IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. No.17404 of 2017
and
W.M.P.Nos.18908 & 18909 of 2017

1.P.Shanmugham

2.S.Sumathi .. Petitioners

Vs.

1.The Authorized Officer,
Indian Bank,
Namakkal District - 637 001.

2.P.Marimuthu

3.The Registrar,
Debts Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
No.55, Ethiraj Salai,
Chennai - 600 008. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari calling for the records of the 3rd respondent order dated 27.03.2017 passed by the Debts Recovery Appellate Tribunal, Chennai in RA (SA).No.20 of 2014 and quash the same.

For Petitioners : Mrs.Nalini Chidambaram, Senior Counsel for Ms.C.Uma

For Respondents: Mr.P.V.Muralidhar (R1)
Mr.M.Muthukumaran (R2)
R3 - Tribunal

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

The petitioners have filed the above Writ Petition to issue a Writ of Certiorari to call for the records relating to the order dated 27.03.2017 on the file of the 3rd respondent in RA (SA).No.20 of 2014 and to quash the same.

2.It is the case of the petitioners that one R.Periaswamy obtained loan on 18.12.21993 for the purchase of a Tipper Lorry and that the petitioners stood as guarantors for the due repayment of the loan amount. Since the borrower viz., R.Periaswamy defaulted in repaying the loan amount, the 1st respondent - Bank initiated proceedings under the SARFAESI Act and the petitioners' property, which was mortgaged with them, was brought to sale.

3.It is pertinent to note that the 1st respondent - Bank issued a notice under Section 13(2) of the SARFAESI Act on 11.10.2004 claiming a sum of Rs.18,85,728/- as on 30.09.2004 along with interest at the agreed rate. Since the borrower did not pay any amount pursuant to the notice, the 1st respondent - Bank issued the possession notice under Section 13(4) on 15.09.2005 and also took symbolic possession of the property on 15.09.2005.

4.The 1st respondent - Bank filed O.A.No.15 of 2006 before the DRT - 1, Chennai on 25.01.2006 against the borrower, the petitioners and 3 others for recovery of a sum of Rs.24,09,761/- together with interest at the rate of 17.50% per annum. On 26.12.2006, the petitioners submitted a One Time Settlement (OTS) proposal for the settlement of the loan availed by the said R.Periaswamy. On 03.03.2007, the 1st respondent filed a Valuation Report of the subject property in O.A.No.15 of 2006 before the DRT - 1, Chennai wherein it was stated that the market value of the property was Rs.125/- per sq.ft., and the total market value of the subject property was Rs.16,35,000/-. On 12.06.2007, the 1st respondent - Bank rejected the OTS proposal submitted by the petitioners and called upon the petitioners to pay a sum of Rs.15,50,000/- on or before 30.06.2007.

5.According to the petitioners, they approached the Bank during the month of July 2007 and offered to pay a sum of Rs.10,00,000/-. However, the 1st respondent - Bank did not accept the payment from the petitioners. On 25.08.2007, the 1st respondent - Bank issued a Sale Notice stating that the property would be sold in the sale scheduled on 27.09.2007.

6.The petitioners filed S.A.No.273 of 2007 under Section 17 of the SARFAESI Act before the DRT - 1, Chennai to set aside the notice dated 11.10.2004 issued under Section 13(2) of the Act, notice dated 15.09.2005 issued under Section 13(4) and the notice dated 25.08.2007 issued under Section 13(4) of the Act. The sale was conducted on 27.09.2007 and the bid submitted by the 2nd respondent for a sum of Rs.17,50,000/- was accepted and the 2nd respondent was declared as the successful bidder. The DRT – 1, Chennai passed an order on 28.09.2007 granting an interim order directing the 1st respondent - Bank to defer further proceedings on condition the petitioners depositing a sum of Rs.2,00,000/- in four weeks' time.

7.On 05.03.2008, the 1st petitioner requested the Sub Registrar to furnish the guideline value of the property and the Sub Registrar, Tiruchengodu issued a Valuation Certificate dated 05.03.2008 stating that the guideline value of the subject property as on 01.08.2007 was Rs.900/- per sq.ft. Therefore, as per the Valuation Certificate, the guideline value of the subject property is Rs.1,17,72,000/-. On 23.05.2008, the DRT – 1, Chennai passed a final order in O.A.No.15 of 2006 holding that the 1st respondent - Bank is entitled for a Recovery Certificate as against the borrower R.Periaswamy, the petitioners and 3 others, jointly and severally, for a total sum of Rs.24,09,761.50 together with interest at the rate of 17.50% per annum till the date of realization and in case of default, the 1st respondent - Bank is at liberty to sell the subject property.

