BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2025

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

W.P.(MD).No.5435 of 2025

UPS Traders,
Represented by its Proprietor P.Subramanian,
2A, Arasarai 2nd Street,
Cheranmahadevi – 627414,
Tirunelveli District. ... Petitioner

Vs.

Bank of Maharashtra,
Represented by its Authorised Officer,
Zonal Office, New No.25 & 27, Old No.43,
Akshaya Shanti,
Annasalai, Chennai – 600 002. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus, directing the respondent to refund the auction bid amount of Rs.52,27,500/- paid by the petitioner within the time frame stipulated by this Court.

For Petitioner	:	Mr.T.Lajapathi Roy Senior Counsel for Mr.Rajesh for M/s.Roy and Roy Associates
For Respondent	:	Mr.N.Dilip Kumar Standing Counsel

ORDER

(Order of the Court was made by S.M.SUBRAMANIAM, J.)

The *lis* on hand has been instituted seeking a direction to the respondent to refund the auction bid amount of Rs.52,27,500/- paid by the petitioner.

2. An e-auction sale notice was issued by the respondent Bank for sale of immovable properties mortgaged with reference to the loan availed by M/s.Satyam Educational Trust, Aralvaimozhi under the SARFAESI Act and Rules. The e-auction sale was held on 06.09.2024. The petitioner was a successful bidder in respect of item 2 of the property described in the e-auction notice. Subsequently, the petitioner has paid a sum of Rs.52,27,500/- including the Earnest Money Deposit. During the interregnum period, on verification, the petitioner found that there are encumbrances in respect of the subject property and has taken a decision not to proceed with the sale. They expressed their willingness to cancel the sale proceedings and made a request to refund the amount deposited. The Bank refused, which resulted in filing of the present Writ Petition.

3. The learned Senior Counsel, Mr.T.Lajapathi Roy assisted by Mr.Rajesh for the petitioner would submit that the issue may not strictly fall under the

provisions of the SARFAESI Act. Therefore, the Writ Petition is maintainable. That apart, after depositing a sum of Rs.52,27,500/-, the petitioner found that the encumbrances may cause infringement of their right to possess and enjoy the property and has taken a decision not to proceed with the sale. Their willingness was expressed to the Bank in writing, who in turn rejected and directed the petitioner to pay the balance amount for completion of sale.

4. The learned Senior Counsel for the petitioner drew the attention of this Court with reference to the Security Interest (Enforcement) Rules to establish that a borrower on part payment of sale amount is not eligible to approach the Debts Recovery Tribunal and therefore, the present Writ Petition must be entertained and issues ought to be decided on merits.

5. Mr.N.Dilip Kumar, learned Standing Counsel for the respondent Bank would oppose by stating that the transaction squarely falls under the ambit of the SARFAESI Act and Rules. Admittedly, it is an e-auction sale conducted under the SARFAESI Act and Rules. Part amount has been paid by the petitioner and the Bank demanded the petitioner to pay the balance amount to complete the sale and to issue sale certificate. Mr.Dilip Kumar would contend that Earnest Money Deposit was paid on 06.09.2024 and 25% of the bid

amount was paid on 09.09.2024. Thereafter, the petitioner states that they came to know about the encumbrances on 10.09.2024. However, further payment of Rs.8,71,250/- was made on 19.09.2024. That being the factum, the reason stated is not genuine and therefore, the present Writ Petition has to be rejected.

6. Regarding the maintainability of the Writ Petition, it is relevant to look into the scope of Section 17 of the SARFAESI Act. Sub-section (1) to Section 17 enumerates that,

> "*any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken*".

7. Sub-section (3) to Section 17 reads as under:

> *"(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the*

management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,-

(a)declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b)restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c)pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13."

Sub-section (3) in unambiguous terms stipulates that any other aggrieved person also is entitled to approach the Debts Recovery Tribunal for redressal of grievances. Clause (c) to Sub-section (3) to Section 17 further elaborates that the Tribunal shall pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under Sub-section (4) of Section 13.

8. A holistic reading of Section 17 as a whole would indicate that a successful bidder in e-auction sale is also entitled to approach the Debts Recovery Tribunal for redressal of grievances, if any exist.

9. The said position has been reiterated by the Hon'ble Apex Court in the case of ***Agarwal Tracom Private Limited Vs. Punjab National Bank and others*** reported in ***(2018) 1 SCC 626*** and the Court held as follows:

> *"28. We also notice that Rule 9(5) confers express power on the secured creditor to forfeit the deposit made by the auction-purchaser in case the auction-purchaser commits any default in paying instalment of sale money to the secured creditor. Such action taken by the secured creditor is, in our opinion, a part of the measures specified in Section 13(4) and, therefore, it is regarded as a measure taken under Section 13(4) read with Rule 9(5). In our view, the measures taken under Section 13(4) commence with any of the action taken in clauses (a) to (d) and end with measures specified in Rule 9."*

10. Plain reading of Section 17 itself reveals that an aggrieved person, who participated in e-auction sale and paid part amount, is also entitled to redress his/her grievances under the provisions of the SARFAESI Act and Rules in view of the fact that the e-auction sale itself has been conducted under the provisions of the SARFAESI Act and Rules.

11. Thus, this Court has no doubt that the petitioner is entitled to

approach the Debts Recovery Tribunal, if any grievance exists.

12. No Writ under Article 226 of the Constitution of India is maintainable, if an efficacious alternate remedy is contemplated under the special enactments. The Debts Recovery Tribunal is a body constituted specially to adjudicate the issues under the SARFAESI Act and therefore, the factual findings of the Tribunal would be of greater assistance for the purpose of resolving the issues in a better manner. High Court cannot adjudicate the disputed facts relating to contractual obligations. This exactly is the reason why the constitutional Courts have time and again reiterated that exhausting the alternate remedy is of paramount importance for the purpose of settling the dispute between the parties. If any attempt has been made by Writ Court to resolve such disputes, there is a likelihood of miscarriage of justice or causing prejudice to either of the parties and that being the settled legal principles, this Court is of the considered view that the matter is to be relegated to the Debts Recovery Tribunal for the purpose of effective adjudication.

13. The learned Senior Counsel for the petitioner raised a concern that in the event of approaching the Tribunal, the application may be rejected on the ground of limitation.

14. In this regard, it is needless to state that the period during which the Writ Petition was pending before this Court is to be taken into consideration for the purpose of condoning the delay. In respect of any previous delay, the petitioner is at liberty to file an appropriate affidavit assigning reasons, which may be considered on merits and in accordance with law.

15. With the above observations, the Writ Petition stands dismissed. There shall be no order as to costs.

(S.M.S.,J.) (A.D.M.C.,J.)
06.06.2025

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

To
The Authorised Officer,
Bank of Maharashtra,
Zonal Office, New No.25 & 27, Old No.43,
Akshaya Shanti,
Annasalai, Chennai – 600 002.

S.M.SUBRAMANIAM,J.
and
DR.A.D.MARIA CLETE,J.

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