IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.07.2018

Pronounced on : 19.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No. 13695 of 2018
and W.M.P.No.16157 of 2018

R.Porselvi ... Petitioner

vs.

1.The Authorized Officer (SARFAESI Act),
The Repatriates Co-operative Finance
& Development Bank Limited,
(REPCO BANK) A Government of
India Enterprises,
Ariyalur Branch, No.8,
Thattara Street, Ariyalur-621 704.

2.K.Geetha

3.The Registrar,
Debts Recovery Tribunal - III,
Chennai. ... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of certiorar to call for the records of the impugned proceedings of the Debts Recovery Tribunal - III, Chennai passed in SA.SR.No.10140 of 2017 dated 17.05.2018 and to quash the same insofar as the conditions (ii) to (iv) as stipulated in the proceedings are concerned .

For Petitioner : Mr.G.Ilamurugu
For Respondents: Mr.A.Ilangovan for R.1

O R D E R

SUBRAMONIUM PRASAD.J

The instant writ petition is directed against the order dated 17.05.2012 passed by the Debts Recovery Tribunal -III, Chennai in S.A.SR.No.10140 of 2017.

2.The petitioner and her husband approached the respondent bank for a loan for a sum of Rs.4,00,000/-. The said amount was sanctioned. The petitioner mortgaged the property being Door No.129/C9 New No.50 , Market Street, Nethaji Nagar, Ariyalur-621 704 as security to repay the loan. The petitioner could not repay the loan amount. The respondent bank initiated the proceeding under the SARFAESI Act. Notice under Section 13(2) of the SARFAESI Act was issued 08.08.2016 demanding a sum of Rs.4,83,776/- (Four lakhs eighty three thousand seven hundred and seventy six only) which was the amount due as on 31.07.2016. On the failure to pay the said amount possession notice under Section 13(4) of the SARFAESI Act was issued on 04.11.2016 and possession of the property was taken. Sale notice was issued on 24.07.2017 fixing the reserve price for the property at Rs.18,45,000/-. The sale notice also indicated that as on 30.06.2017 the petitioner was liable to pay a sum of Rs.5,00,060/- as on 30.06.2017. Sale was conducted on 27.09.2017 and respondent No.2 herein who is the auction purchaser paid a sum of Rs.20,00,000/-. Sale Certificate has been issued.

3.The petitioner filed a writ petition No.27769 of 2017 before this Court challenging the sale. The writ petition was dismissed by an order dated 31.10.2017. However, liberty was granted to the petitioner challenging the sale before the appropriate forum in accordance with law.

4.The petitioner filed an appeal under Section 17(1) of the SARFAESI Act before the Debts Recovery Tribunal -III, Chennai challenging the sale and the sale certificate granted to respondent No.2. One of the grounds raised in the appeal was that the property had been under valued.

5.The Debts Recovery Tribunal by order dated 17.05.2018 passed in order the relevant portions of which read as under:-

> "Learned counsel for the appellant, learned counsel for R-1 bank and learned counsel for R-2 are present. All parties are also present in person. Heard learned counsels appearing for the respective parties. This is a matter of a proposed / contemplated appeal by the unsuccessful borrower after the conclusion of sale in favour of the auction purchaser in terms of the sale notice issued by the respondent bank. It is the case of appellant that the property is grossly under valued in as mush as the guideline value itself according to the valuation report furnished by the respondent bank is at around Rs.52.93 lakhs while fair market value is estimated at Rs.24.6 lakhs while the distress value is Rs.18.45 lakhs which the bank had taken as

reserve rice consequently concluding the auction at Rs.20 lakhs in favour of the auction purchaser. Appellants are now ready with the amounts due and payable to the respondent bank as well as the sale proceeds remitted by the auction purchaser and in fact are willing to reimburse the registration expenses and also offer further amounts towards compensation.

The matter is adjourned several times to facilitate the parties arrive at a negotiated amicable settlement between them as appellants would like to retain the property while the auction purchaser was vehemently insisting to have the property which is adjacent to his existing property and would be advantageous for him to acquire the same.

Learned counsel appearing for the first respondent bank fairly submits that except for indifferent valuation of the property, which the bank ought to have taken at the fair market value instead of distress sale value, there are no other infirmities adopted while bringing the property to sale.

The above discussion concludes that on an erroneous valuation fixation of reserve price for the property by the Authorized Officer of the secured creditor bank, auction purchaser could knock the same for a much lower price than the fair estimated market value. It is a fact borne on record that Authorized Officer of the secured creditor bank, auction purchaser could knock the same for a much lower price than the fair estimated market value. It is a borne or record that the auction purchaser could obtain sale deed registered in his favour only at the guideline value while sale consideration is grossly less by bounds. In the circumstances, it is considered that reasonable opportunity should be extended to the appellants to redeem the property by discharging the debt as well as also retuning the money to the auction purchaser together with costs incurred and at a reasonable compensation of Rs.1.5 lakhs for the amounts invested and for incurring legal expenses in facing this litigation.

In the circumstances, Appellant is directed to hand over the demand draft and bankers cheques for a sum of Rs.5.44,500 as detailed below towards discharge of her debt excluding the legal expenses.

Banker's Cheque No.144350 dated 13.03.2018 - Rs.2,65,000/-

Banker's Cheque No.845363 dated 23.11.2017 - Rs.35,000/-

Banker's Cheque No.792965 dated 06.11.2017 - Rs.2,00,000/-

Demand Draft No.036443 dated 04.04.2018- Rs.44,500/-

Learned counsel for the appellant undertakes to revalidate the Banker's Cheques dated 23.11.2017 and 06.11.2017 and furnish the same to the respondent bank on or before 22.05.2018. Permitted.

