IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/7/2017

C O R A M

The Honourable Mr.JUSTICE S. MANIKUMAR
and
The Honourable Ms.JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.13612 of 2017

1. Mr.C.S.Lakshmi Narasimhan

2. Mrs.S.Chitra ... Petitioners

Vs

1. State Bank of India
rep. by its Deputy Manager
SARC III Floor, Treasury Branch
Mahalingapuram Branch
Chennai 6.

2. Mr.Ballabh Dwarkani ... Respondents

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of certiorari to call for the records relating to AIR No.752/2013,on the file of the Debts Recovery Appellate Tribunal, Chennai and quash the order dated 17/1/2017 made in I.A.No.122 of 2017 in I.A.No.701 of 2014 in AIR No.752 of 2013 on the file of DRAT, Chennai.

For Petitioner : Mr.V.R.Kamalanathan

For Respondents : Mr.N.Sivabalan for R.1
R-2 - unserved

O R D E R

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

Being aggrieved by the order made in I.A.No.122 of 2017, dated 17/1/2017, in I.A.No.701 of 2013 and the final order in AIR No.752 of 2013, dated 17/1/2017, instant writ petition is filed.

2. Facts as deduced from the material on record are that husband and wife, borrowed a housing loan of Rs.17.50 lakhs. Contending inter alia that there was default, O.A.No.72 of 2009

has been filed by State Bank of India, Mahalingapuram Branch/first respondent, to recover, a sum of Rs.23,68,425/-. An ex parte order, dated 18/12/2009, was passed in O.A.No.72 of 2009, on the file of the Debts Recovery Tribunal - I, Chennai. Consequently, on 13/1/2010, Recovery Certificate, in D.R.C.No.5 of 2010 has been issued, and Demand notice was issued, on 20/1/2010.

3. Writ petitioners have filed M.A.Nos.67 and 49 of 2011, to condone the delay of 614 days, in filing the petition and to set aside the ex parte final order, dated 18/12/2009, respectively.

4. In the meanwhile, Bank sold the property. Auction purchaser, approached the Recovery Officer, to issue sale certificate. Accordingly, D.R.C.No.5 of 2010 has been issued in O.A.No.72 of 2009. As against the proceedings dated 28/6/2012, 28/8/2012, 25/10/2012 and 5/12/2012, passed in O.A.No.72 of 2009 by the Presiding Officer, Debts Recovery Tribunal - I, Chennai, A.I.R.No.752 of 2013, has been filed before the Debts Recovery Appellate Tribunal, Chennai.

5. In I.A.No.701 of 2013, in A.I.R No.752 of 2013, writ petitioners have sought for waiver of pre-deposit. On 8/11/2016, the Debts Recovery Appellate Tribunal, directed the writ petitioners, to pay 30% of the sale amount, i.e.Rs.15,10,000/-. I.A.No.122 of 2017 has been filed to modify the order, dated 8/11/2016, passed by the Tribunal, in I.A.No.701 of 2014 in A.I.R.No.752 of 2013. Debts Recovery Appellate Tribunal, Chennai, modified the order, on the ground that writ petitioners had already paid a sum of Rs.23,68,425/- to the Bank. Despite the above said submission, Debts Recovery Appellate Tribunal, has dismissed the modification petition, on the ground that no ground is made out, to modify or reduce the amount.

6. Being aggrieved by the aforementioned order, instant writ petition has been filed for a writ of certiorari, to quash the same.

7. Mr.V.R.Kamalanathan, learned counsel for the writ petitioners reiterated the facts stated in the petition.

8. Deputy Manager of State Bank of India, Mahalingapuram Branch, Chennai, in his counter affidavit, at para No.6, has candidly admitted that an ex parte final order, dated 18/12/2009, was passed by the Debts Recovery Tribunal - I, Chennai, directing the petitioners to deposit a sum of Rs.23,62,425/-. Mortgaged property was sold, in public auction, on 24/11/2011, for a sum of Rs.50,40,000/-. Writ petitioners have filed petitions to set aside the ex parte order with delay.

While condoning the delay in setting aside the ex parte order, Tribunal has directed the petitioners to pay a sum of Rs.23,62,425/-. Though there was some delay, the entire amount has been paid.

9. Based on the averments made in the counter affidavit, Mr.N.Siva Balan, learned counsel for the Bank also submitted that on 13/7/2012, the Bank has filed a memo stating that the loan account was closed, pursuant to the sale and that the sale proceeds were appropriated towards the outstanding dues. Auction purchaser has filed I.A.No.6762 of 2012, to issue sale certificate. The Recovery Officer has issued sale certificate and on 30/1/2013, possession has been handed over to the auction purchaser.

10. Writ petitioners challenged the proceedings, dated 5/12/2012, before the Debts Recovery Appellate Tribunal in the year 2013, along with a petition, to condone the delay. Application under Section 21 of the RDDB and FI Act, has been filed, for waiver. In that application, the Debts Recovery Appellate Tribunal, directed the writ petitioners, to deposit 30% of the sale proceeds. Instead of complying with the conditional order, a petition for modification dated 8/11/2016 has been filed. By proceedings, dated 25/1/2017, the Debts Recovery Appellate Tribunal, Chennai has dismissed the modification application. According to the learned counsel for the Bank, in as much as the conditional order has not been complied with, there is no need to interfere with the impugned order.

11. Heard the learned counsel for the petitioners.

12. Interest of the Bank is well protected by an order made in an interlocutory application, and pursuant to the same, the writ petitioners/borrowers have remitted a sum of Rs.23,68,425/-.

13. Bank in his counter affidavit dated 11th July 2017 has also admitted the said fact. If that be the case, when the writ petitioners have challenged the proceedings, dated 28/6/2012, 28/8/2012, 25/10/2012 and 5/12/2012, respectively, the Bank in all fairness, should not have opposed the waiver petition filed by the borrowers, as it is always open to the borrowers to assail the correctness of the action of the Bank.

14. When ex parte decree has been set aside by the Tribunal, the Bank should not have opposed the waiver petition. Equally, the Debts Recovery Appellate Tribunal, Chennai, also, ought to have considered that when the borrower has already remitted the decree amount to the Bank, the borrowers ought not to have fastened with the liability of remittance of 30% or 50% of the sale proceeds, which worked out to Rs.15.10 lakhs. When

the above facts have been brought to the notice of the Tribunal, the same should have been considered, as to whether there was any requirement to make payment. The Tribunal has failed to consider the above aspects in a proper perspective.

15. In view of the discussions and finding, we are of the view that the borrowers have been unnecessarily saddled with a burden of further payment of Rs.15.10 lakhs. In the light of the discussion, we are of the view that orders made in I.A.No.701 of 2013 and I.A.No.122 of 2017 are liable to be set aside.

16. In the result, this writ petition is allowed, with costs of Rs.10,000/- to be paid to the writ petitioners and the orders made in I.A.No.122 of 2017, I.A.No.701 of 2013 and AIR No.752 of 2013, are set aside. Tribunal is directed to assign regular number, take up the appeal and decide the same on merits, and in accordance with law, within a period of ten days from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

mvs.

To

1.The Presiding Officer,
Debts Recovery Tribunal-I,
Chennai.

2.The Registrar,
Debts Recovery Appellate Tribunal,
Chennai.

+1cc to Mr.G.Desingu, Advocate in sr.no.48478
+1cc to Mr.S.Sethuraman, Advocate in sr.no.48520

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NR 19/07/2017