IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

W.P.No.32478 of 2017
and
WMP No.35799 of 2017

K.Shyamala ... Petitioner

vs.

1. Mr.R.Ram Mohan

2. Bank of India,
Rep. by its Authorized Officer,
Purasawalkam Branch,
Place Regency, First Floor,
80-93, Purasawalkam High Road,
Kellys, Chennai - 600 010. ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarifid mandamus, calling for the records pertaining to the order dated 16.10.2017 passed in R.A.(S.A.) No.154 of 2017 by the Hon'ble DRAT, Chennai and quash the same; and direct the Hon'ble DRAT, Chennai to hear jointly both the appeals, viz., R.A.(S.A.) No.41 of 2017 and R.A.(S.A.) No.154 of 2017 filed by the second and first respondents respectively.

For Petitioner : Mr.Om Prakash, Sr. Counsel for Mr.G.Verapathiran

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ORDER

(Order of the Court was made by S.MANIKUMAR, J)

Petitioner has availed loan from Bank of India, Chennai, the 2nd respondent and mortgaged her property by deposit of title deeds. Petitioner has defaulted and hence account has been classified as Non-performing asset. After issuing notices under Sections 13(2) & 13(4) of SARFAESI Act, 2002, Bank has brought the property for auction. 1st respondent is the successful bidder.

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2. Petitioner has filed, S.A.No.39 of 2015 before the Debts Recovery Tribunal-I, Chennai to set aside the sale notice issued under Section 13(4) of SARFAESI Act, 2002 and consequently, to declare the auction held on 26.10.2015 as null and void. In S.A.No.39 of 2015, both the Bank and the auction purchaser, have been arrayed as respondents. Auction purchaser remained exparte.

3. After considering the rival submissions, vide order dated 04.04.2017 in S.A.No.39 of 2015, Debts Recovery Tribunal-I, Chennai, set aside the auction. Debts Recovery Tribunal, further ordered that a copy of the order made in S.A.No.39 of 2015 dated 04.04.2017 be communicated to the concerned Sub Registrar Office for making appropriate entires in the Registration records, for cancellation of sale certificate dated 11.11.2015, issued in favour of 2nd respondent/auction purchaser. Being aggrieved, Bank of India, Chennai has filed R.A.(S.A) No.41 of 2017, before the Debts Recovery Appellate Tribunal, Chennai. Though, bank has sought for stay of the order dated 04.04.2017 made in S.A.No.39 of 2015, on the file of Debts Recovery Tribunal-I, Chennai, no stay has been granted.

4. Auction purchaser/respondent No.1, has filed R.A.(S.A.) No.154 of 2017, challenging the order of the Debts Recovery Tribunal-I in S.A.No.39 of 2015 and pending disposal of the same, he has sought for a stay/suspension of the final order. Auction purchaser has also sought for an interim injunction, restraining the borrower / writ petitioner therein from alienating the property.

5. Upon consideration of the material on record, Debts Recovery Appellate Tribunal, Chennai vide proceedings dated 16.10.2017 has directed the parties to maintain status quo in respect of possession of the property. For brevity, proceedings dated 16.10.2017 is reproduced.

> "Ld. Counsel Mr.U.Karunakaran for Appellant present.
> Ld. Counsel Mr.G.Veerapathiran for R1 present.
> In view of the fact that this Appeal has been filed by Auction Purchaser and borrower is still in possession of the property, but under cover of Section-13(4) notice of symbolic possession by Bank, hence, parties are directed to maintain status quo in respect of possession of the property and also directed not to alienate during currency of the order.
> List for final hearing on 12.12.2017."

6. Said proceedings is impugned in the instant writ petition on the grounds inter alia that writ petitioner is though willing to settle the loan amount with the bank, by sale of the property, interim order of status quo, has restrained her

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bonafide effort. Inviting the attention of this Court to the operative portion of the order made in S.A.No.39 of 2015 dated 04.04.2017, on the file of Debts Recovery Tribunal-I, Chennai, learned senior counsel further added that instead of seeking for stay of the above said order, respondent No.1, has sought for an injunction, not to alienate the property. He further contended that when sale had been set aside, the writ petitioner has a right to seek for redemption of the property, which in the case on hand, has been restrained due to the interim order. Learned senior counsel further submitted that when bank has sought for stay of the order made in S.A.No.39 of 2015, dated 04.04.2017 on the file of Debts Recovery Tribunal-I, Chennai, no stay was granted.

7. Heard the learned senior counsel for the petitioner and perused the materials available on record.

8. In S.A.No.39 of 2015 dated 04.04.2017, Debts Recovery Tribunal-I, Chennai has set aside the auction sale on the grounds inter alia that the property has been undervalued. Though, auction purchaser has remained exparte, before Debts Recovery Tribunal-I, Chennai, his rights to challenge the order made in S.A.No.39 of 2015, cannot be curtailed. Thus, the auction purchaser has filed R.A.(S.A) No.154 of 2017 before Debts Recovery Appellate Tribunal, Chennai with a prayer to set aside the order made in S.A.No.39 of 2015. In the appeal grounds, he has also sought for stay / suspension of the final order made in S.A.No.39 of 2015 on the file of Debts Recovery Tribunal-I, Chennai. He has also prayed for an order of interim injunction restraining the writ petitioner or anybody claiming right through her, not to alienate the property purchased by him, in the auction. Bank has also filed R.A(S.A).No.41 of 2017.

9. Correctness of the order made in S.A.No.39 of 2015 dated 04.04.2017 is tested by the bank and the auction purchaser in R.A.(S.A) Nos.41 and 154 of 2017, respectively.

10. Contention of the learned senior counsel for the petitioner that the auction purchaser has not sought for stay of the order made in S.A.No.39 of 2015 dated 04.04.2017 on the file of Debts Recovery Tribunal-I, Chennai, cannot be countenanced, for the reason that appeal is continuation of the proceedings and pending appeal the appellate forum is empowered to pass appropriate interim orders. Sale of the property pending appeal, would only invite third party interest to the lis. If the appeal filed by the bank or the auction purchaser, as the case may be, ends in favour of the appellant therein, then, possession has to be given to the auction purchaser. Order of the Debts Recovery Appellate Tribunal, Chennai in maintaining status quo in respect of the possession of the property cannot

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be said to be manifestly illegal. Though, the auction has been set aside, there is a continuation of proceedings, by way of appeals, both by the bank and the auction purchaser.

11. Contention of the learned senior counsel for the petitioner that the above said interim order, has restricted the petitioner's right to redemption of the property, settle the loan account with the bank, by sale of property, also cannot be countenanced, for the above said reasons.

12. In the light of the above discussion, we are not inclined to entertain the writ petition. Hence, dismissed. It is open to the writ petitioner to seek for appropriate directions from DRAT, Chennai. No Costs. Consequently the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

ars

To

The Authorized Officer,
Bank of India,
Purasawalkam Branch,
Place Regency, First Floor,
80-93, Purasawalkam High Road,
Kellys, Chennai - 600 010.

+1cc to Mr.G.VEERAPATHIRAN Advocate, S.R.No. 88934

सत्यमेव जयते

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TR(03/01/2018)

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