

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2018

CORAM:

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

W.P.No.3431 of 2018
and
W.M.P.No.4198 of 2018

Saroja S.Sharma, ... Petitioner

vs.

1.The Lakshmi Vilas Bank Limited,
Chennai Main Branch,
275, Thambu Chetty Street,
Chennai 600 001.

2.Sajjan M.Sharma,
Prop. M/s.SMS Corporation,
C-603, Shivalaya Building,
Commander-in-Charge Road,
Egmore Chennai-105.
Now Residing At
6430, Green Valley Circle,
Apartment 303, Culver City,
California 90230, United States.

3.Subash Chand Jain ... Respondents

Prayer: WRIT Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the order dated 12.01.2018 in AIR (SA) No.518 of 2017 passed by the Debt Recovery Appellate Tribunal, Chennai.

For Petitioner : Mr.G.Senthilkumar
For R1 : Mr.A.V.Radhakrishnan

ORDER

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

M/s.SMS Corporation is a proprietary concern, which availed credit facilities for a sum of Rs.82 Lakhs from Lakshmi Vilas

Bank/first respondent herein. Mrs.Saroj S.Sharma, wife of the proprietor, has offered the residential flat as security. As the borrower and guarantor committed default, account has been declared as a Non Performing Asset. On 08.04.2011, bank has issued a notice under Section 13(2) of the SARFAESI Act, 2002, calling upon the borrower/respondent No.2 to pay a sum of Rs.95,04,060/- within a period of 60 days, failing which further action will be taken under the SARFAESI Act, 2002.

2. Bank has issued a possession notice, dated 18.07.2011, under Section 13(4) of the SARFAESI Act, 2002. On 06.09.2011, sale notice has been issued, fixing the upset price of the property as Rs.1,67,42,000/-. Sale did not materialise and hence, a fresh sale notice dated 18.02.2012 has been issued, fixing the sale on 28.03.2012. The said sale also did not take place. Thereafter, another sale notice dated 09.07.2012 has been issued, fixing the upset price as Rs.1,50,67,800/- for the property. In the auction held on 17.08.2012, the property has been sold to one Mr.Subash Chand Jain, for a sum of Rs.1,50,67,800/-

3. Lakshmi Vilas Bank Limited, the first respondent herein, sought for assistance of the learned District Magistrate and District Collector, Chennai for taking physical possession of the property, in February - 2015, by filing application in CrI.M.P. No.2522/2015 under Section 14 of the SARFAESI Act, 2002 to the learned Chief Metropolitan Magistrate, Chennai and an order has been obtained on 03.06.2015.

4. Being aggrieved by the above order of the learned Chief Metropolitan Magistrate, Chennai, petitioner's wife filed S.A.No.88 of 2015, on the file of the Debts Recovery Tribunal-II, Chennai. She has also filed an application in I.A.No.414 of 2016 for redemption of mortgage. Both the S.A.No.88 of 2015 and other I.A.Nos.505 and 506 of 2015, 414 and 415 of the 2016, were disposed of by a common order dated 07.08.2017.

5. As against the order in S.A.No.88 of 2015, the petitioner has filed AIR (SA) No.518 of 2017 on the file of the Debts Recovery Appellate Tribunal, Chennai. Along with the said appeal, petitioner has filed I.A.No.1351 of 2017, seeking for waiver of pre-deposit.

6. On 15.12.2017, when the matter came up for hearing before the Debts Recovery Appellate Tribunal, Chennai, submission has been made that, after the issuance of notice under Section 13 (2) of the SARFAESI Act, 2002, for recovery of Rs.95.04 Lakhs, petitioner's husband has deposited a sum of Rs.40 lakhs and that the same be treated as pre-deposit. However, before the Tribunal, learned counsel for the Bank, has contended that the

outstanding amount due has become more than Rs.1.42 Crores, and sale notice has been issued for the said amount.

7. Considering the debt amount as Rs.1.42 Crores, vide order dated 15.12.2017, DRAT, Chennai, has directed the petitioner to make a pre-deposit of Rs.50,00,000/-, with the Registrar of DRAT, Chennai, within a period of four weeks from the date of passing of the order.

