

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2017

CORAM:

THE HON'BLE MR.JUSTICE HULUVADI G RAMESH  
AND  
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.10014 OF 2017

and

W.M.P.Nos. 11020 and 11021 of 2017

1.Sri.R.Prashanth

2.Sri.R.Praveen

...Petitioners

Versus

1.The Grain Merchants Co-operative  
Bank Limited, rep.by its Authorised  
Officer, No.2, Pampa Mahakavi Road,  
Chamrajpet, Bengaluru-560 018.

2.Mekal Engineering Works,  
A Partnership Firm, rep. By its partners,  
No.91/19, Tank Bund Road,  
Bengaluru-560 018.

3.Smt.Shanthamma  
No.66/1, 7<sup>th</sup> Cross,  
8<sup>th</sup> Main, RMV Extension,  
Bengaluru-560 080.

4.Sri.M.P.Srinivas

5.Smt.A.Meera

6.Smt.P.Manjula

7.Smt.M.S.Mallappa

8.The Registrar,

The Debt Recovery Appellate Tribunal,  
Chennai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari to call for the records pertaining to AIR 160 of 2017 dated 04.04.2017 and quash the same.

For Petitioners .. Mr.R.Srinivasan for  
M/s. R and P Partners.

For Respondent-1 .. Mr.T.R.Sundaram

For Respondent-2 .. No Appearance.

For Respondents 3-6 .. Mr. B.Dhanaraj

For Respondent -7 .. Mr.Raghunathan

Respondent -8 .. Court.

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O R D E R

(Order of the Court was made by Huluvadi G Ramesh, J)

Heard Mr.R.Srinivasan, learned counsel appearing for the petitioners, Mr.T.R.Sundaram, learned counsel appearing for the first respondent, Mr.B.Dhanaraj, learned counsel appearing for the respondents 3 to 6 and Mr.Raghunathan, learned counsel appearing for the 7<sup>th</sup> respondent.

2.It appears that the second respondent has purchased the property in question from the Karnataka Industrial Area Development Board under a registered sale deed dated 07.07.2000. The second respondent has sold the said property in favour of the petitioners on 19.02.2004. The petitioners formed themselves into a Partnership firm and have been carrying on a Small Scale Industry in the property in question in the name and style of "Perfect Electrodes" engaged in the manufacture and supply of a component called as "Transformer Core (CRGO) Lamination". The petitioners have installed expensive plant and machinery for manufacturing activities and the monthly turnover of the petitioners from the business is in excess of a Crore. When things stood thus, a representative of the first respondent bank visited the industrial premises during the first week of August 2016 and handed over a copy of the Sale Notice under the SARFAESI Act, stating that the property belonging to the petitioners is to be put for public auction by the first respondent bank. On further enquiries the petitioners learnt that the second respondent represented by its partners had obtained loan from the first respondent bank in two transactions during the year 1998 for Rs.15 lakhs and additional loan for Rs.10 lakhs during the year 1999 by depositing only the possession certificate of plot No.314, 4<sup>th</sup> Phase, Peenya Industrial Area, Yeshwanthapura, Bangalore, measuring in all 2267 square meters. The said sale notice also indicated that the sale was scheduled on 31<sup>st</sup> August, 2016 for recovery of

outstanding due of Rs.1,54,16,207/- from the second respondent together with interest and costs.

3.The first respondent bank filed an application against the second respondent and the petitioners under Section 14 of the SARFAESI Act, 2002, in C.Misc.No.6210/2012 before the 7<sup>th</sup> Additional Chief Metropolitan Magistrate, Bangalore, for taking possession of the immovable property bearing plot No.314, 4<sup>th</sup> Phase, Peenya Industrial Area, Yeshwanthapura, Bangalore, measuring in all 2267 square meters and it was allowed by an order dated 17.08.2012, holding that the first respondent bank is entitled to take possession of the property and directed the Inspector of jurisdictional police station to give necessary assistance to the first respondent bank while taking possession of the property.

4.The petitioners filed an Application in S.A.No.429 of 2016 before the Debts Recovery Tribunal at Bangalore for declaration of Notice dated 25.07.2016 issued by the first respondent for sale of the property in question is null and void. In the said application the first respondent bank filed a memo to the effect that sale has not taken place on 31.8.2016. In view of the said memo the said application was dismissed as infructuous on 14.09.2016. The petitioners filed an application S.A.No.65 of 2017 on the file of the Debts Recovery Tribunal, Bangalore seeking restoration of possession of the property in question taken by the first respondent bank. The first respondent bank filed objections to the said application. The Debt Recovery Tribunal, Bangalore by an order dated 23.02.2017, dismissed the said application. The petitioners filed an appeal AIR SA No.160 of 2017 before the Debt Recovery Appellate Tribunal, at Chennai against the order dated 23.02.2017 passed in S.A.No.65 of 2017. The Debts Recovery Appellate Tribunal, Chennai, passed an order dated 04.04.2017 directed the petitioners to make pre-deposit of Rs.30 lakhs with the Registrar of the Tribunal within four weeks. The petitioners have come up with the present writ petition to quash the said order.

