IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2018

CORAM:

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

C.R.P.No.225 of 2017
and CMP No.967 of 2017

H.P.Jinnappa ...Petitioner/ Appealiant

vs.

Authorised Officer &
Chief Manager,
Indian Bank,
Anna Nagar Branch,
Chennai - 600 040. ...Respondent/ Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 17.11.2016 made in IA No.27 of 2015 in AIR No.16 of 2015 on the file of the Debts Recovery Appellate Tribunal, Chennai.

For Petitioner : Mr.K.Thiruvengadam
for Mr.V.Premkumar

For Respondent : Mr.Chandu Suranjan

ORDER

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

Order impugned in the instant Civil Revision Petition is as follows:

"Mr.V.Premkumar Ld. Counsel for the Appellant is present.

Mr.K.Chandu Suranjan Ld. Counsel for the Respondent Bank is present.

Heard the Ld. Counsel for the parties in IA 27/2015, Waiver Application.

Order dated 8.12.2014 passed by the Debts Recovery Tribunal-I, Chennai [DRT, for short] in SA

221/2010 is under challenge by/ which the DRT has affirmed the Notices issued by the Authorized Officer of the Respondent Bank under Sections 13[2], 13[4] and Sale Notice respectively, and dismissed the Application.

Necessary facts in short are that on 07.07.1998 the Respondent Bank advanced loan of Rs.1.82 Lakhs to the borrowers. In consideration of the said loan, one Mr.Dharmaprakash J. Kumar mortgaged his immovable property for due repayment of the said loan. After availing the loan, the borrowers failed to repay the said loan as per the agreed terms. Subsequently, the Respondent Bank classified the loan account of the borrowers as Non-Performing Asset [NPA]. Thereafter, on 30.12.2009, the Authorised Officer of the Respondent Bank initiated proceedings under SARFAESI Act, by issued Notice under Section 13[2] of the Act demanding Rs.32.11 Lakhs.

The Ld.Counsel for the Appellant submits that the Appellant is a 3rd party, who purchased the disputed property in the year 1999 from the borrower without examining and verifying the parent title deeds because the seller has expressed that the original title deeds have lost/stolen. The borrower had lodged a complaint before Police also. Since 1999, the Appellant has been in peaceful possession of the premises under the registered sale deed. The Bank has initiated the SARFAESI proceedings after more than a period of 10 years. Hence, it is time barred. According to Article 137 of the Limitation Act, the proceedings are time barred. The Bank has no explanation regarding this inordinate delay in these proceedings.

Ld. Counsel for the Respondent Bank submits that, the original title deed was deposited in the Bank. Hence, they had no doubt regarding the sale of the property. If the Appellant has purchased the property under false impression given by the borrower, then, the Appellant is free to take any civil or criminal action against the borrower, who sold the property which was mortgaged to the Bank.

Ld. Counsel for the Respondent Bank further submits that the Appellant purchased the property from the borrower which was already mortgaged with the Bank and purchased the property without caring for the original title deeds. Now the Appellant cannot take shelter under a technical ground of the limitation.

In my considered opinion, whether the Appellant is a bonafide purchase of the property in question or not, has to be gone into at the time of final hearing of the Appeal. At this stage, the Appellant is an aggrieved person by the impugned Order. The Authorised Officer of the Respondent Bank has issued 13[2] Notice demanding Rs.32.11 Lakhs. To entertain the Appeal, pre deposit is condition precedent. In my considered view, it would be appropriate if the Appellant is directed to deposit Rs.16 Lakhs in compliance of Section 18 of the SARFAESI Act.

Accordingly, the Appellant is directed to deposit Rs.16,00,000/- [Rupees Sixteen Lakhs Only] within one month from today, in the name of Registrar, DRAT, Chennai, failing which the Appeal shall stand rejected.

Accordingly, the Waiver Application is disposed of. List on 19.12.2016, for confirmation of pre deposit and further orders in stay application."

2. Record of proceedings shows that on 07.02.2017, this Court has ordered notice, through Court and Privately. There is no stay of the order passed in I.A.No.27 of 2015 in AIR (SA) No.16 of 2015 dated 17.11.2016, on the file of Debts Recovery Appellate Tribunal, Chennai.

3. Mr.Chandu Suranjan, learned counsel submitted that on behalf of bank, vakalat has been filed. He further submitted that for non compliance of the deposit, as ordered in I.A.No.27 of 2015 in AIR (SA) No.16 of 2015 dated 17.11.2016, subsequently, DRAT, Chennai has dismissed I.A.No.27 of 2015 and AIR (SA) No.16 of 2015, has been rejected. Submission of the learned counsel for the bank, is placed on record.

4. I.A.No.27 of 2015 is stated to have been dismissed and consequently, AIR (SA) No.16 of 2015, has been rejected. Therefore, nothing survives in this Civil Revision Petition for further adjudication. Hence, instant Civil Revision Petition is dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ars

To

Authorised Officer &
Chief Manager,
Indian Bank,
Anna Nagar Branch,
Chennai - 600 040.

+1cc to Mr.K.Chandu Suranjan, Advocate, S.R.No.21082

C.R.P.No.225 of 2017
and
CMP No.967 of 2017

KJ(CO)

RRK(13/04/2018)