11. SA 422/2023 23.06.2023

Ld. Counsel Ms. Suganya representing Ld. Counsel Mr. K.K. Merrish is appearing for Applicant.
Ld. Counsel Mr. Devaraj is appearing for Respondent Bank (R-1).
There is no representation for R-2.

Emergent Petition in IA No.2269/2023 : This petition is allowed.

Stay Petition in IA No.2270/2023 :

Ld. Counsel for Applicant submitted that the SA is challenging the E Auction Sale Notice dated 07.6.2023, issued by the Respondent Bank and the sale fixed on 26.06.2023, in respect of SA schedule mentioned Property.

Ld. Counsel for the Applicant further submitted that the Applicant in order to meet some of the financial commitments/expenses for her family stood guarantor to the financial facilities availed by one M/s. Uno Traders, the principal Borrower/R-2 herein, and who had approached the 1st Respondent Bank for availing financial assistance for the development of R2 business and availed a loan for a sum of Rs.20.00 lakhs by mortgaging the scheduled mentioned property of the Applicant, in favour of the Respondent Bank. Initially, the Applicant / Principal borrower (R-2) were regular in repayment of EMIs. But, due to adverse marketing conditions and domestic reasons, and further, due to sudden advent of Covid-19 Pandemic and the consequent lockdowns, the R-2 business came to a standstill. the business suffered heavy loss, the Proprietorship concern / Applicant was not able to generate sufficient funds to repay the loan amount and consequently, default took place and the loan account was classified as 'NPA'. Hence, the Respondents Bank had initiated action under the SARFAESI Act and issued the Demand Notice(s) under S.13(2) of the SARFAESI Act, dated 04.10.2021, for a sum of Rs.21,71,701.00 and followed by the issuance of Possession Notice dated 08.11.2022, without following the guidelines issued by the RBI and procedures under the SARFAESI Act and finally, the Respondent Bank has issued the Sale

Notice dated 07.6.2023 and bringing the mortgaged property for sale, and sale fixed on 26.6.2023, which is challenged in the SA.

The Ld. Counsel for Applicant further submitted that the Applicant has earlier challenged the Possession Notice dated 08.11.2022, issued by the Respondent Bank in SA No.1147/2022, which is pending before this Hon'ble Tribunal and wherein, an Interim Order granted by order dated 22.02.2023, an interim stay came to be in force on condition to deposit a sum of Rs.06.00 lakhs in two installments. However, the said conditional order could not be complied with by the Applicant, except for a sum of Rs.1.00 lakh, due severe financial constraints and other domestic reasons. The Ld. Counsel for the Applicant further submitted that the Respondent Bank had not followed the guidelines of RBI and procedures under the SARFAESI Act. While being so, the Respondent Bank has issued the present sale notice, which is being challenged in the present SA.

The Ld. Counsel for the Applicant further submitted that the mortgaged properties consists of land and house plots with RCC building, and the Respondent Bank has grossly undervalued and fixing a very low reserve price @Rs.31.77 lakhs. The Applicant is under the threat of dispossession of the schedule mentioned mortgaged property. The Applicant is required to safeguard the land and House Building property and if the secured property is sold by the Respondents Bank, it shall be highly prejudice and cause hardship and loss to the Applicant. However, if a certain period of time is granted, the Applicant shall settle the entire loan account itself. Hence, the prayer of the Applicant may be considered favourably by this Hon'ble Tribunal.

Ld. Counsel for the Respondent Bank submitted that the Bank has to recover a sum of Rs. 21,71,701.00 03.10.2021, from the Applicant and this is the second SA filed by the Applicant and 1st Sale Notice issued by the Bank. The Bank has to recover the dues from the Applicant and since the earlier conditional order granted by this Hon'ble Tribunal, in SA 1147/2022, while granting an interim order against the Possession Notice, was also not complied by the Applicant, the Respondent Bank has issued the present sale notice and the Applicant being the guarantor to the loan facilities availed by R-2 firm, is equally liable to repay the dues of the Bank and thus, the Applicant has no bona fides in praying / seeking for an interim stay at this stage. There is no violation of the rules and guidelines of RBI and procedures contemplated under the SARFAESI Act. Hence, if any interim order granted, it shall prejudice the right of the Respondent Bank in recovering its dues. However, if any interim order is granted a substantial amount, not less than 50% of the outstanding dues as claimed in the sale notice, may be imposed as a pre-condition by this Hon'ble Tribunal.

This Tribunal on considering the rival submissions of the parties and without going into the merits of the case at present, and the previous conditional order granted by this Tribunal, is of the view that the Applicant needs to be given a chance to prove her bonafide and merits of the submission. Hence, this Tribunal is hereby ordered the Applicant to deposit a sum of Rs.06.00 lakhs to the Respondent Bank, out of which a sum of Rs.3.00 lakhs shall be paid, on or before 21.7.2023 and another sum of Rs.3.00 lakhs shall be paid on or before 18.8.2023 to the Respondent Bank. The Respondent Bank on receiving the sum as ordered by this Tribunal shall not confirm the sale, if any, held, on the schedule date of auction. If the Applicant is failed to deposit any part of the sum as ordered by this Tribunal, the Respondent Bank shall be at its liberty to confirm the auction sale if any, held on the schedule date of auction without any further reference to this Tribunal.

The case is adjourned to 24.7.2023. Call on 24.7.2023.

PO