IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.14809 of 2017

and WMP No.16051 of 2017

1. Mrs.Sithi Khadija Beevi
2. Mrs.Naseema Beevi
3. Mrs.Sithinaeema
4. Mrs.Saliha Begum
5. ThaikaLebbai
6. Mohd. Niyaz
7. Sathak Nawaz ... Petitioners

vs.

1. The Presiding Officer,
Debts Recovery Tribunal - I,
6th Floor, Spencer Towers,
770-A, Anna Salai,
Chennai - 600 002.

2. The Assistant General Manager,
State Bank of India,
Stressed Asset Management Branch,
No.32, Red Cross Building II Floor,
Montieth Road, Egmore,
Chennai - 600 008.

3. The Assistant General Manager,
State Bank of India,
Industrial Finance Branch,
103, Anna Salai,
Chennai - 600 002.

4 Quthubdeen
S/o. Late K.T.M.S. Abdul kader No.20
Nageswara Road Nungambakkam Chennai 600 034

5 Hameed Aiyesha
W/o.Late SathakathulHameed No.20 Nageswara
Road Nungambakkam Chennai 600 034

6 Thaseen Sadhak
D/o. Late SathakathulHameed No20 Nageswara Road Nungambakkam Chennai 600 34

7 Mariam Sharafia
D/o. Late SathakathulHameed No20 Nageswara Road Nungambakkam Chennai 600 34

8 Sabrina Sadhak
D/o. Late SathakathulHameed No20 Nageswara Road Nungambakkam Chennai 600 34

9 Najuminussa
W/o.Late Habeebur Rahman West street Kilakarai Ramnad Dist 623 517

10 Fatheeka
W/o.Late Habeebur Rahman West street Kilakarai Ramnad Dist 623 517

11 Sadhira
W/o.Late Habeebur Rahman No.25 Wallace GArden 3rd St. Chennai 600 006

12 Dhaleela
W/o.Late Habeebur Rahman New No.25 Jainsla Gardenia Apartment Kothari Road Nungambakkam Chennai 600 034

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified mandamus, calling for the records from the 1st respondent and to quash the impugned order passed by the 1st respondent herein dated 15.04.2017 vide S.A.31 of 2017 till the disposal of the partition suit filed by the petitioners in the Hon'ble Madras High Court vide C.S.368 of 2017.

For Petitioners : Mr.Dr.C.K.Syed Shaffi

For Respondents : Tribunal-R1
Mr.M.L.Ganesh (for R2 & R3)
No appearance (for R4 to R8)

ORDER

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

Order impugned in the writ petition dated 15.04.2017 in S.A.No.31 of 2017 is extracted hereunder.

S.A.31/2017 15.4.2017

SIA 255/2017: The petitioners herein have assailed the Sale Notice dated 7.3.2017, wherein the respondent bank brought the schedule mentioned property to sale by way of public auction, inter alia, contending that the petitioners are co-owners along with the mortgagors (who are not impleaded). However, without consent and participation of the petitioners, one Quthubudeen and others, said to have created an equitable mortgage of the entire property in favour of the respondent bank. The petitioners submit that they inherited the 2/18th undivided share devolved on KTMS Abdul Khader. The petitioners therefore contend that in the absence of any security interest having been created by the petitioners in respect of their 2/18 share in the property, the measures initiated by the secured creditor for sale of the entire property right from the inception till the stage of impugned notice are illegal, invalid and unenforceable in any manner. It is in this backdrop, the petitioners/applicants have filed the present petition for grant of interim stay of all further proceedings pursuant to the sale notice dated 7.3.2017.

