenge in S.A.No.562 of 2023, which is pending before the Debts Recovery Tribunal, Madurai, it is for the petitioner to agitate her grievance in the pending proceedings before the Debts Recovery Tribunal, Madurai. As far as the impugned communication, dated 04.03.2024, is concerned, it is only an intimation by the respondent Bank for having credited the balance amount available after deducting the dues payable to the Bank, which has also been credited to the joint bank account of the petitioner. The Writ Petition filed by the petitioner by challenging this communication is totally misconceived and not sustainable.

18.In view of the above, the Writ Petition is deserved to be rejected and accordingly, dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

[R.S.K., J] & [G.A.M., J]
08.07.2024

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

cmr

R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

cmr

Order made in
W.P(MD)No.14841 of 2024

08.07.2024