IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.7694 of 2018
and
W.M.P.Nos.9600 and 18525 of 2018

A.R.Hasina Banu .. Petitioner

Vs.

1.The Assistant Vice President (Law)
and Authorised Officer,
Axis Bank, Central Office,
Maker Tower 'F'
13th Floor, Guffle Parade,
Coloba, Mumbai.

2.The Branch Manager,
Retail Asset Center,
Axis Bank Limited.

3.R.Ramesh .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records made in RA (SA) No.121/2011 by the Debts Recovery Appellate Tribunal, Chennai dated 19.12.2017 and quash the same.

For Petitioner : Mr.C.D.Johnson
for Mr.N.Surya Senthil

For R1 and R2 : Mr.R.Nagasundaram

For R3 : Mrs.Hema Sampath
Senior Counsel
for Mrs.R.Meenal

ORDER

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

On 29.06.2018, the following order has been passed.

"Challenge in this writ petition is to the correctness of the order made in RA(SA) No.121/2011 dated 19.12.2017 on the file of the Debts Recovery Appellate Tribunal, Chennai.

2. Contending inter alia that though a sum of Rs.60.40 Lakhs was paid to the Axis Bank, secured creditor, way back in 2010, for nearly eight years, and unable to get physical possession of the property, auction purchaser, has filed WMP No.18525 of 2018, for a direction to the bank as well as the borrower, respondents 2 and 3 herein respectively, to return the bid amount with interest at the rate of 18% per annum from 01.03.2010, from the date of payment of sale price.

3. Mr.R.Naga Sundaram, learned counsel for the bank submitted that out of Rs.60.40 Lakhs paid by the auction purchaser, a sum of Rs.33,08,727/- amount due and payable had been appropriated towards the loan account and that balance of Rs.27,31,273/-, is retained in an account, which does not bear interest.

4. Learned counsel for the bank further submitted that on 09.04.2018, borrower has paid Rs.35 Lakhs by way of demand draft. As much as loan account has already been closed, demand draft is retained.

5. Learned counsel for the bank further submitted that as on 28.06.2018, amount due and payable by the borrower on the contractual rate of interest is Rs.75,49,377.98p. Learned counsel for the bank further submitted that if the borrower is willing to part with interest, payable by the bank, if any, to the auction purchaser, in the event of any order to be passed in WMP.No.18525 of 2018, there is no objection. Bank has excess money of Rs.27,31,273/-, payable to the borrower.

6. Auction purchaser does not want possession of the property due to the delay. Borrower has intended to repay and accordingly, paid a sum of Rs.35 Lakhs, though, after the sale i.e., 01.03.2010.

7. Considering the totality of the said case and the intention of the borrower, we are of the view that there is a possibility of an amicable settlement. Therefore, Registry is directed to place WP.No.7694 of 2018 for mediation, before Tamilnadu Mediation and Conciliation Centre, High Court, Madras on 09.07.2018.

8. Learned counsel for the parties, will make necessary arrangements for the appearance of the parties on 09.07.2018 before the Mediation Centre.

9. Sum of Rs.27,31,273/- paid by the auction purchaser over and above the outstanding amount, and sum of Rs.35 Lakhs tendered by the borrower by way of Demand Draft, both together, shall be deposited in an interest bearing account till the disposal of the writ petition.

10. Mediation Centre shall submit a report to this Court by 23.07.2018.

11. Post on 23.07.2018 alongwith Mediation report."

2. Mediation failed. When the matter came up yesterday i.e. on 02.08.2018, another endeavour was made by the court, to settle the dispute. With the active cooperation of the advocates, this endeavour has been successful.

3. The auction purchaser has paid a sum of Rs.60,40,000/-, towards purchase or property. The amount was deposited on 01.03.2010. The auction purchaser is therefore entitled to the refund of the entire amount. It is settled law that auction purchaser must be compensated for the loss of enjoyment of the amount/property, pending litigation.

4. It has been agreed by the parties that the amount of Rs.60,40,000/- deposited with the bank on 01.03.2010, will be repaid with interest at the rate of 6.5% per annum. The sum of Rs.35,00,000/- and a sum of Rs.27,31,273/- representing the loan amount and the difference between the auction price and the loan amount would be paid to the auction purchaser by the bank with interest at the rate of 7% per annum (which is more than 6.5% per annum) from 01.03.2010 till July 2018. The sum of Rs.35,00,000/- and Rs.27,31,273/- have been kept in Fixed Deposit bearing FDR Nos.20032973120 and No.20032973119. The FDRs would be liquidated and paid by the bank to the auction purchaser on 04.08.2018. The interest on the FDRs which comes to a sum of Rs.13,79,223/- would be paid by the bank to the auction

purchaser on or before 14.08.2018.

5. The remaining sum of Rs.19,25,090/- being 0.5% differential interest (6% being interest on the FDR) between 1.3.2010 and July, 2018, amounting to Rs.19,25,090/-, will be paid by the borrower, who is present in court to the auction purchaser on or before 10.08.2018. It is made clear that the borrower, who is present in court has consented that she will extend all necessary cooperation for liquidating the Fixed Deposit Receipts. Thus a total sum of Rs.95,35,655/- will be paid to the auction purchaser. The interest from 01.08.2018 to 13.08.2018, is being offset by the interest given at the rate of 7% per annum by the bank on FDRs which is more than 6.5% interest agreed between the parties.

6. The above order has been passed with the consensus of the learned counsel appearing for the parties, and the parties, namely Mrs.A.R.Hasina Banu/borrower/petitioner herein, Mr.R.Ramesh, auction purchaser and Mr.K.Thiyagarajan, Authorised Officer of Axis Bank Limited, who are all present in court and have agreed to the settlement arrived at in court.

7. Writ petition is disposed of on the above terms. However, there shall be no order as to cost. Consequently, the connected writ miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

asr/dm
To
1. The Debts Recovery Appellate Tribunal
   Chennai.

+1 CC to Mr.R. Nagasundaram, Advocate sr 53597.
+1 CC to M/s.R. Meenal, Advocate sr 53595.
+1 CC to Mr.C.D.Johnson, Advocate sr 54300(05/09/2018)

W.P.No.7694 of 2018
and
W.M.P.Nos.9600 and 18525 of 2018

SP(03/08/2018)