2. Per contra, Ld. Counsel for the respondent bank, Shri M.L.K.Ganesh contends that the SA itself is unsustainable and filed in collusion with other mortgagors only to stall the proceedings lawfully initiated by the respondent bank for sale of the secured asset under the provisions of the SARFAESI Act and the rules made thereunder. It is further contended that the plea of the petitioners/applicants that accidentally they came across the sale notice dated 7.3.2017 published in newspaper and on perusal of the sale notice, the petitioners/applicants came to know that the schedule property had been offered as security for the loan facilities availed by M/s.East Coast Constructions & Industries Ltd and creation of equitable mortgage by deposit of title deeds,etc. is an absolute falsehood. According to the Ld. Counsel for the respondent bank, the petitioners have complete knowledge of all the proceedings and have consciously remained silent till the mortgagors failed in their attempts to stall the proceedings. It is also contended that the long silence on the part of the petitioners is also for the reason that they have no right whatsoever in the property. However, at the behest of the mortgagors, to somehow stall the proceeding of the sale of the secured asset, invented false theory of petitioners having 2/18th share of Late KTMS Abdul Khader in the schedule mentioned property.

It is submitted that if the petitioner' contention that 2/18th undivided share devolved on KTMS Abdul Khader devolved on the petitioners/applicants consequent to the demise of KTMS Abdul Khader on 30.05.2001, what the petitioners were doing for all the 16 long years without seeking for partition or not having any documentary proof of their co-ownership in respect of the schedule mentioned property.

3. According to the Ld. Counsel for the respondent bank, the subject property is under a Registered Lease and the tenant has been paying the rent to the mortgagors (now to the respondent bank) alone and at no stage, the petitioners were paid any amount as rent. In fact, the petitioners were not paid even a single pie as rent. The petitioners did not even assert that they have been paid their share of the rent by the o called other co-owners. Ld. Counsel for the respondent bank also filed patta issued by the Tahsildar, Egmore-Nungambakkam Taluk in the name of the mortgagor alone and the petitioner's name did not find place in the patta, which was issued after the demise of the said KTMS Abdul Khader. Thus contending, Ld. Counsel for the respondent bank strongly pleaded that the entire SA is the outcome of the collusion between the mortgagor and the present petitioners and the same is devoid of any merit or substance and prayed not to grant any interim stay and to dismiss the SA.

Heard both sides and perused the records.

4. The point that arises for consideration is

> Whether the petitioners have made out a prima facie case for grant of interim stay of all further proceedings pending disposal of the SA?

5. The petitioners, who claim to be the co-owners of the application schedule property along with one Quthubdeen and others, contend that 2/18th undivided share of Late KTMS Abdul Khader devolved upon them, thus, they became co-owners, as such, creation of mortgage interest, if any, in the entire property in the absence of consent of the petitioners renders the same unenforceable under law, consequently, creation of valid mortgage being sine quo non for initiating measures under the SARFAESI Act, the present proceeding are ifso facto, invalid and unenforceable under law and consequently the impugned sale notice is illegal and liable to be set aside.

6. I have carefully perused the records placed by both sides. Undoubtedly, the assertion of co-ownership and undivided share in the schedule mentioned property by the petitioners appears to be not only belated claim

but also not supported by documents. Here it may be relevant to state that the petitioners who claim to have succeeded to the undivided share of Late KTMS Abdul Khader and claimed co-ownership, cannot remain without any kind of documentary proof establishing their co-ownership, if they are the co-owners. The patta filed by the respondent bank and the Registered lease deed dated 24.01.2000 between the tenant and the mortgagors, above all,the deposit of original title deeds of Late KTMS Abdul Khader, prima facie strengthens the contention of the Ld. Counsel for the respondent bank that the petitioners without having any kind of right, have filed the application in collusion with the borrowers, who defaulted the loan and with an intention to stall the sale proceeding.

7. In view of the above discussion, the claim of the petitioners that they are the co-owners of the secured asset cannot be decided at this stage. The Tribunal will consider the same in the main SA. Since counter of the respondent bank has already been filed and in view of the peculiar facts and circumstances of the case, the Tribunal feels it proper to hear the SA itself as expeditiously as possible instead of granting any interim stay of all further proceedings under the impugned sale notice. Hence, the following order is passed.