8.On 05.08.2008, the Debts Recovery Tribunal also dismissed S.A.No.273 of 2007 filed by the petitioners holding that the measures taken by the 1st respondent - Bank, including fixation of upset price for the subject property, was as per the provisions of the SARFAESI Act. Aggrieved by the order dated 05.08.2008 passed in S.A.No.273 of 2007, the petitioners filed an appeal in RA(SA).No.775 of 2008 under Section 18 of the SARFAESI Act before the Debts Recovery Appellate Tribunal, Chennai. The Debts Recovery Appellate Tribunal, Chennai confirmed the order passed by the DRT – 1, Chennai and dismissed the appeal, against which the petitioners have filed the above Writ Petition.

9.Heard Mrs.Nalini Chidambaram, learned Senior Counsel on behalf of Ms.C.Uma, learned counsel for the petitioners, Mr.P.V.Muralidhar, learned counsel for the 1st respondent and Mr.M.Muthukumaran, learned counsel for the 2nd respondent.

10.On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that one R.Periaswamy had availed loan from the 1st respondent - Bank for the purchase of a Tipper Lorry in the year 1993. At the request of the borrower, the petitioners stood as guarantors and also offered their immovable property as collateral security. After sometime, the borrower became defaulter and disappeared along with the vehicle.

11.It is also pertinent to note that the whereabouts of the principal borrower is not known till date. The petitioners have challenged the notices issued under Sections 13(2) and 13(4) of the SARFAESI Act before the Debts Recovery Tribunal, Chennai in S.A.No.273 of 2007, which was dismissed by the DRT - 1, Chennai. When the Bank had agreed for One Time Settlement of Rs.15,50,000/- and called upon the petitioners to make the payment on or before 30.06.2007, the petitioners tendered only a sum of Rs.10,00,000/-, which was refused by the 1st respondent - Bank saying that the entire amount of compromise should be paid in one stroke. Therefore, it is clear that the petitioners have not even complied with the One Time Settlement offered by the 1st respondent - Bank. The 1st respondent - Bank took symbolic possession of the mortgaged property of the petitioners on 15.09.2005 and fixed the auction sale on 07.12.2005. However, the auction sale could not be conducted on that day. Thereafter, the auction was conducted on 27.09.2007, fixing the upset price at Rs.15,00,000/-.

12.On a perusal of the Valuation Report annexed in the Typed Set of papers, it could be seen that the guideline value for the property was Rs.85.67 lakhs, the prevailing market value was Rs.16.35 lakhs and the Force Value Rate was Rs.14.39 lakhs. In the Valuation Report, the 1st respondent - Bank has not suppressed anything and in fact, they have mentioned all the 3 values and ultimately, fixed the reserve price of Rs.15,00,000/-. When the prevailing market value was only Rs.16.35 lakhs and the Force Value was Rs.14.39 lakhs, one cannot find fault with the 1st respondent - Bank in fixing the reserve price at Rs.15,00,000/-. The reserve price in accordance with the market value of the property can be fixed by the 1st respondent - Bank.

13.The guideline value in respect of the property given by the Sub Registrar is only for payment of the stamp duty for registering a document pertaining to the said property and it cannot be taken as the market value of the property. In the distress sale, the property will not fetch the actual market price and therefore, the value fixed by the Tribunal at Rs.15,00,000/- is just and proper. The borrower and the petitioners have dragged on the matter for several years. In fact, the loan was obtained by the borrower as early as in the year 1993 and even after a lapse of nearly 25 years, the litigation has not come to an end. The value fixed by the 1st respondent - Bank is in accordance with the provisions of the SARFAESI Act and Rules. The Tribunal below has rightly rejected the case of the petitioners.

14.Therefore, we do not find any ground to interfere with the order passed by the Tribunal. The Writ Petition is liable to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

va

To

1.The Authorized Officer,
Indian Bank,
Namakkal District - 637 001.

2.The Registrar,
Debts Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
No.55, Ethiraj Salai,
Chennai - 600 008.

+1cc to Mr. M.Muthu Kumaran, Advocate, S.R.No.59074
+1cc to Mr.C.Uma, Advocate, S.R.No. 58917
+1cc to Mr.P.V.Muralidhar, Advocate SR.No. 58681

W.P. No.17404 of 2017 and
W.M.P.Nos.18908 & 18909 of 2017

RJ(CO)
GN(10/09/2018)