IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. No.22981 of 2018 and
W.M.P.No.26889 of 2018

Rajagop Kanichat @ Rajagopal
rep by his Power of Attorney Holder
P.N.Santhakumari .. Petitioner

Vs.

1.The Authorized Officer,
Indian Overseas Bank,
Thrissur Branch,
P.B.No.514, Palace Road,
Thrissur - 683 501.

2.M/s.Institute of Indian Therapies,
Annamanada P.O., Thrissur - 680 741
rep by its Proprietor
Dr.Mahesh Menon,
Makaraparambil House,
Annamanada P.O., Thrissur - 680 741.
3.Dr.Mahesh Menon
4.T.A.Radhakrishna Menon
5.Sindhu Mahesh
6.The Registrar,
Debt Recovery Appellate Tribunal,
Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus calling for the records relating to the impugned order passed by the 6th respondent in AIR (SA).No.449 of 2017 on 01.05.2018, quash the same and consequently, direct the Registry of the 6th respondent to number the D.A.S.A. and decide the same on merits.

For Petitioner : Ms.K.M.Valsala

For Respondents : Mr.F.M.Benjamin George (R1)
R2 to R5 - no appearance
R6 - Tribunal

ORDER

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

The petitioner has filed the above Writ Petition to issue a Writ of certiorarified mandamus to call for the records relating to the impugned order passed by the Debt Recovery Appellate Tribunal in AIR (SA).No.449 of 2017 dated 01.05.2018, to quash the same and consequently, to direct the Registry of the 6th respondent to number the S.A. and decide the same on merits.

2.Challenging the order passed in T.S.A.No.517 of 2016 on the file of the Debts Recovery Tribunal - II, Ernakulam, the petitioner filed an appeal in AIR (SA).No.449 of 2017 before the Debt Recovery Appellate Tribunal, Chennai along with an application in I.A.No.1770 of 2017 for waiver of pre-deposit.

3.The respondent - Bank issued a notice dated 15.02.2013 under Section 13(2) of the SARFAESI Act for recovery of a sum of Rs.8.16 crores.

4.Considering the amount claimed in Section 13(2) notice, the Debt Recovery Appellate Tribunal directed the petitioner to make a pre-deposit of Rs.2.5 crores. Challenging the order passed by the Debt Recovery Appellate Tribunal, the petitioner has filed the Writ Petition.

5.It is the case of the petitioner that he is a 3rd party to the proceedings, therefore, he is not liable to make any pre-deposit under Section 18 of the SARFAESI Act. It is also the case of the petitioner that based on the Settlement Deed dated 28.07.2010, a mortgage was created in favour of the respondent - Bank on 28.11.2011 and that the said Settlement Deed was cancelled before the Lok Adalat on 15.11.2012 and a new Settlement Deed was executed in favour of the petitioner on the same day (i.e.) 15.11.2012.

6.From the submissions made by the learned counsel appearing for the petitioner, it is clear that on the date of availing loan (i.e.) 28.10.2011 the Settlement Deed dated 28.07.2010 was in existence.

7.The learned counsel appearing for the respondent - Bank submitted that the petitioner and the borrower had collusively entered into a Settlement Deed dated 28.07.2010 and also got another Settlement Deed dated 15.11.2012 executed in favour of the petitioner.

8.When the respondent - Bank had advanced loan to the borrower based on the Settlement Deed dated 28.07.2010, which was subsequently cancelled by the settlement entered into between the parties before the Lok Adalat on 15.11.2012 and a new Settlement Deed was executed in favour of the petitioner, the said transaction cannot be put against the respondent - Bank for recovering the dues. The Settlement Deeds dated 28.07.2010 and 15.11.2012 were executed between the family members. When there is no necessity for executing a Settlement Deed in favour of the petitioner on 15.11.2012 and when there was a mortgage of property in favour of the respondent - Bank, to circumvent the proceedings initiated by the respondent - Bank, the Settlement Deed was executed in favour of the petitioner. The petitioner has not purchased the property by paying Consideration to the owner. Without any consideration, the Settlement Deed has been executed in favour of the petitioner. It is clear that the petitioner is challenging the SARFAESI proceedings at the instance of the borrower/guarantor. Therefore, the petitioner cannot take a stand that he is a 3rd party and he is not liable to make any pre-deposit. The Debt Recovery Appellate Tribunal has rightly directed the petitioner to make pre-deposit of Rs.2.5 crores.

9.In these circumstances, we do not find any merits in the Writ Petition and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Authorized Officer,
   Indian Overseas Bank,
   Thrissur Branch,
   P.B.No.514, Palace Road,
   Thrissur - 683 501.

2.The Registrar,
   Debt Recovery Appellate Tribunal,
   Chennai.

+1cc to Mr.K.S.Kumar, Advocate Sr.70176

W.P. No.22981 of 2018 and
W.M.P.No.26889 of 2018

ssp[co]
srg 14/11/2018