8. Thereafter, on 12.01.2018, I.A.No.1351 of 2017 in AIR (SA) No.518 of 2017, came up for further hearing. Contending inter-alia that the appellant therein, Mr.Sajjan M.Sharma, stays in USA and very soon would be making arrangement for deposits, learned counsel for the appellant has sought for 2 days time. Submission has also been made that a sum of Rs.40,00,000/- had already been deposited. However, by observing that the bank is looking for recovery since 2011, when demand notice was issued, Debts Recovery Appellate Tribunal, Chennai, held that no good ground was made out for extension of time. Thus, rejecting the request for extension of time, vide order dated 12.01.2018, DRAT, Chennai, has dismissed the I.A.No.1351 of 2017 in AIR (SA) No.518 of 2017.

9. Being aggrieved, instant writ petition has been filed, to issue a Writ of Certiorari, calling for the records pertaining to the order dated 12.01.2018 in AIR (SA) No.518 of 2017, passed by the Debts Recovery Appellate Tribunal, Chennai and to quash the same.

10. Reiterating the above facts, Mr.G.Senthilkumar, learned counsel for the petitioner submitted that though a specific plea was made that a sum of Rs.40,00,000/- has already been deposited, pursuant to an interim direction of this Court, in W.M.P.No.26269 of 2016 in W.P.No.30274 of 2016, the Appellate Tribunal, failed to advert to the same, and mechanically dismissed I.A. No.1351 of 2017 and AIR(SA).No.518 of 2017. He further submitted that the Appellate Tribunal, ought to have given a reasonable time for the deposit of the balance amount of Rs.10,00,000/- and in the case on hand, when two days time was sought for, the same ought to have been given.

11. Considering the limited issue, as to whether a sum of Rs.40,00,000/- has already been paid, pursuant to the order made by the Writ Court, we ordered notice to the respondent/bank. Having regard to the submission of the learned counsel for the petitioner that a sum of Rs.40,00,000/- has already been deposited with bank, on 16.02.2018, we directed the petitioner, to serve the entire cause papers in W.P.No.3431 of 2018 on Mr.A.V.Radhakrishnan, learned counsel who had appeared for the respondent bank, in the Tribunal.

12. Mr.A.V.Radhakrishnan, learned counsel for the bank, first respondent herein, submitted that the property has already been sold, sale certificate has been issued and registered in the year 2013 in the name of the Auction Purchaser.

13. He further submitted that though orders were obtained under Section 14 of the SARFAESI Act, 2002, the same could not be implemented, due to the resistance of the writ petitioner. Submissions of the learned counsel for the bank, is placed on record.

14. We called for the entire records in W.P.No.30274 of 2016. Perusal of the cause papers, shows that taking note of the submission of the petitioner therein, to pay a sum of Rs.40,00,000/- to the bank, towards part payment of the loan amount advanced, a Hon'ble Division Bench of this Court, in W.M.P.No.26269 of 2016 in W.P.No.30274 of 2016 has permitted the petitioner therein, to deposit a sum of Rs.40,00,000/- with the first respondent bank, within two weeks from the above said date, as part payment of loan amount, till such time status quo has been directed to be maintained. For brevity, order dated 31.08.2016 in W.M.P.No.26269 of 2016 in W.P.No.30274 of 2016 is extracted hereunder:-

"3. In view of the above submission, subject to the result of the writ petition, the petitioner is permitted to deposit a sum of Rs.40 lakhs (Rupees Forty lakhs) to the 1st respondent Bank within two weeks from today towards part payment of loan amount, till such time status quo to be maintained."

15. Perusal of the interim order shows that Mr.Sajjan M.Sharma, while the husband of the writ petitioner has sought for a writ of certiorari to call for records of the order made in Crl.M.P.No.2522 of 2015, dated 03.06.2015, on the file of the Chief Metropolitan Magistrate, Egmore, Chennai and to quash the same. Mrs.Saroj S.Sharma, wife of the second respondent herein, has chosen to file S.A.No.88 of 2015, before the DRT-II, Chennai, challenging the very same order of the learned Chief Metropolitan Magistrate, Egmore, Chennai.

