

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2017

CORAM :

The Hon'ble MR.HULUVADI G.RAMESH, ACTING CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE M.SUNDAR

W.P.No.4269 of 2017

and

W.M.P.No.4435 of 2017

1.Satish Vishanji Futnani

2.Kishore Mohanlal Futnani

.. Petitioners

-vs-

1.Ind-Bank Housing Limited,  
a company incorporated under the Companies  
Act, 1956 and having its Registered Office  
and carrying on business at  
No.480, Anna Salai,  
Nandanam, Chennai-600 035.

2.New Era Urban Amenities Ltd.,  
a company incorporated under the Companies  
Act, 1956 and having its Registered Office  
and carrying on business at  
No.44, Pantheon Road, Thiru Complex,  
Egmore, Chennai - 600 008.

3.S.Thiyagaraja Chettiar

4.Futnani Dairy Farm,  
a partnership firm carrying on business at  
No.47, Sembudoss Street,  
Chennai - 600 001.

5.Madhusudan Mohanlal Futnani

6.S.Selvaraj

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari calling for the records culminated in the Order dated 30.01.2017 in RA. (SA) No.71 of 2010 on the file of Debt Recovery Appellate Tribunal and consequentially quash the order dated 30.1.2017 passed in RA (SA) No.71 of 2010 by the Hon'ble Debts Recovery Appellate Tribunal, Chennai.

For Petitioners : Mr.P.S.Raman  
Senior Counsel  
for M/s.BFS Legal  
For Respondents : Mr.Krishna Srinjivasan  
for M/s.S.Ramaswubramaniam and  
Associates for R1 & R6

ORDER

(Order of the Court was made by The Hon'ble Acting Chief Justice)

This writ petition has been filed by the petitioners to quash the proceedings of the Debt Recovery Appellate Tribunal at Chennai in RA (SA) No.71 of 2010, dated 30.1.2017, wherein the petitioners were directed to pay deficit court fee of Rs.50,000/- and also file application for waiver of pre-deposit.

2. Brief facts are as follows:-

2.1. The property in question is 25.93 acres at Semmenchery village, Old Mahabalipuram Road, Chennai, which is a joint family property of Futnani family and the said property is also subject matter of C.S.No.781 of 1983 on the file of Calcutta High Court. C.S.No.781 of 1983 was decreed by judgment dt. 19.1.2004 in terms of the settlement filed therein and the land which is the subject matter of the present petition is the subject matter of the said terms of settlement and decree. The petitioners were appointed as Joint Receivers vide judgment dt. 19.1.2004.

2.2. With the prior leave of the Court, the Joint Receivers published notices in daily newspapers and by the said publications, notice was given that the Receivers had taken possession of the properties, which included the properties in the name of Futnani Dairy Farm. The said order was confirmed by the judgment of the Single Judge dt. 4.2.2005 and on an appeal, the decree and judgment were confirmed by the Division Bench vide order dated 23.9.2005. Aggrieved over the Division Bench judgment, the fifth respondent filed Special Leave Petitions before the Hon'ble Supreme Court, which are stated to be pending.

2.3. On 18.9.2005, LIC Housing Finance Limited published notice with the consent of the first respondent under Section 13 (2) of SARFAESI Act. The first petitioner came to know about the said notice only on 04.9.2006. The first petitioner filed Contempt Case No.134 of 2006 against the first respondent and LIC Housing Finance Limited. In that Contempt Case, on 15.09.2006, the Calcutta High Court directed to maintain status quo in respect of possession, nature and character of the said 25.93 acres of land. The said interim order was extended from time to time

2.4. On 24.1.2008, the first respondent issued notice under Section 13 (2) of SARFAESI Act to respondent Nos.2 to 5. The copy of the same was marked to the appellants. By notice dated 08.5.2008, the first respondent asserted that respondent No.6 as its Authorised Officer took possession of the said 25.93 acres of land. The said notice was received by the first petitioner. Respondent Nos.1 and 6 have wilfully and deliberately violated the order and when they are trying to interfere with the possession, control and custody of the said 25.93 acres of land of the Joint Receivers, the first petitioner filed Contempt Case No.73 of 2008 before the Calcutta High Court and the Calcutta High Court vide order dated 4.7.2008 directed that hearing of the contempt application be deferred in view of pendency of S.L.Ps.

2.5. Thereafter, the petitioners have approached DRT-II, Chennai under the provisions of Section 17 (1) of the Act challenging the notice dt. 8.5.2008 in SA SR.No.4325 of 2008 along with M.A.No.43 of 2008 to condone the delay of 43 days in filing the application. By order dated 20.11.2008, DRT-II, Chennai dismissed M.A.No.43 of 2008 and consequently, rejected SA SR.No.4325 of 2008. Challenging the dismissal of M.A.No.43 of 2008, the petitioners have filed W.P.No.28422 of 2008. The Division Bench of this Court vide order dated 9.1.2009, directed that a separate application under Section 17 (1) of the Act could be filed and that pendency of the writ petition would not come in the way of the petitioners of making such application and on such filing of the application, the matter should be heard expeditiously.

2.6. Respondent Nos.1 and 6 have issued a notice dt. 12.12.2008 for sale of the property, which was published in the newspaper. The petitioners were served with a copy of the said notice of intended sale dated 12.12.2008 on 24.12.2008. The petitioners have filed W.P.No.19365 of 2009 challenging the notification under which the first respondent has been notified as an FI under the SARFAESI Act. According to petitioners, respondent Nos.5 and 6 were not entitled to in law to take symbolic possession of the land, without the leave of Calcutta High Court. Respondent Nos.5 and 6 are not entitled to bring the said property to sale.

