

IN THE HIGH COURT OF ANDHRA PRADESH

W.P. No. 2479 of 2020**Between:**

Maruthi Cotton Mills Private Limited,
Represented by its Managing Director Patchala
Srinivasa Rao, having its registered office at Guntur
And another

.... Petitioners

and

Canara Bank, represented by its Authorised Officer
Chief Manager, Vizianagaram Main Branch,
Vizianagaram Andhra Pradesh

.... Respondents

Date of Judgment pronounced on : 29.03.2022

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR**AND****HON'BLE SMT JUSTICE V. SUJATHA**

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
of the Judgment?

*** HON'BLE SRI JUSTICE C.PRAVEEN KUMAR**

AND

HON'BLE SMT JUSTICE V. SUJATHA

+ W.P. No. 2479 of 2022

% 29.03.2022

Maruthi Cotton Mills Private Limited,
Represented by its Managing Director Patchala
Srinivasa Rao, having its registered office at Guntur
And another

... PETITIONER

Vs.

\$ Canara Bank, represented by its Authorised Officer
Chief Manager, Vizianagaram Main Branch,
Vizianagaram Andhra Pradesh

... RESPONDENTS

! Counsel for the Petitioner: SRI T. LAKSHMINARAYANA

Counsel for the Respondents: SRI BACHINA HANUMANTHA RAO

<Gist:

>Head Note:

? Cases referred:

1) 2014 (5) SCC 610

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE SMT. JUSTICE V. SUJATHA
WRIT PETITION NO. 2479 of 2022

ORDER: *(Per Hon'ble Sri Justice C.Praveen Kumar)*

1) Challenging the Sale Notice, dated 18.11.2021, published in Hindu English Newspaper on 21.11.2021 without taking recourse to Rule 8 of Security Interest (Enforcement) Rules, 2002, [**Rules 2002**], the present Writ Petition is filed.

2) The facts, which lead to filing of the present petition, are as under:

- (i) The second Petitioner herein is the Managing Director of the 1st Petitioner Company. The Respondent Bank sanctioned a term loan of Rs.3,00,00,000/- and also working capital limit upto Rs.3,00,00,000/- on 07.12.2015 under two loan accounts numbers, which are 0644766000002 and 0644261000543. The loan was to be repaid within 28 quarterly instalments starting from April 2017. The immovable properties of the 1st Petitioner Company, namely, plant and machinery; agricultural land to an extent of Ac.1.10 cents situated near JOCIL Company, abutting to Guntur to Narsaraopet State Highway and also a residential house standing in the name of the 2nd Petitioner.

- (ii) As the Petitioners committed default in payment of loan amount, their accounts were declared as 'Non Performing Assets' on 17.10.2017. Thereafter, a notice under Section 13 (2) came to be issued on 31.10.2017 under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, [**SARFAESI Act**], in which the total debt was shown as Rs.6,10,15,997.75 paise.
- (iii) The Bank published the Sale Notice on 12.09.2018 for sale of the mortgaged properties. Since, the Sale Notice came to be issued without following the provisions of law; S.A. No. 362 of 2018 came to be filed before the Debts Recovery Tribunal at Visakhapatnam on 27.09.2018. After hearing both sides, the Sale Notice was set-aside by the Debts Recovery Tribunal, on 21.12.2021. Prior to setting aside the Sale Notice by the Tribunal, the Respondent Bank published the impugned Sale Notice, dated 18.11.2021, in Hindu English Newspaper on 21.11.2021, without awaiting the result in S.A. No. 362 of 2018. This notice is now sought to be challenged on various grounds, namely, that in view of the order passed by the Tribunal, the entire process has to be commenced afresh including a notice under Section 13(2).