5. The learned counsel appearing for the first petitioners would submit that the petitioners being the third party purchasers without notice regarding the mortgage of the property in favour of the first respondent bank, they need not comply with the condition of pre-deposit. However, the petitioners have complied with the condition of pre-deposit and they have deposited the amount before the Debt Recovery Appellate Tribunal, Chennai. According to the petitioners, they have no notice nor they aware of the mortgage to the first respondent bank and also as a person to purchase the property from the principal borrower. It is the contention of the learned counsel for the petitioners that the first respondent bank has filed an application before the DRAT to withdraw the amount of pre-



deposit made by the petitioners. Hence, pleaded that if the first respondent bank is permitted to withdraw the pre-deposit amount it will cause prejudice to the petitioners. Hence pleaded to stop withdrawal of the pre-deposit amount from the DRAT.

6. On the other hand, the learned counsel appearing for the first respondent bank would submit that the first respondent bank being the secured creditor of the property in question even prior to the alleged sale of the property in favour of the petitioners, the first lien is in favour of the first respondent bank, the petitioners have no locus to maintain the writ petition much less to approach the Debt Recovery Appellate Tribunal. Since the petitioners have preferred an appeal against the order made by the Debt Recovery Tribunal, Bangalore, they should have approached the High Court of Karnataka if they are aggrieved by the order made by the Debt Recovery Appellate Tribunal and this Court has no jurisdiction to entertain the writ petition. The learned counsel further submits that the purchase made by the petitioners are subsequent to the mortgage deeds executed by the second respondent in favour of the first respondent bank and is subject to Section 48 of the Transfer of Property Act, 1882 and as such, the petitioners cannot avoid the prior mortgage of the property in favour of the first respondent bank. Therefore, the writ petition filed by the petitioners for waiver of deposit is misconceived and not maintainable.

7. From the perusal of the records, it is seen that since the second respondent has become a chronic defaulter and the amounts were classified as Non Performing Asset (NPA), the first respondent bank issued notice under Section 13(2) of the SARFAESI Act, on 02.03.2006 to the second respondent calling upon them to discharge the dues to the first respondent bank a sum of Rs.70,66,378/- as on 31.01.2006. The first respondent bank also sent possession notice dated 12.7.2007 under Section 13(4) of the SARFAESI Act.

8. Considering the facts and circumstances we are of the view that the dispute between the petitioners and the principal borrower is with regard to the property in question which is mortgaged in favour of the first respondent bank and since the matter is pending before the Debt Recovery Appellate Tribunal, Chennai and also there is pre-deposit being made and several contentions raised by the petitioners that they have not supposed to deposit the pre-deposit being the third party to the proceedings, all these contentions may be urged before the Debt Recovery Appellate Tribunal, Chennai. The right of the first respondent also could be looked into by the Debt Recovery Appellate Tribunal.

9. If the petitioners aggrieved by any such orders, the petitioners are at liberty to approach the jurisdictional Court.

As there is no finding as to whether the petitioners or first respondent bank have got right over the property, the application made by the first respondent bank for withdrawing the amount for mortgage loan account of principal borrower is rejected for time being. If the pre-deposit amount is withdrawn by the first respondent bank, the first respondent bank is directed to redeposit the same to the account of Debt Recovery Appellate Tribunal, Chennai and the Debt Recovery Appellate Tribunal, Chennai, is directed to keep the said amount in the suspense account till the disposal of the dispute between the parties.

10. However, the Bailable Warrant issued by this Court for non-appearance of the principal borrowers is hereby modified and the principal borrowers are directed to appear before the Debt Recovery Appellate Tribunal, Chennai, on 30.06.2017.

11. The writ petition is disposed of accordingly. No costs. Consequently, W.M.P.Nos. 11020 and 11021 of 2017 are closed.

Sd/-  
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

gr.

To:  
The Registrar,  
The Debt Recovery Appellate Tribunal,  
4th Floor, Indian Bank Circle Office,  
55, Ethiraj Salai, Chennai-8.

+2ccs to M/s.T.R.Sundaram, Advocate sr.43234

+1cc to M/s.R&P Partners, Advocate sr.43236

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ppa (co)  
ss (29/6/2017)