IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.11.2018
Delivered on : 30.11.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P.No.5011 of 2016 and
W.M.P.Nos.4367 & 4368 of 2016

M/s.S.P.Polymers,
rep by its Partner S.Ponnusamy,
2/198, C.Mudalipalayam Pirivu,
Avinashi Road,
Coimbatore - 45. .. Petitioner

Vs.

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

2.The Authorized Officer,
Punjab National Bank,
Asset Recovery Management Branch,
448 A, Dr.Nanjappa Road,
Coimbatore - 641 009.

3.S.N.Thangavel .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari to call for the records of the 1st respondent herein relating to the order dated 08.09.2015 passed in R.A.(SA).No.85 of 2012 and quash the same.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.S.Saravanan
For Respondents: R1 - Tribunal
Mr.M.L.Ganesh (R2)
Mr.P.G.Kumaraguru (R3)

O R D E R

M.DURAISWAMY,J.

The above Writ Petition has been filed by the petitioner to issue Writ of certiorari to call for the records of the 1st respondent relating to the order dated 08.09.2015 passed in R.A.(SA).No.85 of 2012 and to quash the same.

2.It is the case of the petitioner that they availed loan from the 2nd respondent – Bank in the year 1999. Thereafter, since the loan was not repaid, the petitioner's account was declared as NPA and the 2nd respondent filed O.A.No.96 of 2002 before the Debts Recovery Tribunal, Coimbatore for recovery of a sum of Rs.12,80,645.25. In the meanwhile, the 2nd respondent – Bank initiated proceedings under SARFAESI Act issuing a demand notice dated 08.12.2007 under Section 13(2) of the SARFAESI Act. Thereafter, Section 13(4) notice was issued on 08.05.2008. On 17.06.2010, the 2nd respondent – Bank had issued an auction sale notice for the sale to be conducted on 21.07.2010. According to the petitioner, the sale notice was issued in the name of a dead person viz., K.Senniappan, who died on 18.11.2007. The petitioner challenged the auction sale notice dated 24.04.2009 and also the sale held on 21.07.2010 in S.A.No.61 of 2009 before the Debts Recovery Tribunal, Coimbatore along with an application for grant of stay in I.A.No.584 of 2009. The Debts Recovery Tribunal, Coimbatore passed a conditional order on 15.05.2009 by directing the petitioner to deposit a sum of Rs.10 lakhs. The petitioner filed an application in I.A.No.637 of 2010 in S.A.No.61 of 2009 before the Debts Recovery Tribunal, Coimbatore to stay all further proceedings pursuant to the sale dated 21.07.2010. The Debts Recovery Tribunal, Coimbatore, by order dated 29.07.2010 adjourned the application to 11.08.2010, which was challenged by way of a Revision in C.R.P.(PD).No.2620 of 2010 before this Court and this Court by order dated 30.09.2010 disposed of the Civil Revision Petition by granting an order of status-quo as on that date till the disposal of I.A.No.637 of 2010 and also granted liberty to the parties to approach the Debts Recovery Tribunal for expeditious disposal of I.A.No.637 of 2010.

3.It is the case of the petitioner that the 2nd respondent – Bank did not inform this Court about the issuance of the Sale Certificate on 29.07.2010 when the Civil Revision Petition was taken up for hearing. After the disposal of the Civil Revision Petition, the Debts Recovery Tribunal, by order dated 14.03.2012, directed the petitioner to deposit a sum of Rs.48.50 lakhs before the Tribunal along with interest at the rate of 12% per annum as a condition precedent for hearing the statutory appeal preferred by the petitioner. On 04.04.2012, the Debts Recovery Tribunal, Coimbatore dismissed the appeal preferred by the petitioner for the reason that they have not complied with the conditional order dated 14.03.2012.

4.Aggrieved over the order passed by the Debts Recovery Tribunal, Coimbatore, the petitioner preferred an appeal before the Debt Recovery Appellate Tribunal, Chennai in R.A.(SA).No.85 of 2012. The Debt Recovery Appellate Tribunal, Chennai, by order dated 15.07.2014, dismissed the appeal preferred by the petitioner on the ground that the petitioner has not challenged the order dated 14.03.2012, but has only challenged the order dated 04.04.2012. Aggrieved over the same, the petitioner preferred a Writ Petition in W.P.No.19865 of 2014 and this Court disposed of the Writ Petition, by order dated 27.10.2014, by setting aside the order dated 15.07.2014 passed in R.A.(SA).No.85 of 2012 on the file of the Debt Recovery Appellate Tribunal, Chennai and remitted the matter to the Debt Recovery Appellate Tribunal, Chennai for considering the appeal in its entirety on merits. The Debt Recovery Appellate Tribunal, after remand, again confirmed the order passed by the Debts Recovery Tribunal, which is being challenged in this Writ Petition.

