

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.3232 of 2018

and

WMP No.3965 of 2018

Smt.Asha .K

... Petitioner

vs.

1. Authorized Officer,
Sree Subramanyeshwara Co-operative Bank Ltd.,
No.565, Ananda Ram Complex,
Avenue Road Branch,
Bangalore - 560 002.

2. Smt.L.Padma

3. The Debts Recovery Appellate Tribunal,
Indian Bank Buildings,
4th Floor, Ethiraj Salai, Egmore,
Chennai - 600 008.

... 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 in AIR (SA) No.936 of 2015 on the file of the Honourable Debt Recovery Appellate Tribunal, the 3rd respondent herein and quash the impugned order dated 14.11.2017 in AIR (SA) No.936 of 2015.

For Petitioner : Mr.T.R.Sundaram

ORDER

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

Material on record discloses that on 03.08.2010 Sree Subramanyeshwara Co-operative Bank Ltd., Bangalore has issued a notice under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest (in short SARFAESI) Act, 2002 to the petitioner and her husband Mr.G.K.Ramachandra, borrowers, that a sum of Rs.15 Lakhs was sanctioned on 01.02.2007, for the purpose of housing loan debts, against security of an immovable property belonging to Smt.K.Asha wife of G.K.Ramachandra bearing Site No.5 & 6 (formerly Eastern portion Site No.06) Katha No.3859/49/24/1/12, situated at Valagerahally Village, Kengeri Hobli Bangalore South Taluk, now within the limits of BBMP, Bangalore. Thereafter, possession notice under Section 13(4) of the SARFAESI Act, 2002 dated 21.01.2011 has been issued.

2. In the lis between P.K.Rajesh and Sree Subramanyeshwara Co-operative Bank Ltd., Bangalore, and others, reference has been made to the District Legal Services Authority, Bangalore - The Lok Adalat and Mr.G.K. Ramachandra, borrower has appeared. A lok adalat Order/Award/Decree in I.R.No.2832 of 2011 dated 24.01.2013, had been passed and same is extracted hereunder

ORDER/AWARD/DECREE

That, at the request of Borrower / Resp.No.4, the case has been referred to this Lok Adalath by the Court of the Debts Recovery Tribunal, Bangalore on this day dated 24.01.2013 for final disposal before us.

(1) Sri.Vishwanath Angadi, Hon'ble District and Sessions Judge

(2) Sri.T.K.Prakash, General Manager (Retired) SBI
(Members of Lok Adalath)

In the presence of Respondent NO.4 and Authorized Officer of Respondent No.1 Bank, Bangalore and others for settlement of the claim and both the parties have agreed to resolving their claim by a settlement and we are satisfied, that the said settlement is just and fair in the interest of both the parties. It is ordered by virtue of the settlement.

The Respondent No.4 (borrower) Sr.G.K.Ramachandra has agreed to discharge a sum of Rs.44,00,000/- as full and final settlement and further agreed to pay a sum of Rs.10,00,000/- on or before 10th day of February, 2013 and agreed to pay the remaining amount of Rs.34,00,000/- within 45 days from today.

In case of default the Respondent Bank is entitle to recover the entire outstanding dues along with interest if any as per the terms and conditions of Recovery Proceedings till realization as prescribed under law."

3. Thereafter, when sale notice dated 09.12.2013 was issued by Sree Subramanyeshwara Co-operative Bank Ltd., Bangalore, Smt.K.Asha, one of the borrowers, has filed SA No.37 of 2014, before the Debts Recovery Tribunal, Bangalore, praying to set aside the sale notice 09.12.2013, issued by the bank. Petitioner has also prayed to restrain the bank from proceeding further. Sale has been confirmed on 23.01.2014, in favour Smt.L.Padma, Bangalore for Rs.60,70,00,000/- and that sale certificate dated 01.03.2014 has been issued.

