

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.20319 of 2018 and

W.M.P.No.23871 of 2018

M/s.Renuga Timber & Woods
rep by its Partner cum Guarantor
P.Leelavathi
No.42/2A, Sai Nagar Annexe 1st Cross Street,
Chinmaya Nagar,
Chennai - 600 092. ... Petitioner

Vs.

1.M/s.Asset Reconstruction Company (India) Ltd.,
rep by its Authorized Officer,
No.1 G, 1st Floor, Century Plaza,
No.560-562, Anna Salai,
Teynampet, Chennai - 600 002.

2.V.S.Muthupandi

3.The Debt Recovery Appellate Tribunal,
rep by its Registrar,
4th Floor Indian Bank Buildings,
Egmore, Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus to call for the records of the impugned order dated 23.07.2018 on the file of the 3rd respondent passed in I.A.No.1751 of 2017 in R.A.(SA).No.119 of 2013 and to quash the same and direct the Debt Recovery Appellate Tribunal, Chennai, the 3rd respondent herein to consider the appeal in R.A.(SA).No.119 of 2013 on merits by affording an opportunity of hearing to the petitioner in accordance with law.

For Petitioner : Mr.S.Sethuraman
for M/s.V.S.Selvasekaran

For Respondents : Mr.K.Shankar (R1)
Mr.K.N.Natarajaaj (R2)
R3 - Tribunal

O R D E R

(Order of the Court made by M.DURAI SWAMY, J.)

The petitioner has filed the above Writ Petition to issue a Writ of certiorari mandamus to call for the records of the impugned order dated 23.07.2018 on the file of the 3rd respondent passed in I.A.No.1751 of 2017 in R.A.(SA).No.119 of 2013 and to quash the same and consequently, direct the Debt Recovery Appellate Tribunal, Chennai, to consider the appeal in R.A.(SA).No.119 of 2013 on merits by affording an opportunity of hearing to the petitioner in accordance with law.

2.It is the case of the petitioner that she was made as one of the Partners of the petitioner - Company and she also stood as guarantor for the Over Draft facility for a sum of Rs.40,00,000/- availed from the Indian Bank, CMDA Branch, Chennai. The debt was subsequently assigned in favour of the 1st respondent by the Indian Bank through an Assignment Agreement dated 30.12.2013 for a sum of Rs.38,50,496/-. As per the Deed of Assignment, the total outstanding as per the demand notice dated 30.10.2012 was Rs.43,50,930/-. The Indian Bank issued a demand notice under Section 13(2) of the SARFAESI Act on 30.10.2012 for a sum of Rs.43,50,930/-. In Section 13(2) notice, the petitioner's residential address was mentioned along with the Firm's address at Maduravoyal at Poonamallee. The possession notice affixed on 09.01.2013, was followed by the tender cum auction sale notice dated 22.02.2013 fixing the reserve price at Rs.188 lakhs and the date of auction was fixed on 28.03.2013.

3.The petitioner challenged the auction sale notice dated 22.02.2013 in S.A.No.98 of 2013 before the Debts Recovery Tribunal - III, Chennai. The Debts Recovery Tribunal - III passed an interim order dated 27.03.2013 granting stay of confirmation of sale till the disposal of the appeal. The appeal in S.A.No.98 of 2013 was allowed by the Debts Recovery Tribunal - III on the ground of infirmities, resulting in the quashing of the sale notice by order dated 13.09.2013. Aggrieved over the same, the Indian Bank preferred an appeal before the Debt Recovery Appellate Tribunal, Chennai in R.A.(SA).No.119 of 2013 and the Appellate Tribunal ordered notice to the petitioner to the business address of the petitioner Firm, which was closed long back.

4. According to the petitioner, since the Firm was closed long back and notice was taken to the business address, the petitioner was not served with notice as ordered by the Debt Recovery Appellate Tribunal. Subsequently, paper publication by way of substituted service was effected and the petitioner was set exparte on 20.05.2014. On 28.03.2013, the auction was conducted by the Indian Bank, in which the 2nd respondent was declared as the successful bidder. The petitioner was also informed that the Sale Certificate was registered in favour of the 2nd respondent. The petitioner applied for an Encumbrance Certificate and found that there was only one entry pertaining to the Memorandum of Deposit of Title Deeds.

