IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Petition No.24824 of 2015

M.P.No.1 of 2015

Mrs.S.Sudharani .... Petitioner

vs.

1. The Branch Manager,
   State Bank of India,
   Nungambakkam Branch,
   Valluvar Kottam,
   Nungambakkam, Chennai-34.

2. M/s.State Bank of India,
   Stressed Assets Recovery Branch,
   Red Cross Building, 2nd Floor,
   No.32, Montieth Road,
   Egmore, Chennai-8.

3. Mr.G.Srinivasan,
   M/s.Jothi Leathers,
   No.5/35, Nethaji Street,
   Morai Village, Avadi I.A.F.
   Chennai 600 055. .... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing respondents 1 and 2 to abstain from initiating any action, pursuant to the order passed by the Debt Recovery Tribunal, Chennai, in O.A.No.43 of 2011, dated 30.08.2011, with respect to the mortgaged properties, belonging to the petitioner herein.

For Petitioner : Mr.S.C.Viswantah
for M/s.Malarvizhi Udayakumar

For Respondents 1 & 2 : Mr.Suresh

ORDER

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

The petitioner has sought for a Mandamus, directing the Branch Manager, State Bank of India, Nungambakkam Branch, Chennai-34 and M/s.State Bank of India, Stressed Assets Recovery Branch, Chennai-8, respondents 1 and 2, to abstain from initiating any action, pursuant to the order passed by the Debt Recovery Tribunal, Chennai, in O.A.No.43 of 2011, dated 30.08.2011, with respect to the mortgaged properties, belonging to her.

2. It is the case of the petitioner that her husband had purchased the subject property from (i) Mrs.Kasturi Ammal, W/o. Late Thiru.Govindasamy Naidu, her son, Mr.G.Srinivasan and her daughter, Mrs.Rani and (ii) Mr.Janaki Raman @ Dilli, son of Neelam Govinda Naidu and his sons, viz., Mr.Murugadass, Mr.Bakthavatchalam, represented by their power of attorney, Mr.B.Srinivasalu, son of Mr.Kanniah Naidu, through a registered Sale Deed, bearing Document No.4564 of 1998, dated 23.10.1998 and Document No.4837 of 1998, dated 06.11.1998, on the file of Sub Registrar, Avadi. Ever since the date of purchase, her husband and herself, were in continuous possession and enjoyment of the subject property. Her husband expired on 01.11.2010 and after his demise, she is in continuous possession and enjoyment of the property. Mutation of revenue records has been effected and she is remitting all the cess and tax, pertaining to the subject property.

3. It is the further case of the petitioner that an extent of 0.27 Acres of land in S.No.38/1, was acquired by the Tahsildar, for extension of road and compensation was given, in the name of her late husband, in the year 2003. Therefore, the title vests with the petitioner and no other person is entitled to deal with the property. While so, certain persons and local men inspected the property and tried to measure the property, by metes and bounds. When enquired, the petitioner was informed that the property had been acquired by State Bank of India, viz., 1st respondent, by virtue of an order, passed by the Debt Recovery Tribunal, Chennai, made in O.A.No.43 of 2011, dated 30.08.2011. The petitioner sent a legal notice to respondents 1 and 2, stating that she is the absolute owner of the property and nobody can interfere with her possession and if any action is taken, appropriate criminal action would be taken. Thereafter, the petitioner has filed the present writ petition, for the relief, stated supra.

4. Supporting the relief, stated supra, Mr.S.C.Viswanath, learned counsel for the petitioner, made submissions.

5. Learned counsel appearing for the respondent-Bank submitted that the 3rd respondent had mortgaged the property, as if, it is owned by him and based on the mortgage deed, action was taken under the SARFAESI Act, 2002 and an order came to be passed in O.A.No.43 of 2011. According to him, as per Rule 11 of second schedule of the Income Tax Act, 1961, the petitioner can move, the recovery officer, by filing a claim petition.

6. He further submitted that if the claimant suffers any adverse order, at the hands of the Recovery Officer, remedy is provided, under Section 30 of the Recovery of Debt Due to the Banks and Financial Institution Act (In short "RDBI Act"). Attention of this Court was also invited to the amendment to RDBI Act, by Act 1 of 2000, which provides for an appeal, as against the order made by the recovery offer.

7. Learned counsel for the respondent-Bank further submitted that whenever a claim petition is filed, under Section 11 of the Second Schedule of the Income-Tax Act, ordinarily the claimant is charged only Rs.200/- towards Court fee and not more. According to him, as per the procedure, third party claimants were not even insisted to make any deposit. Submission is placed on record.

Heard the learned counsel appearing for the parties and perused the materials available on record.

8. Having regard to the rival submissions, we are of the view that the writ petitioner, who claims to be owner of the property, mortgaged by the 3rd respondent, without any right or title, with the respondent-Bank, is a person aggrieved and that therefore, she should be provided with an opportunity, either to challenge the order made in O.A.No.43 of 2011, dated 30.08.2011, by way of an application, under Section 29 of the RDBI Act, on payment of sufficient court fee or permitted to file a claim petition before the tax recovery officer, under Rule 11 of the Second Schedule of the Income Tax Act, 1961. Option is left to the writ petitioner.

9. Record of proceedings shows that on 12.08.2015, a Hon'ble Division Bench of this Court in W.P.No.24824 of 2015, while issuing a notice to the respondents, has ordered status-quo to be maintained, till 9th September, 2016. Though the order is restricted to the abovesaid date, status quo has not been vacated.

10. Learned counsel for the respondents submitted that after issuance of the recovery certificate, bank has intended to attach the property, but in view of the order of status-quo granted by this Court, no further action has been taken.

11. In view of the above, we leave it open to the writ petitioner to decide, either to challenge the order made in O.A.No.43 of 2011, dated 30.08.2011, in the manner known to law, either before the Tribunal or to file a claim petition before the Debt Recovery Officer, as the case may be. In any event, we are of the view that there should be promptness in the action to be taken by the petitioner, before the authority or the forum, as the case may be, within 15 days, from the date of receipt of a copy of this order.

12. Though Rule 11(6) of the Second Schedule of Income-Tax Act, 1961, envisages a suit to be filed, Section 30 of the RDBI Act, 1993, enables a party aggrieved, by an order of the Debt Recovery Officer, to prefer an appeal, within 30 days, from the date of receipt of the copy of the order, notwithstanding what is stated in Section 29 of the said Act. When Section 30 of the Act contains a non-obstante clause, referring to a particular provision, i.e, Section 29 of the Act, in our considered opinion, the latter would override the former.

13. Inasmuch as the petitioner is not a borrower and not committed any default, but whose property is at peril, may not be burdened with any conditional deposit, in entertaining an appeal, under Section 20(1) of the RDBI Act. We have given permission to the writ petitioner to move before the appropriate forum/authority, as the case may be. The petitioner had the benefit of an order of status-quo. Therefore, we only observe that our direction granting permission to the writ petitioner should not be nullified by any action of the Bank.

14. With the above observation, Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is also closed.

sd/
Assistant Registrar(CO)

/true copy/

Sub Assistant Registrar

TO

1.The Branch Manager,
State Bank of India,
Nungambakkam Branch,
Valluvar Kottam, Chennai-34.

2.State Bank of India,
stressed Assets Revocery Branch,
Recd Cross Builders, 2nd floor,
32,Monfieth Road, Egmore,
Chennai—8

+1cc to Mr.Malarvizhi Udayakumar, Advocate SR.No.1256
+1cc to Mr.Shivakumar & Suresh, Advocate SR.No.1260.

W.P.No.24824 of 2015

GJ II (CO0
GN(06/02/2017)