

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2015

CORAM

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

W.P.Nos.16103 and 20558 of 2014
and
M.P.No.1 of 2014

R.MohanPetitioner in both petitions
Vs.

1. The Debt Recovery Appellate Tribunal,
rep by its Registrar,
Chennai-600 002.
2. State Bank of Hyderabad,
No.175, M.M.Complex,
Arcot Road, Porur,
Chennai-600 116.
3. Best Builders and Consultants,
rep by N.D.Raja
S/o.Late Navaseelan
No.19, Bharathiyar Street,
Thiruvanmiyur, Chennai-600 041. Respondents 1 to 3
in both petitions
4. J.Sam David
(R-4 impleaded as per order
dated 29.10.2014 in M.P.No.2/2014
in W.P.No.16103 of 2014) 4th Respondent in
W.P.No.16103 of 2014

W.P.No.16103 of 2014 is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records relating to the order passed by the Debt Recovery Appellate Tribunal, Chennai in R.A.(S.A.) No.247 of 2010 in S.A.No.189 of 2007 dated 13.5.2014 and quash the same.

W.P.No.20558 of 2014 is preferred under Article 226 of the Constitution of India praying for the issue of a writ of

certiorarified mandamus to call for the records relating to the dismissal order passed by the Debt Recovery Appellate Tribunal at Chennai in I.A.No.377 of 2012 in R.A.(S.A) No.247 of 2010 on 13.05.2014 and quash the same and consequently to allow the petition as prayed for.

For Petitioner : Mr.M.K.Krishnamurthy in both W.Ps.
For Respondents : Mr.S.S.Swaminathan for R-2 in both W.Ps.
Mr.K.Shankar
for Mr.A.L.Namasivayam for RR3 and 4
in W.P.No.16103 of 2014
and for R-3 in W.P.No.20558 of 2014

COMMON ORDER

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

Both writ petitions arise from the order dated 13.5.2014, one passed in R.A.(S.A.) No.247 of 2010 and the second one in I.A.No.377 of 2012 in R.A.(S.A) No.247 of 2010 by the Debt Recovery Appellate Tribunal, the first respondent herein.

2. The petitioner obtained loan to the tune of Rs.5.20 lakhs on 04.10.2004 payable in monthly instalments of Rs.4929/- for 20 years together with interest at the rate of 8.25% p.a. The land with proposed house was mortgaged for the said loan. The petitioner defaulted in making payment of the monthly installments. Thereafter, a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (For short "SARFAESI Act"), was issued on 5.7.2007. Thereagainst, the petitioner sent a reply on 21.7.2007, explaining the reasons for non payment of monthly installments and sought for certain documents. The petitioner did not file any objection under Section 13(3-A) of the SARFAESI Act. A possession notice was issued on 30.10.2007. Being aggrieved, the petitioner preferred a Securitisation Appeal, being S.A.No.189 of 2007 before the Debts Recovery Tribunal-III, Chennai, questioning the possession notice dated 30.10.2007 under Section 13(4) of the SARFAESI Act, 2002 and also seeking a direction to waive the penal interest and excessive interest other than the accepted interest by both parties.

3. The Debt Recovery Tribunal-III by order dated 11.09.2009 dismissed the application, noting the fact that the petitioner was given time more than required to regularise the account by paying the defaulted installments for upgradation of the account to performing asset. The petitioner failed to do so and as such, necessary steps were taken under the provisions of the SARFAESI Act. Thereagainst,

the petitioner came up to this court in W.P.No.23782 of 2009. A division bench of this court by order dated 13.4.2010 disposed of the writ petition, reserving liberty to the petitioner to avail the efficacious alternative remedy of appeal before the Debt Recovery Appellate Tribunal, within a period of two weeks. It was observed that a deposit of Rs.2 lakhs made by the petitioner during the pendency of the writ petition shall abide by the result of the appeal.

4. The Debt Recovery Appellate Tribunal, by the impugned order dated 13.5.2014 considered the issue at length and negatived the argument of the petitioner that there was collusion between the banker and the builder and also that during pendency, the secured asset was put on auction sale. It was held that there is no contravention of any of the provisions of the SARFAESI Act as the petitioner has not questioned the validity of possession notice dated 30.10.2007. Thereagainst, the petitioner has come up with the instant petition being W.P.No.16103 of 2014.

5. The learned counsel appearing for the petitioner would submit that the possession notice deserves to be quashed as from the date of sanction of loan amount, the respondent bank and the builder colluded each other and committed fraud against the petitioner, for which a criminal complaint was lodged against the Manager of the respondent bank. Thereafter, out of malice, the respondent bank had initiated steps under Section 13(2) of the SARFAESI Act and thereafter under Section 13(4). The petitioner is the sufferer of fraud and malpractice perpetrated by the respondent bank and builder and as such, the bank was not entitled to any benefit. It was further contended that the petitioner was made to get the loan fraudulently. Since the loan was given directly to the builder, the petitioner was not liable to discharge the liability. The petitioner could not deposit the money on account of heavy penal interest and also the petitioner was not a chronic defaulter in making payment of monthly installments. Thus, it was urged that the orders passed by the DRAT be set aside and the auction of sale which had taken place on 29.9.2009 by the appellant be also quashed.

6. On the other hand, the learned counsel appearing for the respondent Bank would urge in support of the impugned order rendered by the appellate Tribunal.

7. We have examined the pleadings and documents appended thereto, in the light of the submissions advanced by the learned counsel for the parties.

8. The grounds raised by the petitioner are vague as no material has been produced to substantiate the ground of fraud, misrepresentation or malice. The Tribunal has rightly recorded that the petitioner has failed to prove any fraud, illegality, entitling the petitioner the relief sought for before the Debt Recovery Tribunal as well as Debt Recovery Appellate Tribunal. The case of the petitioner is not that the petitioner has never defaulted in making payment of monthly installments and also there is any procedural error in taking steps under the provisions of the SARFAESI Act.

9. For the reasons mentioned hereinabove, while exercising the supervisory jurisdiction, we do not find any irregularity, illegality or irrationality in the impugned order, warranting interference. Thus, W.P.No.16103 of 2014 is dismissed. No costs. Consequently connected miscellaneous petition is closed.

10. W.P.No.20558 of 2014 arise from the order passed in I.A.No.377 of 2010, which was dismissed as the main appeal in RA(SA) No.247 of 2010 was dismissed on 13.5.2014. Thus, consequently, this W.P.No.20558 of 2014 is also dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vvk

To

1. The Registrar,
The Debt Recovery Appellate Tribunal,
Chennai-600 002.
2. State Bank of Hyderabad,
No.175, M.M.Complex,
Arcot Road, Porur,
Chennai-600 116.

+4cc's to M/s.R.Shankar, Advocate, S.R.No.19960
+2cc's to M/s.A.L.Namasivayam, Advocate, S.R.No.19329
+1cc to M/s.S.S.Swaminathan, Advocate, S.R.No.19336

W.P.Nos.16103 and 20558 of 2014
and M.P.No.1 of 2014

CA(CO)
CA(21/04/2015)