> "The respondent bank can proceed with the intended sale, however, the outcome of the sale, if takes place, shall be subject to the final result of the SA. Since counter in the SA has already been filed, call the SA for final hearing on 01.05.2017. It is made clear that both sides shall get ready for enquiry on 01.05.2017 without fail"

2. Though writ petitioners have sought for a writ of Certiorarified mandamus, calling for the records from the 1st respondent and to quash the impugned order passed by the 1st respondent herein dated 15.04.2017 vide S.A.31 of 2017 till the disposal of the partition suit filed before this Court, by the petitioners in C.S.368 of 2017, when a specific question is posed to the learned counsel as to whether statute contemplates an alternate and effective remedy by way of an appeal as against a final order, Mr.(Dr).C.K.Syed Shaffi, submitted that there is a remedy.

3. Mr.M.L.Ganesh, learned counsel for the respondent bank submitted that S.A.No.31 of 2017, is posted for final hearing on 10.07.2017. Attention of this Court was also brought to the notice of another S.A.No.36 of 2017 in which on 11.05.2017, on

being mentioned, the matter was taken up and Debts Recovery Tribunal No.I, Chennai has passed the following order.

SA 36/2017 (Mentioning) 11.5.2017

On being mentioned matter is taken up today. Heard Shri Ravi Ld counsel for the applicant and Shri M.L. Ganesh for the respondent bank. Wtih the consent of both sides hearing of the SA has been advanced from 15.5.2017 to today 11.5.2017

SIA 324/2017 - Heard both sides. The applicants herein challenged the earlier Sale Notice dated 7.3.2017 in respect of the same property in SA 31/2017, and the Tribunal ordered that sale may go on according to law, subject to the final result in SA 31/2017 on the file of this Tribunal. The Sale Notice impugned in this SA has been issued as Sale under the earlier Sale Notice did not take place. There is no change in the fact situation from the previous SA except that a fresh Sale Notice is issued. Hence considering the facts and circumstances it is ordered that:

The respondent bank can proceed with the intended sale, however, if the sale takes place, the same shall be subject to the final result of the SA.36/2017. Since counter in SA 31/2017 has already been filed, call both the SAs 31/2017 and 36/2017 for final hearing on 12.6.2017. It is made clear that both the sides shall get ready for enquiry on 12.6.2017. Meanwhile applicant shall take private notice to R2 to R12.

Case be called on 12.6.2017 for hearing the parties.

4. Both the second appeals are directed to be listed on 10.07.2017.

5. Heard the learned counsel for the parties and perused the materials available on record. Section 18 of the Act reads thus.

"18. Appeal to Appellate Tribunal: (1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal alongwith such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:

PROVIDED that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:

PROVIDED FURTHER that no appeal shall be entertained unless the borrower has deposited with the

Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

PROVIDED ALSO that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.

6. In the light of the above discussion, we are not inclined to delve into the grounds of challenge, when the same are urged in S.A.Nos.31 & 36 of 2017.

7. Instant writ petition is disposed of, directing the Debts Recovery Tribunal-I, Chennai to dispose of the Second Appeals slated for hearing on 10.07.2017 on merits and in accordance with law. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Presiding Officer,
Debts Recovery Tribunal - I,
6th Floor, Spencer Towers,
770-A, Anna Salai,
Chennai - 600 002.

Copy to

1. The Assistant General Manager,
State Bank of India,
Stressed Asset Management Branch,
No.32, Red Cross Building II Floor,
Montieth Road, Egmore,
Chennai - 600 008.

2. The Assistant General Manager,
   State Bank of India,
   Industrial Finance Branch,
   103, Anna Salai,
   Chennai - 600 002.

+1cc to Dr.Syed Shaffi, Advocate SR.No.46945
+1cc to Mr.Ganesh, Advocate SR.No.46565

W.P.No.14809 of 2017
and WMP No.16051 of 2017

MG(CO)
GN(07/07/2017)