

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4.10.2016

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Petition No.35134 of 2016

and

WMP No.30270 of 2016

K.Chitra

.... Petitioner

vs.

1.M.Nazeen

2.The Authorised Officer
Indian Bank
Thousand Lights Branch
611, Anna Salai
Chennai - 600 035

3.Authorised Officer
Indian Bank, ARMB,
Ethiraj Salai
Egmore

4.The Registrar
Debt Recovery Appellate Tribunal
Chennai

..... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing DRAT, Chennai to hear AIR No.375 of 2016 dated 07.09.2016 expeditiously.

For Petitioner : Ms.Ananda Gomathy

ORDER

(delivered by S.MANIKUMAR, J.)

Owner of the subject property mortgaged with Indian Bank, Chennai, has filed S.A.No.51/2011 before the Debts Recovery Tribunal - I, Chennai, to call for the records pertaining to SARFAESI action, initiated by respondents 1 and 2 therein, to set aside and quash sale notice dated 10.1.2011 and the sale that took place on 18.2.2011 and to award cost of the application, grant compensation under Section 19 of the Act and

other reliefs. K.Chitra/Respondent No.3 therein, is the auction purchaser.

2. Adverting to the rival submissions, the DRT-I, Chennai, vide order dated 29.8.2016 in S.A.No.51/2011 has ordered as hereunder:

"(a) The first respondent shall restore the possession of the secured asset described in the schedule annexed to the application to the applicant herein within 30 days from the date of this order.

(b) The first respondent bank shall refund the entire sale consideration paid by the Auction Purchaser i.e. the 3rd respondent herein, pursuant to the Auction Sale held on 18.2.2011 to the 3rd respondent together with prevailing interest payable for the fixed deposits of a period not less than five years, from the date of the deposit of the entire sale consideration till the date of payment.

(c) The third respondent shall return the original title deed of the secured asset and other documents that were handed over to him by the first respondent bank within 30 days from the date of the order, and shall file the compliance memo before this Tribunal."

3. The Tribunal allowed the appeal filed by the borrower. Being aggrieved, auction purchaser, has filed an appeal before the Debts Recovery Appellate Tribunal, Chennai and sought for a direction, to set aside the same. Material on record further discloses that the said appeal has not been numbered by the registry of DRAT.

4. Registry of DRAT, has returned the papers directing the appellant therein/writ petitioner, to pay court fee, as per Rule 13 of the SARFAESI Rules. According to the writ petitioner, court fee need not be paid. The petitioner is unable to number, process the appeal and obtain orders before 10.10.2016. Having regard to the fact that DRT, Chennai passed an order directing the writ petitioner to re-deliver possession of the property by 30.9.2016 and inasmuch as the petitioner is unable to number the appeal and take further remedial measures, writ of mandamus is filed for a direction to DRAT, Chennai to hear AIR No.375/2016 dated 7.9.2016 expeditiously, and to pass orders. Pending disposal of the writ petition, the petitioner sought for interim direction restraining the respondents 2 and 3 herein, not to take any action.

Heard the learned counsel for the parties and perused the materials on record.

5. Registry of Debts Recovery Appellate Tribunal, has returned the appeal papers on the ground that as per Rule 13 of the SARFAESI Rules, court fee has to be paid. According to the petitioner, appeal papers have been submitted, and the same has to be posted for maintainability. Whether payment of court fee is required or not, the same has to be decided by DRAT. Without adjudication on the above issue, mandamus sought for, cannot be issued. It is for the writ petitioner, to substantiate her contention before the Tribunal, that petition AIR (S.A.) No.375 of 2016, can be entertained without payment of court fee. In such view of the matter, prayer sought for cannot be granted.

Writ petition is dismissed. However, there shall be no order as to cost. Consequently, the connected writ miscellaneous petition is closed.

-s/d-
Assistant Registrar

true Copy

Sub-Assistant Registrar

asr

To

1.The Registrar
Debt Recovery Appellate Tribunal
Chennai

+1 cc to Ms.Ananda Gomathy Advocate sr 57289

W.P.No.35134 of 2016

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