IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. No.21560 of 2014

K.Kalpana .. Petitioner

v.

1.The Authorised Officer
State Bank of India, SARB
No.43, Montith Road
Egmore, Chennai - 600 008.

2.V.G.Jairaj
3.V.Gopinath
4.E.V.Joseph
6.Vincent Selvasekar

6.The Registrar
Debts Recovery Appellate Tribunal
4th Floor,Indian Bank Circle Office
55, Ethiraj Salai
Chennai.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 03.03.2014 in AIR (S.A.)No.520 of 2013 on the file of the 6th respondent and quash the same and consequentially direct the 6th respondent to hear the appeal AIR (S.A.)No.520 of 2013 on merits.

For Petitioner : Mr.K.J.Parthasarathy

For Respondents : Mr.K.S. Sankaran - for R1
R2 to R5 - Given up
R6 - Tribunal

ORDER

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

The above writ petition has been filed by the petitioner to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order dated 03.03.2014 in AIR (S.A.) No.520 of 2013 on the file of the Debts Recovery Appellate Tribunal, to quash the same and consequentially direct the 6th respondent to hear the appeal AIR (S.A.)No.520 of 2013 on merits.

2. According to the petitioner, she is a third party said to be the owner of the property, which was mortgaged with the 1st respondent- bank.

3.1 It is the case of the petitioner that she purchased an extent of 2400 sq.ft. of land out of 4800 sq.ft. by a sale deed dated 22.05.2004 from one Swarnalatha, Power of Attorney Holder of Vincent Selvasekar. The said Selvasekar had mortgaged the property with Tamil Nanu Thozhil Co-operative Bank Limited on 03.10.2003 by way of depositing title deeds and the said Swarnalatha had discharged the loan with the bank on 27.04.2004 and released the original title deeds. The said property was lying on the eastern side of the entire plot. Thereafter, Swaralatha sold the remaining extent of 2400 sq.ft. to one Jayasri under the sale deed dated 05.05.2004.

3.2 Further, according to the petitioner, the respondent-bank pasted a possession notice dated 30.04.2011 on the compound wall of her property. Thereafter, the petitioner purchased the remaining extent from Jayasri on 27.05.2011. Thereafter, she filed a suit in O.S.No.89 of 2011 on the file of Sub Court, Tambaram, for declaration of her title. Subsequently, the bank issued a sale notice dated 15.07.2011 and the petitioner challenged the said notice by way of S.A.No.241 of 2011, which was closed by an order dated 18.08.2011 Thereafter, the respondent-bank issued the impugned possession notice dated 17.07.2012. Challenging the same, the petitioner has filed S.A.No.271 of 2012 before the Debts Recovery Tribunal-III, Chennai.

4. The Debts Recovery Tribunal-III, Chennai, by order dated 18.06.2013, dismissed the Securitisation Appeal finding that the petitioner has no right to challenge the measures taken by the secured creditor against the borrower for the reason that after the issuance of Section 13(2) notice and without written consent of the secured creditor knowing fully well about the existence of the mortgage, the petitioner has purchased the property.

5. Challenging this order, the petitioner has filed an appeal in AIR (SA) No.520 of 2013 before the Debts Recovery Appellate Tribunal, Chennai. By order dated 16.01.2014, the Debts Recovery Appellate Tribunal, granted time to the petitioner to pay the requisite court fee and also filed all translated copies. Subsequently, at the request made by the learned counsel for the petitioner, by proceedings dated 03.03.2014, the Debts Recovery Appellate Tribunal granted time till 28.04.2014 to the petitioner to file the waiver application. Thereafter, the petitioner filed an application under section 18(1) of the SURFEASI Act read with Section 19 (25) Recovery of Debts Due To Banks & Financial Institutions Act, 1993 to recall the order dated 03.03.2014 and hear the appeal in AIR (SA) No.520 of 2014 on merits.

6. The Debts Recovery Appellate Tribunal, by order dated 05.05.2014, returned the application as not maintainable in view of the fact that the petitioner had sought for time for filing the waiver application. Challenging this order, the petitioner has filed this writ petition.

7. The learned counsel appearing for the petitioner submitted the petitioner is neither a borrower nor a guarantor and therefore, there is no necessity for filing any waiver application before the Debts Recovery Appellate Tribunal.

8. On a reading of Section 18 of the SURFEASI Act, it is clear that any person aggrieved, by any order passed by the Debts Recovery Tribunal under section 17, may prefer an appeal alongwith such fee, as may be prescribed to the Appellate Tribunal within 30 days on depositing 50% of the amount of debt due from him, as claimed by the secured creditor or determined by the Debts Recovery Appellate Tribunal, whichever is less with the appellate tribunal. The 3rd proviso to section 18 says that for the reasons to be recorded in writing, the appellate tribunal may reduce the amount to not less than 25% of the debt referred to in the second proviso.

9. When the petitioner has challenged the order passed by the Debts Recovery Tribunal as per section 18 of the Act, it is mandatory on the part of the petitioner to pay the pre-deposit amount. If the petitioner seeks to apply the third proviso to section 18 for reduction of the pre-deposit amount to 25% , she has to file waiver application.

10. The ratio laid down in the judgment reported in 2011(4) SCC 548 [NarayanChandra Ghosh v. UCO Bank and others] applies to the present case.

11. Since as per section 18 any person aggrieved over the order passed by the Debts Recovery Tribunal may file an appeal before the Debts Recovery Appellate Tribunal, there should be compliance of pre-deposit as contemplated in the said section.

12. In these circumstances, we do not find any reason to interfere with the order passed by the Debts Recovery Appellate Tribunal . The Writ Petition is devoid of merits and the same is dismissed. The petitioner is granted one week time from the date of receipt of a copy of this order to file waiver application before the Debts Recovery Appellate Tribunal, Chennai.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

Rj

To

1.The Authorised Officer
State Bank of India, SARB
No.43, Montith Road
Egmore, Chennai - 600 008.

2.The Registrar
Debts Recovery Appellate Tribunal
4th Floor,Indian Bank Circle Office
55, Ethiraj Salai, Chennai.

+2cc to Mr.K.J.Parthasarathy, Advocate SR.No.62030

W.P. No.21560 of 2014

GMY(19/09/2018)