IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2017

CORAM:

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

W.P.No.15995 of 2017
and
WMP No.17283 of 2017

Mrs.Krishnaveni ... Petitioner

vs.

The Authorized Officer,
Central Bank of India,
Asset Recovery Branch,
No.48/49, Montieth Road, Egmore,
Chennai - 600 008. ... Respondent

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari, calling for the records pertaining to the sale notice No.ARB:CHEN:2017-2018:67 dated 7.6.2017 issued by the respondent and quash the same as illegal, arbitrary and malafide exercise of power.

For Petitioners : Mr.Sethuraman

For Respondent : Mr.M.L.Ganesh

ORDER

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

Material on record discloses that M/s.Krishna Constructions represented by Mr.S.Mani, Sole Proprietor, Chennai had borrowed Rs.7 Crores from Central Bank of India, Chennai Main Branch, by way of Fund based Limits. (1) Mr.S.Mani, (2) Mrs.M.Krishnaveni and (3) Mrs.S.Mallika, extended their personal guarantee. Mrs.M.Krishnaveni and Mr.Mani, wife and husband, respectively, have offered four properties as collateral security for the credit facility availed and created mortgage. As there was default, the bank issued notice dated 04.01.2016 under Section 13(2) of the SARFAESI Act, 2002, demanding a sum of Rs.5,93,88,774/- to be paid within sixty days. According to the petitioner, objections submitted by the borrower and guarantors, were not considered.

2. Subsequently, bank issued possession notice dated 15.03.2016 under Section 13(4) of the Act in respect of properties mortgaged. One of the property viz., Door No.52/31, 2nd Avenue, Ashok Nagar, Chennai -83 was in the possession of the bank, since the bank was the tenant. The said proceeding has been challenged in S.A.No.63 of 2016, before the Debts Recovery Tribunal-II, Chennai. According to the writ petitioners, the Debts Recovery Tribunal-II, Chennai vide order dated 29.08.2016, allowed the said S.A.No.63 of 2016.

3. Material on record discloses that on 26.07.2016, bank issued a sale notice fixing auction on 31.08.2016. As possession notice was set aside the sale did not take place. Thereafter, bank preferred R.A.(S.A.).No.27 of 2016, against the order made in S.A.No.63 of 2016 on the file of Debts Recovery Tribunal-II, Chennai. Appeal was allowed remanding the matter to the Debts Recovery Tribunal-II, Chennai, for fresh consideration of S.A.No.63 of 2016. On 17.03.2017, another sale notice was issued fixing the auction on 21.04.2017.

4. Being aggrieved, the borrower has filed M.A.No.67 of 2017 in S.A.No.63 of 2016 to stay the sale. No relief has been granted. Challenging the sale notice dated 17.03.2017, a separate appeal in S.A.No.32 of 2017 has been filed before the Debts Recovery Tribunal-I, Chennai. I.A.No.263 of 2017 has been filed for stay of sale. The tribunal directed the borrower to deposit a sum of Rs.1.50 crores before the date of auction and further directed the borrower to deposit a sum of Rs.30 Lakhs, out of the abovesaid sum on 15.04.2017. The tribunal has further directed the authorized officer not to open the tenders received under the impugned sale notice dated 17.03.2017. The writ petitioner has deposited only a sum of Rs.20 Lakhs, but could not deposit Rs.10 lakhs before 15.04.2017. On 20.04.2017, the tribunal further directed the petitioner to deposit Rs.2 Crores and directed, issuance of sale certificate to be kept in abeyance. On 28.04.2017, before the tribunal, bank has informed that there were eight bidders and offered, a sum of Rs.2.32 Crores, with regard to Item No.3 of the property, sought to be sold.

5. The writ petitioner has further contended that he was ready with a sum of Rs.1.95 crores and already deposited Rs.40 Lakhs, towards Rs.2.35 Crores, being the value of the property at Door No.52/31, 2nd Avenue, Ashok Nagar, Chennai -83, sought to be sold in the auction. According to the petitioner/guarantor, the bank has refused to receive the payment and insisted for sale and therefore, left with no other alternative, guarantor was constrained to file the instant writ petition, challenging the sale notice dated 17.03.2017, issued in respect of all the properties.