- (iv) It is further urged that, once an order is passed by the Tribunal, the principle of doctrine of merger steps in and the consequential steps taken by the Respondent Bank till 21.12.2021 have to be declared as null and void. In other words, the argument of Sri. Ashok, learned Counsel appearing on behalf of Sri. T. Lakshmi Narayana, Advocate appearing for the Petitioners, would be that entire process has to be started afresh by following the procedure contemplated under Section 13(4) read with Rule 8 of the Rules.
- 3) On the other hand, Sri. Bachina Hanumantha Rao, Counsel appearing for the Respondent Bank, opposed the same. He would submit that the Writ Petition is not maintainable since the successful bidders are not made parties. He further submits that already the plant and machinery are sold and, as such, the proper remedy for the Petitioners would have been to approach the Debts Recovery Tribunal, once again.
- 4) (i) The averments in the Counter would show that, pursuant to the default committed, a notice under Section 13(2) was issued and after a lapse of sixty days from the date of service of notice, the Respondent Bank took possession of the secured asset and served Possession Notice on 24.10.2018 as required under Section 13(4) of the SARFAESI Act, which was acknowledged by the Petitioners. Since, there was no response from the Petitioners with regard to payment of any amount;

Possession Notice was issued on 24.10.2018 by publishing the same in English vernacular language Newspapers on 31.10.2018 and also affixing the same at a conspicuous place as required under Rule 8(1) and 8(2) of Rules 2002. It is further stated that, a Notice under Rule 8 (6) of the Rules was issued on 27.08.2018, which was also served and acknowledged by the Petitioners. The Sale Notice dated 27.08.2018 was published in two newspapers on 13.09.2018. Thus, complying with the provisions of law.

(ii) It is stated in the counter that, pursuant to 1st Sale Notice, dated 12.09.2018, the date of auction was fixed on 15.10.2018. The auction scheduled to be held on 15.10.2018 did not materialize fully for want of bidders, because of which, the Respondent Bank has conducted auction on more than 14 occasions starting from 30.11.2018 and 31.01.2022. All the auctions failed due to lack of bidders. Hence, it is urged that the order of the Tribunal does not come in the way of the Respondent Bank, as the proceedings before the Tribunal relate to a different sale notice.

(iii) It is further stated that, finally on 27.12.2021, the auction took place for two securities [plant & machinery and vacant plot at Guntur] in favour of M/s. Srivatsa Biotech India Private Limited and Mr. Srinivasa Aditya Akella, who were turned as successful bidders for an amount of Rs.98,10,000/- and Rs.75,99,000/-, respectively. Thereafter, Sale Certificate, dated 11.01.2022, came to be issued in favour of M/s. Srivatsa

Biotech India Private Limited. Having regard to the above, it is said that, auction purchasers would be necessary parties to the property in dispute.

(iv) It is further stated that the physical possession of the plant and machinery was handed over to the Respondent Bank by the Petitioners themselves as the factory was not in operation for a long time and no workmen is present at the time of eviction. For all the above circumstances and the averments in the counter are supported by material documents, pleads that there are no merits in the Writ Petition and the same is liable to be dismissed.

5) The short point that arises for consideration is, *whether the Sale Notice, dated 18.11.2021, which was published in Newspapers on 21.11.2021 is violative of the provisions of the SARFAESI Act and the Rules made thereunder?*

6) Before dealing with the issue involved, we intend to go through the relevant provisions of the SARFAESI Act and the Rules made there-under to find out the procedure that is required to be followed before putting any property to auction by the secured creditor.

7) Section 13 of the SARFAESI Act, deals with "*Enforcement of Security Interest*".

(i) Sub-section (1) postulates that, notwithstanding anything contained in Section 69 or Section 69A of

the Transfer of Property Act, 1882, any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this SARFAESI Act.