5. On 04.07.2017, a letter was given to the petitioner by the 1st respondent stating that on 21.03.2017, the Debt Recovery Appellate Tribunal had passed an order in favour of the assignee and the sale has been confirmed and the Sale Certificate has been issued in favour of the 2nd respondent. The 1st respondent approached the petitioner on 22.05.2018 for taking physical possession of the residential property under Section 14 of the SARFAESI Act. Before the Chief Metropolitan Magistrate, Chennai, the petitioner filed Crl.M.P.No.3079 of 2017 and also filed her objections in Crl.M.P.No.2441 of 2017 pointing out the fact about the material suppressions in respect of proof affidavit filed before the Chief Metropolitan Magistrate on 15.06.2017.

6. In the meanwhile, the borrower K.Rajendran filed an appeal in S.A.No.61 of 2018 challenging the order passed by the Chief Metropolitan Magistrate in Crl.M.P.No.3079 of 2017 and the petitioner has also filed a Securitisation Appeal in S.R.No.4461 of 2018, which is also pending for adjudication. Subsequently, the petitioner filed an application in I.A.No.1751 of 2017 to condone the delay of 224 days in filing the petition to set aside the exparte order dated 21.03.2017. The Debt Recovery Appellate Tribunal, by order dated 23.07.2018, dismissed the petition. Aggrieved over the same, the petitioner has filed the above Writ Petition.

7. It is pertinent to note that though the petitioner has closed the Firm, notice was ordered only to the address where the Firm was functioning, resulting in the non-service of notice on the petitioner. Since she was not put on notice, she was set exparte and an exparte order came to be passed on 21.03.2017 against her. It is also pertinent to note that since the notice was affixed on the premises, substituted service by way of paper publication was effected and the exparte order was passed against the petitioner.

8.On a perusal of the materials available on record, it would reveal that there is nothing on record to show that the petitioner was duly served with a notice by the Debt Recovery Appellate Tribunal. The petitioner should have been served with proper notice prior to the disposal of the appeal by the Debt Recovery Appellate Tribunal. By passing the exparte order, that too, without serving the notice on the petitioner, resulted in miscarriage of justice, causing hardship and prejudice to the petitioner.

9.In the interest of justice, the petitioner should have been given an opportunity to contest the appeal on merits. When the petitioner was not served with notice, we are of the considered view that the order passed by the Debt Recovery Appellate Tribunal declining to condone the delay of 224 days in filing the petition to set aside the exparte order dated 21.03.2017 has to be set aside. Accordingly, the same is set aside and the delay of 224 days in filing the petition to set aside the exparte order is condoned. The application in I.A.No.1751 of 2017 is allowed, on condition, the petitioner paying a sum of Rs.20,000/- as costs to the respondents 1 & 2. Out of the said sum of Rs.20,000/-, the petitioner is directed to pay Rs.10,000/- to the 1st respondent and the balance sum of Rs.10,000/- to the 2nd respondent within two weeks from the date of receipt of a copy of this order. Further, we also direct the 3rd respondent viz., the Debt Recovery Appellate Tribunal, Chennai to dispose of the appeal in R.A.(SA).No.119 of 2013, on merits and in accordance with law, after giving due opportunity of hearing to the petitioner, within eight weeks from the date of payment of costs as stated above.

10.With these observations, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

va
To

- 1.The Authorized Officer,
M/s.Asset Reconstruction Company (India) Ltd.,
No.1 G, 1st Floor, Century Plaza,
No.560-562, Anna Salai,
Teynampet, Chennai - 600 002.

2.The Debt Recovery Appellate Tribunal,
rep by its Registrar,
4th Floor Indian Bank Buildings,
Egmore, Chennai.

+2cc to Mr.K.N.Nataraj, Advocate, S.R.No.78603

+1cc to Mr.K.Shankar, Advocate, S.R.No.78606

W.P.No.20319 of 2018 and
W.M.P.No.23871 of 2018

GSP (27/11/2018)



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