IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18/6/2018
C O R A M
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.9686 of 2018

V.N.Ashok Kumar ... Petitioner

Vs

1. The Authorised Officer
TATA Capital Housing Finance Limited
No.82/1 Ground Floor
Krishna Tower
Richmond Road
Bangalore 560 025.

2. S. Adisesha Setty

3. B.A.Sridhaar ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorarified mandamus to call for the records pertaining to the records of impugned proceedings dated 27/3/2018 passed in I.A.No.1725 of 2017 in A.I.R.No.700 of 2017 on the file of the Debt Recovery Appellate Tribunal, Chennai and quash the same and consequently direct the Registry of Debts Recovery Appellate Tribunal, Chennai, to number the appeal.

For petitioners : Mr.R.Baskar
for Mr.G.M.Ananthakumar

For respondents : Mr.M.Arunachalam
for R.1

O R D E R

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

Respondents 2 and 3 herein have availed loan from TATA Capital Housing Finance Limited, Bangalore, first respondent. They defaulted in payment. Bank has issued notice, dated 13/6/2017, under Section 13 (2) of the SARFAESI Act, 2002, demanding a sum of Rs.2,59,74,262/-, along with interest, penal interest, charges, costs, etc., to be paid, within a period of sixty days, from the date of said notice. Bank also cautioned the petitioner to the effect that if the above said amount is not paid, within the stipulated period, Bank would be constrained to take proceedings, under Section 13 (4) of the SARFAESI Act, r/w. Rule 9 of the Rules.

2. Being aggrieved, writ petitioner/agreement holder has filed S.A.No.204 of 2017, on the file of the Debts Recovery Tribunal - III, Chennai. On 4/9/2017, Debts Recovery Tribunal - III, Chennai, passed the following order:-

> "Ld. Counsel for the appellant is present. AOS filed. Notices to R.1 and R.3 are duly served and notice to R.2 returned unserved. This SA is filed challenging the possession notice dated 13/6/2017 issued by the respondent financial institution for recovery of sum of Rs.2,59,74,262/-.
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> As no urgency is established by the appellant, SIA No.1013 of 2017 dismissed. SIA No.1014 of 2017 for stay is takes up. Hence Ld. Counsel for the appellant who submits that he is a third party proposed purchaser of the schedule mentioned property from the borrower with the consent of the respondent financial institution and it is his express case that respondent financial institution itself had sanctioned loan to him for purchase of the property but as one of the vendors is not traceable, the transaction could not be processed through, resulting in the respondent financial institution issuing the subject impugned possession notice. It is the case of the appellant that he is willing to deposit the sale proceeds if a reasonable time is granted.
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> Consequently, the appellant is permitted to deposit the admitted sale consideration with the respondent financial institution. Call on 4/10/2017 for reporting compliance or otherwise and for appearance of the respondent bank and for filing counter and typed set of documents by the respondent.

3. As per the direction of the Debts Recovery Tribunal - III, Chennai, petitioner/agreement holder, has paid a sum of Rs.2.39 crores, with TATA Capital Housing Finance Limited, Bangalore, first respondent. Thereafter, on 4/10/2017, Debts Recovery Tribunal - III, Chennai, has dismissed S.A.No.204 of 2017. For brevity, the said order is extracted hereunder:-

"Ld counsel for the appellant, Ld counsel for R.1 institution and Ld counsel for R.3 are present. This SA is filed by third party appellant challenging the possession notice, dated 13/6/2017 issued by the respondent financial institution for recovery of sum of Rs.2,59,74,262/-.

Heard ld counsels for the respective parties. It is the case of the appellant that he is a third party to the proceedings being a purported agreement holder with the principal borrower/mortgagor as well as the joint owner of the property, who is arrayed as third respondent herein. Ld. Counsel for R.3 admit that R.2 who is none other than his father is missing, however submits that he does not know the date as to when his father is missing and sought to take the said information from the Ld counsel appearing for the appellant as they are having the record as well as the FIR copy who then admits that his father was found missing since 13/7/2016 instance.

Whereas it is the case of the appellant that consequent to said missing, he had entered into a memorandum of understanding with the third respondent herein as well as the legal representatives of second respondent to uphold their sale agreement. It is also further admitted by the Ld. Counsel appearing for the appellant that it is one of the terms of their agreement that the appellant has to remit the instalments due to the first respondent financial institution herein which however was defaulted by the appellant herein ever since October 2016.

Ld Counsel appearing for the first respondent financial institution submits that it had followed all the procedures as warranted under law. During the course of hearing it is observed that appellant is alleging to have deposited a sum of Rs.2.39 crores with the first respondent but does not seem to have furnished any information to any of the respondents. The officials from the first respondent financial institution who are three in number are present in the Court hall and admit to receipt of Rs.1 crore only and submit that they have to cross check the details that are made available only today morning and that too for Rs.2.25 crores to ensure whether the representation of the appellant are true to what is being stated.

From the foregone, it is observed that the appellant has nothing to do with the course adopted by the respondents and that he is not an aggrieved person but only alleged agreement holder who has to determine his rights before appropriate Civil Court and not by way of this securitisation appeal before this Tribunal. Even otherwise, taking into fact that the appellant is willing to redeem the property from the first respondent in terms of his agreement of sale, there are no merits in the present appeal and the same is liable to be dismissed.

Accordingly, this SA stands dismissed, however, without costs. Notwithstanding the orders of this Tribunal, parties are permitted to relegate to a negotiated amicable settlement amongst them for settlement and declaration of their respective rights and obligations interse."

4. Being aggrieved by the order of dismissal, agreement holder/writ petitioner has filed R.A.(SA) No.700 of 2017, before the Debts Recovery Appellate Tribunal, Chennai. I.A.No.1725 of 2017 has been filed, for waiver of pre-deposit. On 27/3/2018, Debts Recovery Appellate Tribunal, Chennai, has directed the writ petitioner, to deposit Rs.20 lakhs, with the Registrar of the Appellate Tribunal. The said order is challenged in the instant writ petition.

5. Record of proceeding shows that on 19/4/2018, while ordering notice of motion through Court and privately, returnable by 4/6/2018, a Hon'ble Division Bench of this Court has granted interim stay of the order impugned. Subsequently, on 4/6/2018, stay has been extended.

6. During the pendency of S.A.No.204 of 2017, and as per the directions of the Debts Recovery Tribunal - III, Chennai, agreement holder/writ petitioner had already made payment of Rs.2.39 crores with the Bank. Mr.M.Arunachalam, learned counsel for the Bank/first respondent, acknowledged the said averment.

7. Section 18 of the SARFAESI Act, reads thus:-

"18. Appeal to Appellate Tribunal.-(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal along with such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:

Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:

Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder."

8. Bank has not taken any steps for recovery. Even in S.A.No.204 of 2017, there is no determination of any amount. Therefore, this Court has to consider only the amount mentioned in the 13 (2) Notice, which is Rs.2,59,74,262/-. Out of which Rs.2.39 crores had already been paid to the Bank. When such substantial payment has been made, there is no need for further deposit.

9. For the above said reason, writ petition is allowed and the impugned order, dated 27/3/2018, is set aside. Registrar of the Debts Recovery Appellate Tribunal is directed to process the appeal papers, if it is in order, number the same and place it before the Appellate forum. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

mvs.

To

1.The Registrar,
The Debts Recovery Appellant Tribunal,
Chennai.

+1cc to Mr.G.M.Annathakumar, Advocate, S.R.No.37972
+1cc to Mr.M.Arunachalam, Advocate, S.R.No.38384

W.P.No.9686 of 2018

GSP(28/06/2018)