In the result, sale concluded on 04.09.2017 and consequent sale certificate issued on 01.11.2017 are set aside subject to the following conditions:-

1. Appellant to furnish the above said instruments to the respondent bank on or before 22.05.2018 and the respondent bank is permitted to credit the same to the loan account of the appellant.
2. Appellant is further directed to deposit a sum of Rs.20 lakhs as reimbursement of the sale consideration (lying in her loan account) further sum of Rs.4.25 lakhs incurred towards registration expenses together with subsequent interest @ 10% p.a. Simple from the date of registration till the date of actual payment, Rs.1.5 lakhs towards compensation to the auction purchaser for his efforts and a further sum of Rs.15,000/- towards legal expenses in defending the present litigation.
3. Appellant is directed to provide necessary balance funds apart from Rs.20 lakhs lying in her loan account with the respondent bank on or before 08.06.2018.
4. In the event of default to comply with any one of the conditions above within the stipulated period, this order stands automatically canceled and the sale conducted in favour of auction purchaser on 04.09.2017 and consequent sale certificate issued on 01.11.2017 shall hold good.

S.A.SR.No.10140 of 2017 is disposed in terms of the above observations.”

6.This order has been challenged in this writ petition.

7.Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on records.

8.The learned counsel for the petitioner submits that once the Tribunal came to conclusion that the valuation of the property was not proper it could have directed the petitioner to deposit a sum of Rs.20,00,000/- as reimbursement of sales consideration, further sum of Rs.4.25 lakhs towards registration expenses together with subsequent interest 10% per annum from the date of registration to the date of actual payment and other sum of Rs.1.5 lakhs towards compensation to the auction purchaser and Rs.15,000/- towards legal expenses with a further stipulation in case the amount was not paid the sale certificate would be valid. According to the petitioner since the property was under valued sale was in violation of the Security Interest Rules no conditions could have been imposed.

9.Per contra, the counsel for the bank submits that the impugned order is the consent order and that the conditions were imposed only because the petitioner agreed for the conditions and that the petitioner now cannot be permitted to back out. He also submitted that the valuation had been done as per law and that there was no under valuation. According to him the fair market value was Rs.24,60,000/- and the distress value was arrived it Rs.18.45 lakhs which was the upset price. He therefore submits that the conclusion that the property was under valued is erroneous.

10.A perusal of the order of the Tribunal shows that the counsel for the bank had fairly accepted that the property was under valued. The Tribunal observed " It is a fact borne on record that the auction purchaser could obtain sale deed registered in his favour only at the guideline value while sale consideration is grossly less by bounds". The contention of the bank that the conclusion that the property has been under valued is wrong cannot be accepted in absence of a challenge by the bank to the impugned order. The Tribunal after holding that the property had not been valued properly could only set aside the sale and directed the bank to proceed afresh. It could not have directed the petitioner to deposit the entire auction amount.

11.There is one more aspect to be considered. As per the calculation of the bank the petitioner was liable to pay a sum of Rs.5.44 lakhs. The petitioner has been asked to pay a sum of Rs.4.25 lakhs towards registration expenses with interest at the rate of 10% p.a from the date of registration to the date of payment and a further sum of Rs.1.5 lakhs towards compensation. This amount itself exceeds the amount due from the petitioner to the bank and the petitioner could not have been directed to pay an amount more than the loan amount towards the registration charges and compensation.

12.However, it is pertinent to note that the impugned order was passed only because a submission was made by the counsel for the petitioner that "Appellants are now ready with the amounts due and payable to the respondent bank as well as the sale proceeds remitted by the auction purchaser and in fact are willing to reimburse the registration expenses and also offer further amounts towards compensation". The petitioner is now trying to avoid his commitments.

13.Admittedly, the property was undervalued and the sale therefore has to be set aside. The further question which arises is how should the auction purchaser be compensated. The Supreme Court in the case of M/s. Oasis Dealcom Pvt. Ltd vs. Khazana Dealcomm Pvt. Ltd and others reported in 2016 10 SCC 214 has directed that the amount paid by the auction purchaser should be returned with simple interest at the rate of 10% per annum till the amount is returned. The bank is therefore directed to return the amount of Rs.20,00,000/- to the auction purchaser. Since the impugned order was passed because of the assurance given by the petitioner he would be liable to pay interest at the rate of 10% on Rs.20,00,000/- from 27.09.2017 till the date of passing of this order. The registration charges must be borne by the bank and the petitioner in the ratio of 1/3 and 2/3. The petitioner is directed to revalidate the drafts and pay the Bank the sum of Rs.5.44 lakhs. The petitioner has also to pay interest on Rs.5.44 lakhs from the date of the impugned order till the date of revalidation of the drafts and payment. The payment shall be made within a period of one month from today.

14.The writ petition is disposed of in the manner stated above. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

gsp
To

1.Managing Director,
Chennai Metropolitan Water Supply
and Sewerage Board,
No. Pumping Station Road,
Chindadripet, Chennai- 600 002.

2.The Staff Manager,
Chennai Metropolitan Water Supply
and Sewerage Board,
No. Pumping Station Road,
Chindadripet, Chennai- 600 002.

+1 CC to Mr.A. Ilangovan, Advocate sr 47803.
+1 CC to Mr.C. Prabakaran, Advocate sr 48314.
+2 Ccs to Mr.G. Ilamurugan, Advocate sr 48181.

W.P.No. 13695 of 2018
and
W.M.P.No.16157 of 2018

VSNII(CO)
SP(07/08/2018)