- (ii) Section 13 (2) deals with issuance of notice to the borrower who had made default in repayment of secured debt or any instalment thereof and in respect of such debt been classified by the secured creditor as on- performing asset. The notice shall be issued in writing by the secured creditor, requiring the borrower to discharge his full liability to the secured creditor within 60 days from the notice, failing which the secured creditor shall exercise all or any of the rights under sub-section (4). Section 13(2) speaks about certain exceptions.
- (iii) On receipt of such notice under Sub-section (2), the borrower if makes any representation or raises any objection, the secured creditor shall consider such representation or objection. If the secured creditor is not in acceptance of the explanation given, he shall communicate within 15 days of receipt of such representation or objection the reasons for non-acceptance of the objection or representation. This procedure referred to above is contemplated

under Section 13 (3A). It is also to be noted here that, notice under Section 13(2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower

- (iv) In case the borrower fails to discharge his liability in full, then sub-section (4) comes into play, wherein, the secured creditor may take recourse to one or more of the measures mentioned therein to recover his secured debt including to take over possession of the secured asset by way of lease, assignment or sale for realising the secured debt.
- (v) Section 13(8) postulate that, where the amount of dues of secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty, the said secured asset shall not be transferred by way of any lease, assignment or sale by the secured creditor.
- (vi) Rule 4 of the Rules lays down the procedure to be followed after issuing notice under Sub-section (2) of

Section 13 i.e., when the amount mentioned in the demand notice is not paid within the specified time. It states that, in such situation, the Authorised Officer shall proceed to realise the amount by adopting any one or more of the measures specified in Sub-section (4) of Section 13 of the SARFAESI Act.

- (vii) Rule 5 deals with the situation where after taking possession under sub-rule (1) of Rule 4 and in any case before sale, the Authorised Officer shall obtain the estimated value of the movable secured assets and thereafter in consultation with the secured creditor, fix the reserve price of the assets to be sold in realisation of the dues of the secured creditor.
- (viii) Rule 6 prescribes the mode in which the property which is taken possession under sub-rule 1 of Rule 4 is to be sold.
- (ix) Rule 7 postulates that where movable secured assets is sold, sale price of each lot is to be paid as per the terms of the public notice or on the terms settled between the parties and on payment of sale price, the authorised officer shall issue a certificate of sale in the prescribed form specifying the movable secured assets sold, price paid and the name of the purchaser. Thereafter, only the sale shall become

absolute. Rule 7 (2) categorically states that the “certificate of sale” so issued shall be *prima facie* evidence of title of the purchaser.

- (x) Rule 8 deals with “Sale of Immovable Secured Assets”. What is relevant here is, sub-rule 6 of Rule 8 which states that, the authorised officer shall serve to the borrower a notice of thirty days for sale of immovable secured assets, under sub-rule (5). As per the proviso, if the sale is by public auction, the secured creditor shall cause a public notice in the prescribed form to be published in two leading newspapers, one in vernacular language having sufficient circulation in the locality by setting out the terms of the sale. Such notice is also required to be affixed at a conspicuous part of the immovable property as per sub-rule 7.

- (xi) Sub-rule 1 of Rule 9 stipulates that, no sale of immovable property under these Rules, in first instance shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served on the borrower. If the sale of immovable property under Rule 8 (5) fails and sale is required to be conducted again, the authorized officer shall

serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale.

8) From a reading of the above Rules, more particularly, Rule 8 (5) and (6) and Rule (1), it follows that, thirty days of sale is required to be given by the Authorized Officer and no sale can take place before the expiry of thirty days, in the first place. If for some reason, the sale does not get materialize, in the first instance, for subsequent sale, the notice period shall not be less than fifteen days.

9) In ***Mathew Varghese v. M. Amritha Kumar And Others***¹, the Hon'ble Supreme Court had a occasion to analyze the provisions of the SARFAESI Act and the Rules made there-under. In paragraph Nos. 30 and 31 of the Judgment, the Court held as under:

“30. Therefore, by virtue of the stipulations contained under the provisions of the SARFAESI Act, in particular, Section 13(8), any sale or transfer of a secured asset, cannot take place without duly informing the borrower of the time and date of such sale or transfer in order to enable the borrower to tender the dues of the secured creditor with all costs, charges and expenses and any such sale or transfer effected without complying with the said statutory requirement would be a constitutional violation and nullify the ultimate sale.