16. Subsequently, W.P.No.30274 of 2016, has been disposed of on 07.11.2016, whereby the Hon'ble Bench, to which one of us is a party (Mr.Justice S.MANIKUMAR), directed the Debts Recovery Tribunal - II, Chennai, to dispose of S.A.No.88 of 2015, within two months from the date of receipt of a copy of the order.

17. S.A.No.88 of 2015 along with I.A.No. 414 of 2016 has been disposed of on 07.08.2017. Guarantor had pledged the property. She has filed appeal in AIR (SA) No.518 of 2017 along

with I.A.No.1351 of 2017, for waiver. Record of proceedings dated 15.12.2017 of DRAT, Chennai, shows that submission has been made that a sum of Rs.40,00,000/- has been made as deposit and prayer has been made to take the same as pre-deposit.

18. Before DRAT, Chennai, learned counsel for the Bank/first respondent herein, has contended that a sum of Rs.1.42 Crores was due. Taking note of the same and by observing that, DRAT, Chennai, cannot entertain any appeal without ensuring pre-deposit of 50% of the debt amount, which cannot be reduced to less than 25% in any case. DRAT, Chennai, has directed the appellant to make a pre-deposit of Rs.50,00,000/- with the Registrar, of the Tribunal, within a period of four weeks from 15.12.2017, and thereafter on 12.01.2018 dismissed I.A.No.1351 of 2017 along with AIR (SA) No.518 of 2017, for want of compliance of pre-deposit.

19. As rightly contended by the learned counsel for the petitioner that though a sum of Rs.40,00,000/- has already been deposited and submission has been made to treat the same as part of pre-deposit, the Tribunal has not adverted to the same.

20. Perusal of the order dated 12.01.2018 shows that though two days time, was sought for by the petitioner, Tribunal has not considered the same.

21. Taking note of the fact that, bank was looking for recovery since 2011, when demand notice was issued, two days time sought for, has been rejected. It may be a fact that bank had been waiting for such a long period, that would not be a ground, to deny extension of two days time for making pre-deposit. Bank has already sold the property what is now sought to be challenged, is only an order passed under Section 14 of the SARFAESI Act, 2002. Right of appeal is statutory.

22. Having regard to the fact that, husband of the petitioner Mr.Sajjan M.Sharma had already deposited a sum of Rs.40,00,000/- towards the loan amount, after the issuance of a notice under Section 13(2) of the SARFAESI, Act, 2002, we are of the view that the said amount can be taken note of for the purpose of pre-deposit a condition, precedent for entertaining an appeal under Section 18 of the SARFAESI Act, 2002, against the order in S.A.No.88 of 2015, dated 07.08.2017, on the file of the DRT-II, Chennai.

23. We direct the petitioner/guarantor to make a further deposit of Rs.10,00,000/-. Sum of Rs.50,00,000/- secured (Rs.40,00,000/- paid to the bank + Rs.10,00,000/- to be deposited by the petitioner with the Registrar of DRAT, Chennai) would constitute, little more than 25% of the pre-deposit of the

debt amount of Rs.1.42 Crores.

24. For the reasons stated supra, we are of the view that the impugned order deserves to be set aside and accordingly set aside. Mr.G.Senthilkumar, learned counsel for the petitioner submitted that within one week from today, a sum of Rs.10,00,000/- would be deposited with the Registrar, DRAT, Chennai.

25. As already ordered a sum of Rs.40,00,000/- deposited with the bank be taken as pre-deposit Rs.10,00,000/- be deposited within a period of one week. Registrar, Debts Recovery Appellate Tribunal, Chennai, is directed to assign regular appeal number, if it is otherwise in order, and place the appeal before the DRAT, Chennai.

26. With the above directions, Writ Petition is Allowed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

dm

+1cc to Mr.A.V.Radhakrishnan, Advocate, S.R.No.13810

+1cc to Mr.G.Senthilkumar, Advocate, S.R.No.13733

W.P.No.3431 of 2018
and W.M.P.No.4198 of 2018

RRK(14/03/2018)

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