IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.04.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE DR.JUSTICE S.VIMALA

C.R.P.(PD) No.1302 of 2017
and C.M.P.Nos.6073 & 6074 of 2017

V.Anu Radha .. Petitioner

Vs.

1.Canara Bank,
ARM Branch,
Rep. by its Authorised Officer,
Spencer Towers,
No.770-A, Anna Salai,
Chennai – 600 002.

2.M/s.Swastik Enterprises,
Rep. by its Proprietor, S.Samraj,
Flat No.47, 4th Floor,
Rishikesh Apartments,
T.Nagar, Chennai – 600 017.

3.S.Samraj .. Respondents

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, to setaside the Fair and Decretal Order, dated 13.03.2017 made in AIR (SA) No.104 of 2017 (in SA No.120 of 2016 on the file of the DRT-II), on the file of the Debts Recovery Appellate Tribunal, Chennai.

For Petitioner : Mr.R.Thiagarajan

For Respondents : Mr.K.N.Chinnakrishnan

O R D E R

*[Order of the Court was delivered by **HULUVADI G. RAMESH, J.**]*

This Civil Revision Petition is filed against the order dated 13.03.2017 made in A.I.R. (S.A.) No.104 of 2017 (in S.A. No.120 of 2016 on the file of the DRT-II), on the file of the Debts Recovery Appellate Tribunal, Chennai.

2. The second respondent / Proprietor of M/s.Swastik Enterprises, availed cash credit facility and term loan of Rs.11,35,00,000/- from the first respondent / Canara Bank, Chennai. They have committed default in repayment. The loan account became "Non-Performing Asset" [NPA]. The Bank issued notice dated 03.06.2011 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act") calling upon the third respondent to pay a sum of Rs.11,58,61,577/-. Thereafter, a notice dated 16.08.2011 was issued by the Bank for taking symbolic possession of the secured assets. Subsequently, the third respondent entered into a sale agreement with the petitioner dated 27.01.2012. At the instance of the Bank, the Chief Metropolitan Magistrate, Chennai, passed an order dated 22.10.2016, in terms of Section 14(1) of SARFAESI Act in Crl.M.P.No.6530 of 2015, appointing an Advocate Commissioner to take possession of the property in question and hand over the same to the Bank.

3. Challenging the order dated 22.10.2016, the petitioner approached the Debts Recovery Tribunal – II, Chennai, by filing S.A.No.120 of 2016 and obtained an order of status quo on condition that the petitioner shall deposit a sum of Rs.50 lakhs in "No Lien account" by 30.12.2016 to prove their bona-fide. Accordingly, the petitioner had deposited Rs.50,00,000/- on 28.12.2016 in Canara Bank through RTGS. On 20.02.2017, the Sarfaesi Application has been dismissed by the Debts Recovery Tribunal – II, Chennai stating that as per the sale agreement dated 27.01.2012, the petitioner itself has sworn affidavit to the effect that she cannot claim any right over the subject property in question and in view of the same, she has no right in the schedule mentioned property as agreement holder or tenant. Since she has complied with the conditional order dated 26.12.2016, the amount deposited by the petitioner has to be returned to her.

4. Aggrieved by the order dated 20.02.2017, the petitioner approached the Debts Recovery Appellate Tribunal, Chennai, in A.I.R.No.104 of 2017 in S.A.No.120 of 2016, to set aside the order dated 20.02.2017 and obtained an order of status quo subject to the condition that she should deposit a sum of Rs.60 lakhs and accordingly, she deposited the same. Thereafter, the Debts Recovery Appellate Tribunal, Chennai, passed the impugned order dated

13.03.2017 in A.I.R.(SR) No.104 of 2017 directing the petitioner to make Rs.4 crores more as pre-deposit with the Registrar of this Tribunal and also directed the petitioner to make pre-deposit of Rs.2 crores as first part of payment of pre-deposit within four weeks from today and further Rs.2 crores as second part of payment of pre-deposit within four weeks thereafter and adjourned the matter for confirmation of first part of payment of Rs.2 crores of pre-deposit. Challenging the said order, the present Revision has been filed.

5. Heard the learned senior counsel appearing for the petitioner and the learned counsel appearing for the respondents.

6. The learned senior counsel appearing for the petitioner submitted that the Debts Recovery Appellate Tribunal, Chennai, directed the petitioner to deposit a sum of Rs.4,60,00,000/- as a condition precedent for entertaining the Miscellaneous Appeal is contrary to the provisions contained under Section 18 of SARFAESI Act. He also submitted that if an appeal is to be filed against an order of DRT, 50% of the entire amount is required to be deposited under the second proviso to Section 18 of SARFAESI Act. He further submitted that the petitioner had already deposited Rs.50,00,000/- in S.A.No.120 of 2016 and Rs.60,00,000/- in A.I.R.No.104 of 2017 in S.A.No.120 of 2016. In support of his contention, he relied on the judgment of the Hon'ble Apex Court reported in ***2011 1 SCC 429***

[J.P.BUILDERS & ANOTHER vs. A. RAMADAS RAO & ANOTHER].

7. In the judgment of the Hon'ble Apex Court with regard to specific performance of contract, it is held that test to determine the sale of mortgaged property to a third party by mortgagor, readiness and willingness cannot be treated as straitjacket formula, and has to be determined from the entirety of facts and circumstances relevant to intention and conduct of the party. In the said case, it was held that the respondent – plaintiff had proved his readiness and willingness to perform his part of obligation under the Section 16(c) of the Specific Relief Act, 1963.

8. In the case on hand, the learned senior counsel for the petitioner submitted that despite the suit for specific performance is concerned before the Civil Court, he undertakes to pay the entire amount of Rs.4 crores so that the value of the property could be saved but the same shall be ordered, subject to the condition that the borrower shall file an affidavit / undertaking before this Court that she will pay the entire amount of Rs.4 crores within a period of eight weeks.

9. It is submitted that the amount of Rs.1,10,00,000/- is lying with the Bank and the same can be adjusted. In view of the matter, it is for the Bank to treat as part payment of Rs.60 lakhs, which is forfeited towards loan amount and it may be transferred to the account of the Bank and the remaining amount of Rs.2,90,00,000/- shall be paid by the petitioner within a period of eight weeks from the date of receipt of a copy of this order, failing which, the entire property can be auctioned by the Bank and the agreement holder deem to pay penal consequence. However, it is made clear that so far as the sale of properties are concerned, after issuing due notice to the agreement holder, they can proceed with the matter in accordance with law. The possession of the agreement holder is safe guarded for a period of eight weeks.

10. Accordingly, the Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed. It is for the agreement holder to comply with the order, within a period of eight weeks.

List the matter after eight weeks for reporting compliance.

[H.G.R.,J.] **[Dr.S.V.,J.]**
17.04.2017

Index : Yes / No
Internet : Yes
sri

HULUVADI G. RAMESH, J.
and
DR.S.VIMALA, J.

sri

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