31. Once the said legal position is ascertained, the statutory prescription contained in Rules 8 and 9 have also got to be examined as the said Rules prescribe as to the procedure to be followed by a secured creditor while

¹ 2014 (5) SCC 610

resorting to a sale after the issuance of the proceedings under Sections 13(1) to (4) of the SARFAESI Act. Under Rule 9(1), it is prescribed that no sale of an immovable property under the Rules should take place before the expiry of 30 days from the date on which the public notice of sale is published in the newspapers as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served to the borrower. Sub-rule (6) of Rule 8 again states that the authorised officer should serve to the borrower a notice of 30 days for the sale of the immovable secured assets. Reading sub-rule (6) of Rule 8 and sub-rule (1) of Rule 9 together, the service of individual notice to the borrower, specifying clear 30 days' time-gap for effecting any sale of immovable secured asset is a statutory mandate. It is also stipulated that no sale should be affected before the expiry of 30 days from the date on which the public notice of sale is published in the newspapers. Therefore, the requirement under Rule 8(6) and Rule 9(1) contemplates a clear 30 days' individual notice to the borrower and also a public notice by way of publication in the newspapers. In other words, while the publication in newspaper should provide for 30 days' clear notice, since Rule 9(1) also states that such notice of sale is to be in accordance with the proviso to sub-rule (6) of Rule 8, 30 days' clear notice to the borrower should also be ensured as stipulated under Rule 8(6) as well. Therefore, the use of the expression "or" in Rule 9(1) should be read as "and" as that alone would be in consonance with Section 13(8) of the SARFAESI Act."

10) Further, the Hon'ble Supreme court in paragraph Nos. 33.1 and 33.2 observed that Rule 8 and Rule 9 of the SARFAESI Act, have got a twin objective to be achieved, held as under:

"33.1 In the first place, as already stated by us, by virtue of the stipulation contained in Section 13(8) read along with Rules 8(6) and 9(1), the owner/borrower

should have clear notice of 30 days before the date and time when the sale or transfer of the secured asset would be made, as that alone would enable the owner/borrower to take all efforts to retain his or her ownership by tendering the dues of the secured creditor before that date and time.

33.2. Secondly, when such a secured asset of an immovable property is brought for sale, the intending purchasers should know the nature of the property, the extent of liability pertaining to the said property, any other encumbrances pertaining to the said property, the minimum price below which one cannot make a bid and the total liability of the borrower to the secured creditor. Since, the proviso to sub-rule (6) also mentions that any other material aspect should also be made known when effecting the publication, it would only mean that the intending purchaser should have entire details about the property brought for sale in order to rule out any possibility of the bidders later on to express ignorance about the factors connected with the asset in question.”

11) Therefore, from the judgment of the Hon'ble Supreme Court it is very clear that, a clear thirty days time is required to be give for effecting the sale of any immovable secured asset and the right of redemption would be available to the borrower till the date of time of auction sale. In case, if the auction, at the first stance fails, then under the proviso to Rule 9, the authorised officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale, meaning thereby that in-stead of thirty days notice as required under 8(6) for sale of immovable secured asset under sub-rule 5, fifteen days time is sufficient to the borrower for the subsequent sale.

12) Keeping in the procedure that is mandated in the SARFAESI Act and the Rules made there-under, we shall now proceed to deal with the case on hand.

13) As per the averments in the counter filed by the Respondent Bank, it appears that there were two sale notices. The first one on 12.09.2018 and the second one on 18.11.2021. The first notice, dated 12.09.2018, was challenged before Debts Recovery Tribunal [**D.R.T.**] in S.A. No. 362 of 2018, which was allowed on the ground that no material has been placed to show that notices under Section 8(6) were published in a local newspaper of vernacular language. The said order was passed on 21.12.2021. But, as said earlier, prior to the order of the Tribunal another e-auction sale notice, dated 18.11.2021, was issued fixing the e-auction on 27.12.2021. This notice is challenged in the present Writ Petition.

