IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.26029 of 2017
and WMP No.27632 of 2017

R.Shanmugam ... Petitioner

vs.

1. The Registrar,
Debt Recovery Appellate Tribunal,
Egmore,
Chennai - 600 008.

2. The Authorised Officer,
Indian Bank,
ARM Branch - II,
IV Floor, Ethiraj Salai,
Egmore, Chennai - 600 008.

3. Mr.D.Karthikeyan ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari, calling for the records of the Respondents particularly that of the 1st respondent in AIR (SA) 273 of 2017 dated 11.09.2017 and quash the same as illegal and unlawful besides unsustainable in law.

For Petitioner : Mr.Easwar Kumar
for Mr.T.S.Rajamohan

For Respondent :Mr.John Kingslin
For Mrs.G.Shanthi Meenakshi

ORDER

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

Material on record discloses that being aggrieved by the auction, held on 17.08.2012, pursuant to a tender cum auction sale notice dated 16.06.2012 has been challenged in S.A.No.121 of 2012 on the file of the Debts Recovery Tribunal-I, Chennai.

After considering the arguments and material on record, vide order dated 06.03.2017, Debts Recovery Tribunal-I, Chennai, has dismissed S.A.No.121 of 2012.

2. Being aggrieved, petitioner / borrower has filed appeal in AIR (SA) No.273 of 2017 before the Debts Recovery Appellate Tribunal, Chennai. Alongwith the appeal, I.A.No.958 of 2017 has been filed seeking for waiver of pre deposit, wherein, the petitioner, has contended that notice under Section 13(2) of the SARFAESI Act, 2002 dated 02.09.2002, was issued, demanding a sum of Rs.20,33,492/-. Thereafter, notice under Section 13(4), dated 24.06.2004 was issued under the SARFAESI Act, 2002. Matter was referred to Lok Adalat, wherein, it was mutually agreed between the parties, to amicably settle the dispute for a sum of Rs.15.26 Lakhs, as against Rs.21.55 Lakhs stated to be due and payable. In the supporting affidavit, filed to I.A.No.958 of 2017, in AIR (SA) No.273 of 2017, for waiver, petitioner has further contended that he has paid Rs.4.9 Lakhs towards repayment and agreed to pay the remaining sum on or before 10.03.2005.

3. Garnishee viz., BSNL, also was directed to release Rs.1 Lakh from the Bank account, towards the compromise amount. Petitioner has contended that O.A.No.42 of 2003 filed by the Bank was allowed on 05.11.2004. Out of Rs.15,26,000/-, agreed to be paid in the Lok Adalat, a sum of Rs.12,15,236/- has already been paid and that the petitioner was due and liable to pay the balance sum of Rs.3,04,764/- only. With the above averments, the petitioner has prayed for waiver of pre-deposit.

4. Material on record discloses that I.A.No.957 of 2017 filed to condone the delay of 22 days in filing the appeal has been ordered. However, though the petitioner has made averments regarding payments, and also contended that due to financial constraint, he could not repay the amount, the tribunal by taking note of the amount mentioned in the notice dated 02.09.2002, issued under Section 13(2) of the SARFAESI Act, 2002, i.e. Rs.20.33 Lakhs and by observing that in 15 years time debt amount would have increased in many folds, directed the petitioner to make pre deposit of Rs.8 Lakhs with the Registrar of DRAT, Chennai, within four weeks from 11.09.2017.

5. After considering the material on record and submissions, on 05.10.2017, we passed the following orders.

> "Statute provides entertaining the appeal on pre-deposit upto 50% of the debt amount, which could be reduced to 25%, but not less than 25%, in any case. Perusal of the order impugned, shows that notice under Section 13(2) of the SARFAESI Act, 2002, has been issued on 02.09.2002, directing the petitioner to pay a sum of Rs.20.33 Lakhs.

2. Material on record discloses that sale notice dated 16.06.2012, challenged in S.A.No.121 of 2012, on the file of the Debts Recovery Tribunal - I, Chennai, has been dismissed, vide order dated 06.03.2017, against which, petitioner has filed AIR (SA) No.273 of 2017, alongwith a waiver application in I.A.No.958 of 2017.

3. On this day, when the matter came up for hearing, Mr.T.S.Rajamohan, learned counsel for the petitioner submitted that pursuant to the auction sale notice dated 16.06.2012, property mortgaged has been sold for Rs.42 Lakhs and that a sale certificate has also been issued.

4. When the 3rd proviso to Section 18 of the SARFAESI Act, 2002, enables the Debts Recovery Appellate Tribunal, to entertain an appeal, with pre-deposit of 25% of the debt claimed, by the secured creditor or determined by the Debts Recovery Tribunal, whichever is less, the Debts Recovery Appellate Tribunal, Chennai, ought to have considered the reasons assigned by the petitioner for waiver, within the statutory limitations.

5.Having regard to the 3rd proviso to Section 18 of SARFAESI Act, 2002, and the reasons assigned by the petitioner, expressing inability, we deem it fit to entertain the instant writ petition and grant interim stay of the order impugned, subject to the petitioner, depositing Rs.5,08,250/-, [Rupees Five Lakhs Eight Thousand Two Hundred and Fifty Only], being 25% of the debt amount claimed, within a period of three weeks from the date of receipt of a copy of this order. It is made clear that if the petitioner fails to deposit the said amount as ordered above, interim stay granted would stand vacated, without any further reference to the orders of this Court.

