

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND

THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P.No.30256 of 2014

and

M.P.No.1 of 2014

N.Chinnadurai

.. Petitioner

Vs.

1.The Registrar,
Debts Recovery Appellate Tribunal,
Ethiraj Salai,
Chennai-2.

2.The Authorised Officer,
Indian Bank Circle Office,
No.4, Bharathi Road,
Cuddalore-607 001.

3.The Senior Manager,
Indian Bank,
South Car Street Branch,
64, South Car Street,
Chidambaram.

4.Mr.Rajarajan

.. Respondents

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari calling for the records pertaining to I.A.No.406 of 2013 in AIR(SA) No.254 of 2011 dated 15.09.2014 on the file of the Debts Recovery Appellate Tribunal, Chennai/the first respondent and quash the same insofar as the condition to deposit Rs.2,66,592/- in the waiver application is concerned.

For Petitioner : Mr.C.K.M.Appaji

For Respondents : Ms.R.Divya for RR2 and 3
Mr.S.Sethuraman for R-4

ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

With the consent of both parties, the writ petition is taken up for final disposal.

2. The petitioner, being aggrieved by an order dated 11.2.2011 passed by the Debts Recovery Tribunal-III, Chennai, in S.A.No.85 of 2010, preferred an appeal under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (For short 'SARFAESI Act') in AIR(SA) No.254 of 2011 before the Debts Recovery Appellate Tribunal, Chennai. Along with the appeal, the petitioner also preferred an application being I.A.No.406 of 2013 to waive the pre-deposit as prescribed under Section 18 of the Act.

3. The contention of the learned counsel for the petitioner before the Tribunal was that under Section 13(2) notice, the total amount due was Rs.5,33,184/-. The secured asset was sold and the money has been realized to satisfy the dues and as such, no pre-deposit is required as a condition precedent for filing an appeal under Section 18 of the Act.

4. The learned Tribunal came to the conclusion that since the petitioner has not paid any amount after the issuance of Section 13 (2) notice, the petitioner cannot take advantage of the amount realized through the sale on the ground that the secured asset, i.e., the property in question, had already been sold. Accordingly, 50% of the total amount to the tune of Rs.2,66,592/- was directed to be deposited on or before 28.11.2014.

5. Heard the learned counsel appearing for the auction purchaser. The learned counsel appearing for the respondents-Bank would submit that under Section 18 of the Act, the appellant is required to deposit 50% of the total amount and there cannot be 100% waiver. However, under third proviso to Section 18(1) of the Act, for the reasons to be recorded in writing, the appellate tribunal can reduce the amount to not less than 25% of the debt referred to in the second proviso.

6. We have examined all the facts of the case. In the case on hand, admittedly, the secured asset has already been sold to satisfy the dues of the bank. In that view of the matter, the Tribunal ought to have considered the case for reduction of deposit amount under third proviso also.

7. For the reasons mentioned herein-above, we set aside the impugned order dated 15.09.2014 and remit back the matter with a direction to the appellate tribunal to reconsider the application filed by the petitioner for waiver of deposit as contemplated under all provisions of Section 18(1) of the SARFAESI Act. The appellate authority, if an application is made for grant of time to make the payment, may also consider the same in accordance with law

8. Accordingly, the writ petition is allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

vvk

To

1.The Registrar,
Debts Recovery Appellate Tribunal,
Ethiraj Salai,
Chennai-2.

2.The Authorised Officer,
Indian Bank Circle Office,
No.4, Bharathi Road,
Cuddalore-607 001.

3.The Senior Manager,
Indian Bank,
South Car Street Branch,
64, South Car Street,
Chidambaram.

1 cc to Mr.C.K.M. Appaji, Advocate, SR. 121

1 cc to Mr. Chandran, & R. Divya, Advocate, SR. 136

W.P.No.30256 of 2014

KS (CO)

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