14) If there is only one sale notice, dated 12.09.2018, and when the same is set-aside, for want of compliance of mandatory requirement, the Bank could not have proceeded with the auction. If there are two different sale notices, as pleaded now, then the Bank could have proceeded with the auction, provided other mandatory requirements under the Act are followed. The counter filed is silent on this aspect. Except stating that the two e-auction sale notices are different and that two of the properties in Auction Sale notices are auctioned and Sale Certificate was also issued, there is no reference to compliance of Section 13 (2),

Section 13(4) of the Act and Rule 8 (6) and 9 of the Rules in the affidavit. The counter further states that Sale Notice, dated 12.09.2018, was published in two newspapers and one of which was in vernacular language newspaper, but could not be filed before the D.R.T.

15) At this stage, it would be appropriate to refer to two Auction Sale notices, dated 12.09.2018 and 18.11.2021.

Auction Sale Notice dated
12.09.2018

1. Property No -1: Zeroyathi Dry Land for an extent of Ac.0.58 cents in Survey No. 172-4 Ac.0.26 cents in Survey No.172-5 and Ac 0.63 cents in Survey No. 172-6 with a total extent of Ac. 1.47 cents (0.588 Hec.) with a single plot situated at Garrajucheepurupalli of Garrajucheepurupalli Panchayat Rajam Mandal, Srikakulam District. Bounded: North Zeroyathi Dry Land of Pannada Suryanarayana Nemmadi Chandrakala and others, South: Zeroyathi Dry Land of Chelikam Subhadra Saibu and etc., East: Zeroyathi Dry Land of Dharmana Suseela and Road, West: Zeroyathi Dry Land of Dharmana Leelavathi.
2. *Property No -2: An extent of 70-2 ½ sq. yards of site and a house therein bearing D. No. 5-72-75/1, situated at T.S. No. 20/2,19,18/1, Guntur District, Guntur Sub-District, Guntur Municipal Corporation Guntur City, Pandaripuram 1st Line. Bounded: North: Bachepalli Rama Rao – 21.2 ft. South: Joint Galli-21ft. East: Gumma Rama Kotamma – 30ft out of which an extent of 25-1/2 of site and 4-1/2 joint galli, West: Anil Kumar Compound Wall*

Auction Sale Notice dated
18.11.2021

1. **Property No. 1:** The Part and parcel of Factory Land admeasuring 1.47 acres along with industrial building situated at S. No. 172/4, 172/5 and 172/6 of Garrajucheepurupalle Panchayat, Rajam Mandal, Srikakulam District, Andhra Pradesh, standing in the name of Maruthi Cotton Mills Private Limited. Bounded: On the north by: Dry Land belongs to Ponanda Suryanarayana, Nemmadi Chandrakala etc., On the south by: Dry Land belongs to “Chelikani Subhadra, Sai Babu etc. On the east by: Dry land belongs to Dharmana Suseela and Road, On the west by: Dry Land belongs to Dharmana Leelavathi.
2. **Property No. 2:** *Plant and Machinery related to Cotton Ginning situated at Garraju Cheepurupalli Village & Panchayat, Rajam Mandal, Srikakulam District.*

30ft out of which 25-1/2 site 1-1/2 Joint galli.

3. Property No -3: An extent of Ac1.10 cents of site, situated at Door No. 308/D of Ameenabad Guntur District Narasaraopet Registration district, Phirangipuram Sub-district Ameenabad Gram Panchayat, Ameenabad Village, Bounded: North: Land of Bathula Ramachandraiah, South: Guntur to Narasaraopet Road, East: Land of Yejendla Tirupataiah, West: Land of Gopavaram Brahmanandam.
3. **Property No. 3:** The part and parcel of vacant site admeasuring 1.10 cents (5324 sq. yards – 1475 sq. yards deducted for internal road = 3849 sq. yards) situated at Door No. 308/D, Near JOCIL Company, abutting Guntur to Narasaraopet State Highway, Ameenabad Village Panchayat, Phirangipuram Mandal, Guntur District standing in the name of Sri Patchala Srinivasa Rao. Bounded: One the north by: Land of Bathula Ramachandraiah, On the south by: Guntur to Narasaraopet Road, On the east by: Land of Yejendla Tirupataiah, On the west by: Land of Gopavaram Brahmanandam.