6. Record of proceedings shows that on 27.06.2017, a Hon'ble Division Bench of this Court, passed the following order.

> "The respondent is at liberty to go on with the auction of all the properties. With regard to the commercial property, namely Item No.3, the petitioner shall participate in the auction after paying the earnest Deposit Money and shall pay the highest bid amount offered. On such payment, the respondent shall release the property in favour of the petitioner. If the petitioner fails to pay the amount, the Bank is at liberty to confirm the sale on highest bidder. List the matter on 14.07.2017."

7. On this day, when the writ petition came up for further hearing, on the basis of an affidavit dated 14.07.2017 filed by the writ petitioner, Mr.Sethuraman, learned counsel submitted that having regard to the directions of this Court dated 27.06.2017, the writ petitioner had authorized her husband to pay the Earnest Money Deposit and participate in the auction conducted by the bank on 28.06.2017 and that she is the successful bidder and she has also paid Rs.2,37,25,000/- to the bank.

8. Learned counsel for the petitioner further submitted that though vide order dated 27.06.2017 W.P.No.15995 of 2017, a Hon'ble Division Bench has directed the bank to release the property, in favour of the petitioner, it has not done. But the bank is insisting for further orders from this Court.

9. Central Bank of India, has filed a memo dated 14.07.2017 admitting the payment, which is extracted.

> " It is respectfully submitted that pursuant to an order passed on 27.06.2017 by this Hon'ble Court, the respondent bank has permitted the petitioner's husband Mr.Mani, who is also the borrower/guarantor of the secured property to participate in the auction proceedings on 28.06.2017 and in the interse bidding, Mr.Mani was declared as successful bidder for Rs.2,37,25,000/- and accordingly, he has remitted the entire sale consideration to the bank which has been adjusted towards the loan liability. It is relevant to mention that the petitioner's husband, Mr.Mani has been permitted to participate in the auction proceedings in terms of order of this Hon'ble Court despite non availability of digital signature with him. It is also relevant to mention that third party/participant had questioned the petitioner's husband, Mr.Mani in participating in the auction proceedings without digital signature in S.A.No.48/2017 before DRT-I, Chennai and this

respondent had filed a counter by stating that pursuant to order of this Hon'ble Court only, the petitioner's husband Mr.Mani has been allowed to participate in the auction proceedings.

It is therefore respectfully prayed that this Hon'ble Court may be pleased to record the aforesaid payment and dispose of the above writ petition and pass appropriate orders and thus render justice.”

10. Added further, Mr.M.L.Ganesh, learned counsel for the bank submitted that at the time of institution of O.A.No.493 of 2016, all the original title deeds mortgaged with the bank, have been submitted to the tribunal. As per the procedure, bank has to file a Part / Full Satisfaction Memo to the tribunal and after appropriate orders regarding release of documents, the same would be handed over to the writ petitioner.

11. Learned counsel for the respondent bank submitted that the document pertaining to Item No.2 of the Sale Notice dated 07.03.2017, would be given to the petitioner, after going through the procedure contemplated, which the bank would do it immediately.

12. Mr.Sethuraman, learned counsel for the guarantor submitted that the borrowers and the guarantors have no objection for the bank to proceed against the other properties mentioned in the sale notice dated 07.03.2017. Submission of both the learned counsel for the parties is placed on record.

13. In view of the above, there shall be a direction to the Central Bank of India, Asset Recovery Branch, Chennai, to take steps, as expeditiously as possible, for release of the documents, pertaining to the property at Door No.52/31, 2nd Avenue, Ashok Nagar, Chennai -83, and hand over the same, to the writ petitioner. Bank is at liberty to proceed, in respect of other properties, in accordance with law.

14. With the above directions, the writ petition is disposed of. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To:
The Authorized Officer,
Central Bank of India,
Asset Recovery Branch,
No.48/49, Montieth Road, Egmore,
Chennai - 600 008.

+1cc to Mr.M.L.Ganesh,Advocate sr.49324

+1cc to Mr.S.Sethuraman,Advocate sr.49552

W.P.No.15995 of 2017
and
WMP No.17283 of 2017

rj(co)
ss(21/7/2017)