2.7. The case of petitioners is that fifth respondent is one of the many co-parceners of Futnani family and his undivided shares, if any in the joint family properties, including 25.93 acres of land can be ascertained only after the same are partitioned in terms of the decree dt. 19.1.2004. Challenging the notice dt. 12.12.2008, the petitioners have filed S.A.No.2 of 2009. By order dated 24.02.2009, DRT-II, Chennai dismissed S.A.No.2 of 2009. Aggrieved by the said order, the petitioners

have filed RA (SA) No.71 of 2010 before the DRAT, Chennai. By order dt. 30.1.2017, the DRAT, Chennai directed the petitioners to pay deficit court fee of Rs.50,000/- and also to file an application for waiver of pre-deposit. Challenging the said order, the present writ petition is filed.

3. Resisting the writ petition, a common counter has been filed by respondent Nos.1 and 6 stating that Calcutta High Court vide its order dt.10.11.2016 has permitted LIC Housing Finance, who is the co-lender along with the respondents having pari passu charge over the properties situated at Semmenchery, to take steps for recovery as per law. The proceedings initiated under SARFAESI Act by the respondents is in accordance with the Act, which was confirmed by DRT-II. The respondents have taken possession of the property under SARFAESI Act which has overriding effect over the other laws and they are not required to take leave of Calcutta High Court to proceed under SARFAESI Act which being a special enactment gives rights to the secured creditor to recover their dues without the intervention of the Courts. As the petitioners have personal interest over the property in question, the rules of payment of court fees applicable to third parties would not be applicable to them and prays for dismissal of the writ petition.

4. Heard the learned counsel for parties for some time.

5. The petitioners are the Joint Receivers appointed by the Calcutta High Court. Admittedly, the petitioners are not borrowers to satisfy the requirements of pre-deposit. In such circumstances whatever the amount due to the Bank, the same has to be recovered from the borrower and not from the Receivers.

6. In these circumstances, the writ petition is allowed and the impugned order passed by the DRAT, Chennai dated 30.1.2017 in RA (SA) No.71 of 2010 is set aside. No costs. However, it is made clear that the first respondent Bank may proceed against the borrower and also move the Calcutta High Court to get clarification, if any. The DRAT, Chennai to process the appeal in accordance with law. The respondents also to seek clarification before the DRAT, Chennai regarding the enforceability of the amount due to the Bank from the borrower. Consequently, W.M.P.No.4435 of 2017 is closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

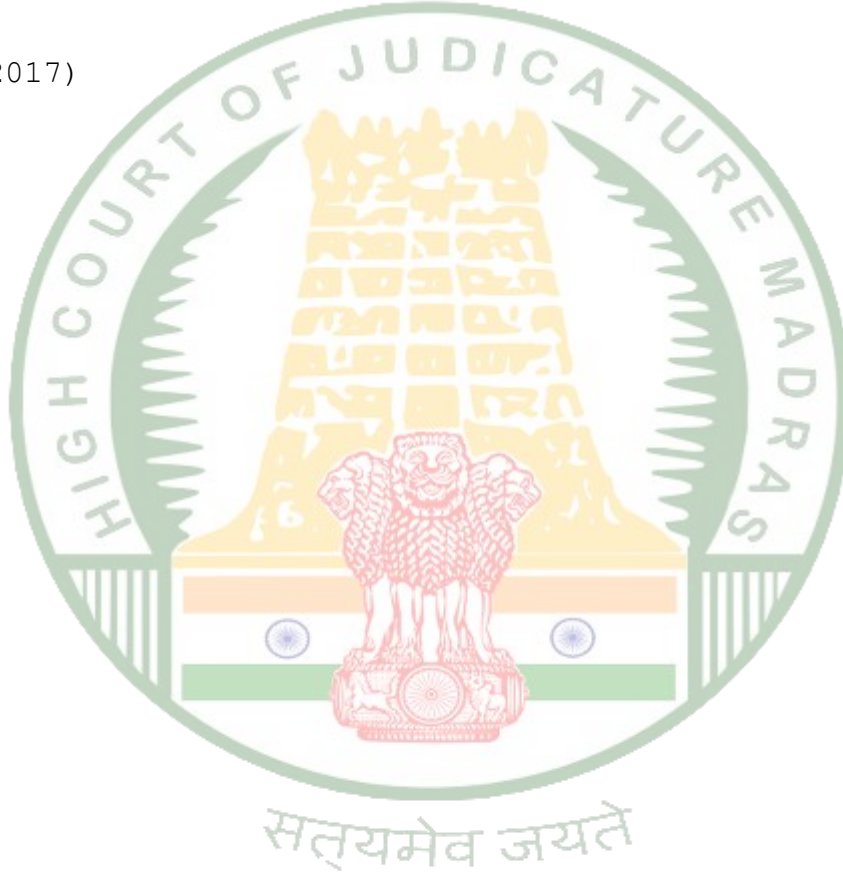
To

The Ind-Bank Housing Limited,  
a company incorporated under the Companies  
No.480, Anna Salai,  
Nandanam, Chennai-600 035.

+1cc to M/S. BFS Legal, Sr. 14623  
+1cc to Mr. S. Ramasubramaniam Associates Sr. 14511  
+1cc to M/S. Venkatesh Mohanraj, Advocate Sr. 14590

W.P.No.4269 of 2017

KS (CO)  
Vr(17/03/2017)



WEB COPY