16) A comparison of the same would show that in both the Auction Sale Notices, three properties were put to auction. Two of the three properties are only common. In the first notice, dated 12.09.2018, there is a reference to a property situated in T.S. No. 20/2,19,18/1, admeasuring 70-2 ½ square yards and a house bearing Door No. 5-72-75/1, but same is not put to auction vide Auction Sale Notice, dated 18.11.2021. Instead, Plant and Machinery relating to Cotton Gunning situated at Garrajuchipurupalle Village is put to auction. That being the position, the Bank authorities ought to have followed the procedure as contemplated under the Act. They could not have put to auction properties which were not part of Section 13(2) notice. On the other hand, the E-auction details filed along with

counter (in the form of a table) would show that Sale Notice, dated 18.11.2021, is in continuation of earlier Sale Notice, meaning thereby that as earlier auction failed to materialize for want of bidders, another Auction Sale Notice came to be issued. For instance, as the auction on 20.09.2021 pursuant to Auction Sale Notice, dated 10.08.2021, did not materialize, the impugned Auction Sale Notice, dated 18.11.2021, was issued. Further, the properties are put to auction and Sale Certificate was issued in favour of auction purchasers, who are not made parties in this Writ Petition.

17) The Act, as stated above, clearly postulates that if sale notice does not materialize at the first instance, fifteen days time to the borrower is sufficient to give another sale notice. Further, once the auction notice, dated 12.09.2018, has been set-aside for not following the procedure required, the question of holding auction again even without giving fifteen days time as contemplated under the proviso to Rule 9 (1) of the Rules is improper. The argument of the learned counsel for the Petitioner appears to be that subsequent notices nowhere indicate auction being conducted in terms of Rule 9(1) by giving 15 days time. When the subsequent notices do not indicate the procedure as contemplated under proviso to Rule 9(1) being followed, then automatically they have to fall back and start afresh from the stage Rule 13(4). The same is disputed by the Counsel for the Respondent Bank, stating that as the issue before the Tribunal

was different, they could not file all the material and if an opportunity is given, relevant material evidencing compliance of mandatory requirements would be filed before the Tribunal.

18) Having regard to the aforesaid facts and circumstances of the case, it appears that property No.2, which is sought to be put to auction in the first sale notice dated 12.09.2018, was not included in the subsequent sale notice dated 18.11.2021, instead, some other property i.e. plant and machinery relating to Cotton Ginning situated at Garraju Cheepurupalli village and Panchayat, Rajam Mandal, Srikakulam District, was put to auction. Further, as stated earlier, the subsequent sale notice does not anywhere indicate auction being conducted in terms of Rule 9 (1) of the Rules. Further, the fact of issuance of sale notice dated 18.11.2021, though issued even prior to passing of the order by the Tribunal, was not brought to the notice of the Tribunal at the time when the Tribunal passed the order. In such circumstances, since the respondent bank authorities have failed to follow the procedure as contemplated under Rule 9 (1) of the Rules and when a new property is included in the sale notice, then automatically the respondent bank have to follow the procedure under the Act from the stage of Section 13 (2) of the SARFAESI Act. But, the respondent bank, without following such procedure, straight away issued the impugned sale notice dated 18.11.2021 by including a new property, which is illegal, improper and contrary to the mandatory provisions of the

SARFAESI Act. Hence, the sale notice dated 18.11.2021 is liable to be set aside. When once the sale notice dated 18.11.2021 is set aside, the auction proceedings pursuant to the said sale notice becomes null and void.

19) Accordingly, the writ petition is allowed and the sale notice dated 18.11.2021 is set aside. However, the respondent bank is at liberty, if they so desire, to proceed further in accordance with the provisions of the SARFAESI Act. There shall be no order as to costs.

Consequently, the miscellaneous petitions pending, if any, shall stands closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE V. SUJATHA

Date: 29.03.2022.

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THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SMT. JUSTICE V. SUJATHA

WRIT PETITION NO. 2479 of 2022
(Per Hon'ble Sri Justice C.Praveen Kumar)

Date: 29.03.2022

S.M.