6. Issue notice to the respondents through Court and privately, returnable by 27.10.2017.

7. Post on 27.10.2017."

6. Subsequently, on 27.10.2017, this Court passed orders as hereunder.

> "On 5/10/2017, we passed the following order:-
>
> "5.Having regard to the 3rd proviso to Section 18 of SARFAESI Act, 2002, and the reasons assigned by the petitioner, expressing inability, we deem it fit to entertain the instant writ petition and grant interim stay of the order impugned, subject to the petitioner, depositing Rs.5,08,250/-, [Rupees Five Lakhs Eight Thousand Two Hundred and Fifty Only], being 25% of the debt amount claimed, within a

period of three weeks from the date of receipt of a copy of this order. It is made clear that if the petitioner fails to deposit the said amount as ordered above, interim stay granted would stand vacated, without any further reference to the orders of this Court.”

2. On this day, when the writ petition came up for hearing, Mr.T.S.Rajamohan, learned counsel for the petitioner submitted that though this Court has passed an order, on 5/10/2017, copy of the order was made ready, on 9/10/2017 and the period provided for depositing a sum of Rs.5,08,250/- is on 30/10/2017. A Demand Draft, dated 23/10/2017, was taken in the name of the Debts Recovery Appellate Tribunal, Chennai and when the said amount was sought to be deposited, along with a memo, dated 26/10/2017, Registrar of the Debts Recovery Appellate Tribunal, Chennai, has refused to receive the same, stating that in the order made in W.P.No.26029 of 2017, dated 5/10/2017, there is no specific mention as to the place of deposit.

3. Per contra, Mr.John Kingston, learned counsel for the Bank submitted that there is no proof that such a memo, dated 26/10/2017 is filed.

4. Proviso to Section 18 of the SARFAESI Act, 2002, makes it clear that pre-deposit to be made with the Appellate Tribunal. For brevity, proviso is extracted hereunder:-

“Provided 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.”

5. Language employed in the said proviso is very clear that the deposits should be with the Tribunal and that there is no need to mention the place of deposit.

6. Registrar of Debt Recovery Appellate Tribunal, Chennai, is directed to receive Demand Draft, dated 23/10/2017, for a sum of Rs.5,08,250/-, which the petitioner will do on 30/10/2017.

7. Post on 31/10/2017. Interim order already granted is extended upto 2/11/2017."

7. On this day, Mr.Easwar Kumar, learned counsel for the petitioner submitted that a sum of Rs.5,08,250/- directed by this Court has been deposited. Though discretion is conferred on the Debts Recovery Appellate Tribunal, Chennai to direct pre deposit of 25% of the amount, claimed or determined, whichever is less, going through the material on record, we are of the view that the Debts Recovery Appellate Tribunal, Chennai, has

not considered, as to whether the case of the petitioner, requires any discretion to be exercised, as contemplated under Section 18 of the SARFAESI Act, 2002, but the Debts Recovery Appellate Tribunal, Chennai has proceeded on the premise that a sum of Rs.20.33 has been demanded under Section 13(2) dated 02.09.2002 under the SARFAESI Act, 2002 and that the debt amount would have increased in many folds. Section 18 of the SARFAES Act, speaks only about pre-deposit of 50% or 25% of the amount claimed or determined, whichever is less and that therefore, when the petitioner in the supporting affidavit, to I.A.No.958 of 2017 in AIR (SA) No.273 of 2017 has specifically averred payment of Rs.Rs.12,15,236/-, the same ought to have been adverted to, which Debts Recovery Appellate Tribunal, in our opinion, has not done. 25% of the debt amount claimed in O.A.No.42 of 2003, has been now deposited.

8. Considering the totality of the case and in the light of 3rd proviso to Section 18 of SARFAESI Act, 2002, we are of the view that suffice to make a deposit of 25% of the debt claimed. Impugned order, imposing pre deposit is sustained with a modification of deposit of Rs.5,08,250/-, which has been done, pursuant to the directions of this Court.

9. Thus, while sustaining the order made in I.A.No.958 of 2017 in AIR (SA) No.273 of 2017, with the above modification, writ petition is partly allowed. Registry of DRAT, Chennai is directed to process the appeal papers, if in order, assign regular number, proceed with the same and pass orders on merits and in accordance with law. Considering the fact that O.A. No.42 of 2003, has been filed in the year 2003 and passage of time, DRAT, Chennai is requested to dispose of the appeal, as expeditiously as possible. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ars
To

1. The Registrar,
   Debt Recovery Appellate Tribunal,
   Egmore,
   Chennai - 600 008.

2. The Authorised Officer,
   Indian Bank,
   ARM Branch - II,
   IV Floor, Ethiraj Salai,
   Egmore, Chennai - 600 008.

+2cc to M/S.T.S.Rajamohan, Advocate Sr. 77927
+1cc to M/S.J.John Kingslin, Advocate Sr. 77738

W.P.No.26029 of 2017

CP(CO)
VR(06/11/2017)