IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE M.DURAISWAMY
W.P. No.4130 of 2018 and
W.M.P.No.5057 of 2018
K.Sekar .. Petitioner

v.

1 The Bank of Baroda
Rep. by its Branch Manager
Namakkal Branch, Paramathy Road
Namakkal.
2 S.S.Murugesan
3 V.Sengoda Goundar
4 M.Poongodi .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records leading to the impugned order passed by the Debt Recovery Appellate Tribunal, Chennai in M.A.No.6 of 2017, dated 18.01.2018 and quash the same.

For Petitioner : Mr.C.Jagadish
for J.Milton Arul Rajendran

For Respondents : No appearance - for R1
Mr.S.Muthukrishnan - for R2 to R4

ORDER
(Order of the Court made by M.DURAISWAMY,J.)

The petitioner has filed the above writ petition to issue a Writ of Certiorari to call for the records in respect of the impugned order passed by the Debt Recovery Appellate Tribunal, Chennai in M.A.No.6 of 2017, dated 18.01.2018 and to quash the same.

2. The petitioner, who is the auction purchaser, has filed the above writ petition challenging the order passed by the Debt Recovery Appellate Tribunal, Chennai in M.A.No.6 of 2017. The petitioner-auction purchaser is aggrieved over the clause (iii) of the order, wherein the Debt Recovery Appellate Tribunal directed the respondent-bank to collect pre-deposit amount lying to the credit of the Debt Recovery Appellate Tribunal and refund the money to the auction purchaser along with interest payable according to the prevailing rate of interest on term deposits. So far as clause (i) and (ii) are concerned, the learned counsel for the petitioner submitted that the petitioner is not aggrieved over the same.

3. The respondent-bank filed O.A.No.315 of 2011 on the file of the Debts Recovery Tribunal, Madurai against the respondents 2 to 4 [2nd respondent is the borrower and the respondents 3 and 4 are the

guarantors] for recovery of a sum of Rs.88,05,951/- [Rupees eighty eight lakhs five thousand nine hundred and fifty one only] with subsequent interest and to issue an order of recovery certificate to recover the total sum of Rs.88,05,951/- with interest and other reliefs.

4. Since the respondents 2 to 4 remained exparte before the Debts Recovery Tribunal, Madurai, the Tribunal, by order dated 24.03.2015, decreed the O.A.No.315 of 2011 as prayed for and also directed to issue the recovery certificate. Thereafter, the respondents 2 to 4 filed an application in I.A.No.922 of 2015 in O.A.No.315 of 2011 to set aside the exparte order passed in O.A.No.315 of 2011, dated 24.03.2015. The said application was contested by the respondent-bank.
5.After taking into consideration the case of both sides, the Debts Recovery Tribunal, Madurai, by order dated 28.09.2016, declined to set aside the order dated 24.03.2015 and consequently dismissed the application in I.A.No.922 of 2015.
6. Subsequently, the property was brought to sale by the respondent-bank and the petitioner was the successful bidder, having purchased the property for a sum of Rs.60,40,000/- [Rupees sixty lakhs and forty thousand only] in the sale held by e-auction on 21.07.2016. The sale was confirmed and the sale certificate dated 07.12.2016 was also issued in favour of the petitioner. Thereafter, the respondents 2 to 4 preferred an appeal in M.A.No.6 of 2017 against the order passed in I.A.No.922 of 2015 in O.A.No.315 of 2011 on the file of the Debt Recovery Appellate Tribunal.

7. Though the sale certificate was issued in favour of the writ petitioner as early as on 07.12.2016, he was not made as a party in the appeal filed by the respondents 2 to 4 before the Debt Recovery Appellate Tribunal, Chennai. In his absence, the Debt Recovery Appellate Tribunal passed the following order on 18.12.2018:-
"Exparte order dated 24.03.2015 deserves to be set aside on the following conditions:-
(i) Since Appellants have already paid Rs.63.42 lakhs with DRAT as pre-deposit will pay balance OA amount along with interest at 11.50% p.a. with quarterly rests within six weeks from today.

(ii) Appellants will deposit the amount before DRT, Madurai and after deposit only, exparte order will come to an end.

(iii) Respondent Bank will collect the pre-deposit amount lying in this Tribunal and refund the money to Auction Purchaser along with interest payable according to prevailing rates of interest on term deposits, at the earliest.

It is made clear that default in compliance of aforesaid order will make the Appellants borrowers liable for dispossession of the property with immediate effect.

Appeal is disposed of as indicated above. Accordingly IA-1012/2017 contempt petition and IA-14/2014 stay application stand closed."

8. Now, the petitioner-auction purchaser is aggrieved over clause (iii) of the order mentioned above.

9. On a perusal of the order passed by the Debt Recovery Appellate Tribunal, it could be seen that the Debt Recovery Appellate Tribunal, Chennai has virtually set aside the sale made in favour of the petitioner-auction purchaser and also the sale certificate issued on 07.12.2016, that too, without making the auction purchaser as a party. That apart, the order passed by the Debt Recovery Appellate Tribunal would also make it clear that even the respondents 2 to 4, who are the borrower and the guarantors, have not made any submission before the Debt Recovery Appellate Tribunal to set aside the sale made in favour of the petitioner. The Debt Recovery Appellate Tribunal on its own cannot appropriate the pre-deposit amount towards the sale consideration paid by the auction purchaser and set aside the sale. The respondents 2 to 4 should have filed an application under

Order XXI, Rule 89 CPC and to get the sale set aside as per the said provisions on deposit of the entire sale consideration together with 5% poundage and other expenses incurred by the auction purchaser.

10. In the case on hand, even without filing an application to get the sale set aside, the Debt Recovery Appellate Tribunal, on its own, directed the respondent-bank to collect the pre-deposit amount lying before the Tribunal and refund the money to the auction purchaser along with interest. The order passed by the Debt Recovery Appellate Tribunal is erroneous and liable to be set aside.

11. Since the learned counsel appearing for the petitioner submitted that the petitioner is not questioning clause (i) and (ii) of the order passed by the Debt Recovery Appellate Tribunal, we are not interfering with the clause (i) and (ii) of the order.

12. For the reasons stated above, clause (iii) of the order alone is set aside. It is open to the respondents 2 to 4 to file appropriate application before the Debts Recovery Tribunal, Madurai, to set aside the sale made in favour of the petitioner, in accordance with law. If such an application is filed by the respondents 2 to 4, the Debts Recovery Tribunal shall decide the same on merits and in accordance with law, after giving due opportunity of personal hearing to all the parties.
With these observations, the writ petition is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

(V.K.T., CJ.) (M.D., J.)
27.09.2018
Index : Yes/No
Speaking Order/Non Speaking Order
Rj

To

The Branch Manager
Bank of Baroda
Namakkal Branch
Paramathy Road
Namakkal.

THE HON'BLE CHIEF JUSTICE
AND
M. DURAISWAMY,J.

Rj

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