

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2016

CORAM:

THE HON'BLE MR. JUSTICE SATISH K.AGNIHOTRI
and
THE HON'BLE MR. JUSTICE V. BHARATHIDASAN

W.P. No.15809 of 2016 and W.M.P. No.13721 of 2016

State Bank of India
represented by its Authorised Officer
Stressed Assets Management Branch (SAMB)
Red Cross Building
No.32, Montieth Road
Egmore, Chennai 600 008 ... Petitioner

vs.

- 1 The Chairperson
Debts Recovery Appellate Tribunal
Ethiraj Salai
Egmore, Chennai 600 008
- 2 The Presiding Officer
DRT-II, Deva Towers
Anna Salai, Chennai 600 002
- 3 V.A. Palanikumar
- 4 M.F. Rahamath Mushina
- 5 CCS Infotech Ltd.
14 Periyar Road
T. Nagar, Chennai 600 017 Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records and to quash the impugned order dated 30.03.2016 passed in A.I.R. No.149/2016 by the first respondent and consequently, empower the petitioner bank to continue the SARFAESI proceedings.

For petitioner Mr. M.L. Ganesh

ORDER

(delivered by SATISH K.AGNIHOTRI, J.)

This writ petition is filed seeking quashment of the order dated 30 March 2016 passed by the first respondent, viz., the Debts Recovery Appellate Tribunal, Chennai (for brevity "the Appellate Tribunal") in A.I.R. No.149 of 2016 and consequently, to empower the petitioner bank to continue with the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity "the SARFAESI Act").

2.1 The facts, as posited by the petitioner are that the fourth respondent availed loan from the petitioner bank for the purpose of operating the fifth respondent company. Owing to default in repayment of loan, the petitioner bank, initiating proceedings under the SARFAESI Act, issued demand notice under Section 13(2) of the SARFAESI Act on 07 August 2014 and possession notice under Section 13(4), *ibid.*

2.2 When such being the position, the third respondent, with an intent to purchase the property in question, entered into four agreements of sale with the fourth respondent. Subsequently, invoking the arbitration clause in the said sale agreements, the third respondent obtained an award from the Arbitrator to the effect that the fourth respondent shall execute and register the sale deed qua the secured asset.

2.3 While so, the third respondent challenged the act of the petitioner bank in bringing the secured asset for auction, on two occasions, before the Debts Recovery Tribunal-II, Chennai, (for brevity "the Tribunal"), firstly, in S.A. No.45 of 2015 and secondly, in S.A. No.14 of 2015, which were dismissed on 30 April 2015 and 06 October 2015, respectively, on the ground that the sale had not taken place and the prayer of the third respondent had become infructuous.

2.4 When the petitioner bank once again issued sale notice on 03 March 2016, fixing the auction sale on 13 April 2016, the same was put to assail by the third respondent in S.A. No.146 (sic) 46 of 2016 before the Tribunal. In the said S.A., by order dated 23 March 2016, the Tribunal held that interim order cannot be granted. Thereagainst, the third respondent preferred A.I.R. No.149 of 2016 before the Appellate Tribunal, wherein, by order dated 30 March 2016, it was held as under:

"The counsel for appellant present. Notice to respondents issued. Mr. N. Rajendra, Advocate appeared for R1. The R1 bank would be at liberty to proceed with auction sale, but, will not confirm the sale without having prior permission of this Tribunal.

The counsel for appellant is directed to file copies of notices u/s 13(2) and 13(4). Adjourned to 14.06.2016."

Feeling aggrieved by the aforesaid order, the petitioner bank is before us in this writ petition.

3 We have heard the learned counsel for the petitioner and also perused the documents and pleadings appended thereto.

4 The Appellate Tribunal, taking note of the pendency of appeal, while issuing notice, granted liberty to the petitioner bank to proceed with the auction sale, but, not to confirm the sale without getting its prior approval and adjourned the matter to 14 June 2016.

5 Thus, when the date of next hearing has been fixed by the Appellate Tribunal and the petitioner bank has been permitted to proceed with the auction, the order of the Appellate Tribunal not to confirm the sale, till the next date of hearing, is just and proper, warranting no interference.

As a sequel, the writ petition fails being devoid of any merit and is accordingly dismissed. Costs made easy. Connected W.M.P. is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

- 1 The Chairperson,
Debts Recovery Appellate Tribunal,
Ethiraj Salai,
Egmore, Chennai 600 008.
- 2 The Presiding Officer,
DRT-II, Deva Towers,
Anna Salai, Chennai 600 002.

+1cc to Mr.M.L.Ganesh, Advocate sr.26452

W.P. No.15809 of 2016

pa(CO)
srg(18/05/2016)