4. In S.A.No.37 of 2014, petitioner has filed IA.No.1723 of 2014 to set aside the sale and I.A.No.1724 of 2014 to permit her to redeem the mortgage. On 17.10.2014, respondent bank had filed objection. I.A.No.1724 of 2014 has been dismissed on 02.03.2015.

5. After hearing the learned counsel for the parties, Debts Recovery Tribunal, Bangalore vide order dated 09.07.2015, dismissed SA.No.37 of 2014.

6. Mr.T.R.Sundaram, learned counsel for the petitioner submitted that I.A.No.1723 of 2014, was disposed of on the same day. Submission is placed on record.

7. Being aggrieved by the order of dismissal of SA No.37 of 2014, dated 09.07.2015, on the file of the Debts Recovery Tribunal, Bangalore, petitioner has filed AIR SA No.936 of 2015 on the file of the Debts Recovery Appellate Tribunal, Chennai.

8. In IA No.998 of 2017, filed for waiver of pre deposit in AIR SA No.936 of 2015, on 17.10.2017, the Debts Recovery Appellate Tribunal, Chennai, has directed the petitioner to make pre deposit of Rs.10 Lakhs within four weeks.

9. When the matter came up on 14.11.2017, before the Appellate Tribunal, expressing difficulty in mobilising Rs.10 Lakhs and that the appellant could only arrange a sum of Rs.5 Lakhs, learned counsel for the appellant therein/writ petitioner has sought for extension of four weeks time, so as to enable her to make the pre deposit of Rs.10 Lakhs, as ordered on 17.10.2017. Taking note of the fact that since 03.08.2010, bank had been looking for recovery of more than Rs.41 Lakhs and observing that no good ground has been made out for extension of time, Debts Recovery Appellate Tribunal, Chennai, declined to consider the said request and consequently, dismissed the appeal for want of compliance of pre deposit. Being aggrieved by the order of dismissal, instant writ petition is filed.

10. Though several grounds have been made assailing the correctness of the dismissal of Appeal AIR (SA) No.936 of 2015, Mr.T.R.Sundaram, learned counsel for the petitioner submitted

that now the petitioner has taken a demand draft for Rs.10 Lakhs and considering the right of the petitioner, to pursue the statutory appeal, prayed, to set aside the order impugned before us and grant extension of time.

11. Heard Mr.T.R.Sundaram, learned counsel for the petitioner and perused the materials available on record.

12. As rightly pointed out, right of appeal is statutory, but at the same time, as per the decision of the Hon'ble Supreme Court, in Narayan Chandra Ghosh vs. Uco Bank & Ors. reported in AIR 2011 SC 1913, pre deposit is mandatory. Amount claimed, by the bank is Rs.41 Lakhs. On 17.10.2017, Debts Recovery Appellate Tribunal, Chennai, has directed the appellant therein / writ petitioner to make deposit of Rs.10 Lakhs within four weeks. On 14.11.2017, submission has been made that a sum of Rs.5 Lakhs alone could be arranged and extension of time by four weeks has been sought for. Debts Recovery Appellate Tribunal, Chennai, had considered that recovery was due from 2010. Except the above, Debts Recovery Appellate Tribunal, Chennai, had not assigned any other reason as to why extension cannot be granted.

13. Considering the decisions of the Hon'ble Supreme Court in State of U.P., v. Manohar reported in 2005 (2) SCC 126, Chairman, Indore Vikas Pardhikaran v. Pure Industrial Coke & Chemicals Ltd., reported in 2007 (8) SCC 705 and Dev Sharan v. State of U.P. reported in 2011 (4) SCC 769, that right to property is a constitutional right under Article 300-A of the Constitution of India, and the statutory right of the appellant under Section 18 of the SARFAESI Act, 2002, we are of the view that the petitioner should be given an opportunity to pursue the appellate remedy and for that purpose, while setting aside the order made in AIR SA No.936 of 2015 dated 14.11.2017, on the file of Debts Recovery Appellate Tribunal, Chennai, we hereby grant two weeks time to the petitioner to make pre-deposit of Rs.10 Lakhs to the Registrar of Debts Recovery Appellate Tribunal, Chennai.

