IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. No.22626 of 2018 and
W.M.P.No.26473 of 2018

Satyanarayan Sharma .. Petitioner

Vs.

1 Can Fin Homes Ltd.
Koramangala Branch
No.586, 2nd Floor, 80ft Road
8th Block, New Police Station
Koramangala, Bengaluru-560 095
Rep. by its Authorized Officer.

2 Sri.Dinesh Kumar Agarwal

3 Smt.Nitu Agarwal .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, by calling upon the records culminating in the order dated 06.08.2018 passed by the Learned DRAT, Chennai in IA No.493 of 2018 in AIR (SA) No.219 of 2018 and quash the same.

For Petitioner : Mr.Adeesh Anto
For Respondents : Mr.AR.M.Arunachalam - for R1

O R D E R
(Order of the Court made by M.DURAISWAMY,J.)

The above Writ Petition has been filed by the petitioner to issue a Writ of Certiorari to call for the records culminating in the order dated 06.08.2018 passed by the Debt Recovery Appellate Tribunal in I.A. No.493 of 2018 in AIR (SA) No.219 of 2018 and to quash the same.

2. Challenging the order passed in S.A.No.212 of 2017 on the file of Debts Recovery Tribunal-I, Bangalore, the petitioner filed an appeal in AIR (SA) No.219 of 2018 before the Debt Recovery Appellate Tribunal, Chennai along with an application in I.A. No.493 of 2018 for waiver of pre-deposit.

3. The petitioner filed S.A.No.212 of 2017 on the file of the Debts Recovery Tribunal-I, Bangalore, challenging the possession notice dated 05.06.2017.

4. According to the petitioner, he is neither a borrower nor a guarantor in respect of loan transaction, therefore, he is not liable to make any pre-deposit.

5. The respondent-bank issued a notice dated 03.07.2015, under section 13(2) of the SARFAESI Act, claiming a sum of Rs.56.91 lakhs.

6. The Securitisation Appeal preferred by the petitioner challenging the possession notice was dismissed by the Debts Recovery Tribunal. Challenging this order, the petitioner has filed an appeal in AIR (SA) No.219 of 2018 before the Debt Recovery Appellate Tribunal.

7. Taking into consideration the claim of Rs.56.91 lakhs made by the respondent-bank, under section 13(2) notice, the Debt Recovery Appellate Tribunal, by order dated 06.08.2018, directed the petitioner to make pre-deposit of Rs.25,00,000/- [Rupees twenty five lakhs only]. Challenging this order, the petitioner has filed the above Writ Petition.

8. The learned counsel appearing for the petitioner submitted that there is no privity of contract between the petitioner and the respondent-bank and that he has not mortgaged the property with the respondent-bank or availed any loan from the respondent-bank.

9. Admittedly, there is no dispute that the property was sold in auction on 10.03.2006. Even prior to the auction held on 10.03.2006, the respondent-bank issued a notice dated 04.03.2006 to the petitioner informing him that they are sanctioning a housing loan to Mr.Dinesh Kumar Agarwal working in M/s.Moksha Technologies, Bangalore, on the basis of Tripartite Agreement duly signed by the builder and agreement of sale and agreement of construction duly executed by the builder. The respondent-bank had also informed the petitioner in their letter

that the petitioner is occupying the property, which has been mortgaged to them. Further, they have also cautioned the petitioner that the property cannot be sold or purchased by any party and any such transaction will be in breach and violation of contract and agreement. In spite of receiving the notice dated 04.03.2006, the petitioner proceeded to purchase the property under a registered sale deed dated 10.03.2007.

10. Since the petitioner was put on notice about the mortgage by the respondent-bank even prior to the purchase made by him, the principle of Caveat Emptor will apply. Thereafter, challenging the possession notice, the petitioner has filed Securitisation Appeal before the Debts Recovery Tribunal, Bangalore, which was dismissed by the Debts Recovery Tribunal. Challenging the order passed by the Debts Recovery Tribunal, the petitioner has filed an appeal before the Debt Recovery Appellate Tribunal along with a petition seeking for waiver of pre-deposit.

11. From the materials available on record it is clear that the petitioner's property was already mortgaged with the respondent-bank and in spite of having sufficient knowledge and was put on notice even prior to his purchase, the petitioner had purchased the property. Therefore, the petitioner cannot now take a stand that he is neither a borrower nor a guarantor and hence, he is not liable to make pre-deposit. If this argument is accepted, then, the respondent-bank will not be in a position to recover the loan advanced to the petitioner's vendor. In these circumstances, the petitioner is liable to make pre-deposit as per the provisions of Section 18 of the SARFAESI Act . Under the 3rd proviso to section 18, the pre-deposit can be reduced to not less than 25% of the debt. The respondent-bank issued section 13(2) notice claiming a sum of Rs.56.91 lakhs. The Debt Recovery Appellate Tribunal directed the petitioner to make pre-deposit of Rs.25,00,000/-, which is almost 50% of the amount claimed under section 13(2) notice.

12. The learned counsel appearing for the petitioner submitted that the petitioner may be directed to pay 25% of the amount claimed by the respondent-bank.

13. In view of the submission made by the learned counsel on either side, we are inclined to reduce the pre-deposit amount to 25% of the claim made in the notice issued under section 13(2) of the SARFAESI Act. Except this modification, in other aspects, the order dated 06.08.2018, passed by the Debt Recovery Appellate Tribunal, is confirmed. The petitioner is directed to make pre-deposit of 25% of Rs.56.91 lakhs, within a period of three weeks from the date of receipt

of a copy of this order.

With this observations, the Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

Rj

To

1. The Authorized Officer
Can Fin Homes Ltd.
Koramangala Branch
No.586, 2nd Floor, 80ft Road
8th Block, New Police Station
Koramangala, Bengaluru-560 095

2. The Debts Recovery Appellate Tribunal
Chennai

+1cc to M/s.Adeesh Anto, Advocate SR.No.70632

+1cc to M/s.A.R.M.Arunachalam, Advocate SR.No.70414

W.P. No.22626 of 2018 and
W.M.P.No.26473 of 2018

GMY(15/10/2018)