14. However, Mr.T.R.Sundaram, learned counsel for the petitioner submitted that Rs.10 Lakhs would be deposited by way of Demand Draft, drawn in favour of the Registrar, Debts Recovery Appellate Tribunal, Chennai, by tomorrow itself. Submission is placed on record.

15. On deposit of Rs.10 Lakhs, pre deposit ordered in IA No.998 of 2017 in AIR SA No.936 of 2015, Registrar, Debts Recovery Appellate Tribunal, Chennai, is directed to process the appeal, assign regular appeal number and place it before Debts Recovery Appellate Tribunal, Chennai.

16. With the above directions, writ petition is ordered.
No costs. Consequently, the connected Writ Miscellaneous
Petition is closed.

Sd/-
Assistant Registrar (CS-vi)

//True Copy//

Sub Assistant Registrar

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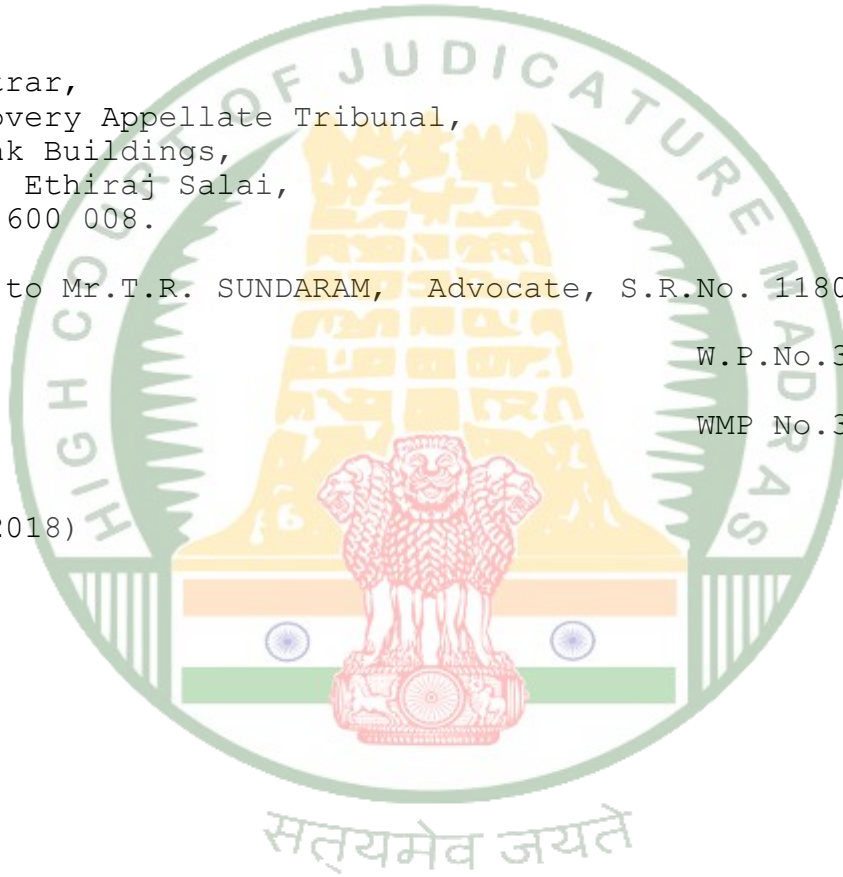
To

The Registrar,
Debts Recovery Appellate Tribunal,
Indian Bank Buildings,
4th Floor, Ethiraj Salai,
Chennai - 600 008.

+1cc to Mr.T.R. SUNDARAM, Advocate, S.R.No. 11806

W.P.No.3232 of 2018
and
WMP No.3695 of 2018

skv (CO)
TR(07/03/2018)



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