5.It is brought to the notice of this Court that the 3rd respondent was the successful bidder and sale was confirmed in his favour and Sale Certificate was also issued on 29.07.2010 and the same was also registered before the Office of the Sub Registrar.

6.The respondents 2 & 3 contended that since the Sale Certificate has been issued in favour of the 3rd respondent, the petitioner should have challenged the Sale Certificate, which was issued on 29.07.2010 and the petitioner cannot seek to set aside the Sale Certificate in the present Writ Petition.

7.The learned senior counsel appearing for the petitioner submitted that since the sale notice has been challenged in S.A.No.61 of 2009, there is no necessity for challenging the Sale Certificate issued in favour of the 3rd respondent.

8.In support of his contention, the learned senior counsel relied upon a judgment reported in (2009) 8 Supreme Court Cases 366 [Authorized Officer, Indian Overseas Bank and another vs. Ashok Saw Mill] wherein the Hon'ble Supreme Court held as follows:

> "...
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> 36.The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare any such action invalid and also to restore possession even though possession may have been made over to the transferee.
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> 37.The consequences of the authority vested in DRT under sub-section (3) of Section 17 necessarily implies that the DRT is entitled to question the action taken by the secured creditor and the transactions entered into by virtue of Section 13(4) of the Act. The legislature by including sub-section (3) in Section 17 has gone to the extent of vesting the DRT with authority to even set aside a transaction including sale and to restore possession

to the borrower in appropriate cases. Resultantly, the submissions advanced by Mr. Gopalan and Mr. Altaf Ahmed that the DRT has no jurisdiction to deal with a post-Section 13(4) situation, cannot be accepted.

38.The dichotomy in the views expressed by the Bombay High Court and the Madras high Court has, in fact, been resolved to some extent in the Mardia Chemicals Ltd. Vs. Union of India, (2004) 4 SCC 311 case itself and also by virtue of the amendments effected to Sections 13 and 17 of the principal Act. The liberty given by the learned Single Judge to the appellants to resist SA No.104 of 2007 preferred by the respondents before the DRT on all aspects was duly upheld by the Division Bench of the High Court and there is no reason for this Court to interfere with the same."

9.It is pertinent to note that the Debt Recovery Appellate Tribunal had dismissed the appeal in R.A.(SA).No.85 of 2012 on 08.09.2015. However, the Sale Certificate was issued in favour of the 3rd respondent on 29.07.2010. Inspite of the same, the petitioner has filed the Writ Petition only on 29.10.2015 and got it numbered on 09.02.2016. When the petitioner has filed an application in I.A.No.637 of 2010 in S.A.No.61 of 2009 before the Debts Recovery Tribunal, Coimbatore to stay all further proceedings pursuant to the sale, the Debts Recovery Tribunal directed the petitioner to deposit a sum of Rs.48.50 lakhs together with 12% interest as a condition precedent for hearing the statutory appeal. The said condition was not complied with by the petitioner and hence, the appeal was dismissed by the Debts Recovery Tribunal, which was also confirmed by the Debt Recovery Appellate Tribunal. When an order of stay was not granted in respect of the sale of the property, the property was sold in the auction in favour of the 3rd respondent and the Sale Certificate was also issued in his favour. The condition imposed by the Debts Recovery Tribunal by directing the petitioner to deposit Rs.48.50 lakhs for entertaining the appeal in S.A.No.61 of 2009 is not supported by any provisions of the SARFAESI Act.

10.No doubt, the Tribunal can impose a condition for granting any interim order. But for entertaining the appeal under Section 17 of the SARFAESI Act, the Debts Recovery Tribunal cannot impose a condition by directing the petitioner to deposit the entire outstanding amount. In view of the order of status-quo granted till the disposal of I.A.No.637 of 2010 by this Court in C.R.P.(PD).No.2620 of 2010 on 30.09.2010, the 2nd respondent - Bank has not taken possession of the property from the petitioner.

11.Since there is no provision under Section 17 of the SARFAESI Act calling upon the petitioner to make payment of the outstanding amount for entertaining the appeal, we are of the considered view that the order passed by the Debt Recovery Appellate Tribunal and also the Debts Recovery Tribunal are liable to be set aside. However, the Sale Certificate dated 29.07.2010 was issued in favour of the 3rd respondent prior to the order of status-quo dated 30.09.2010 granted by this Court in C.R.P.(PD).No.2620 of 2010. Therefore, we are not going into the correctness or the validity of the Sale Certificate dated 29.07.2010 in this Writ Petition.

12.In these circumstances, the order dated 08.09.2015 passed by the Debt Recovery Appellate Tribunal, Chennai in R.A.(SA).No.85 of 2012 and the order dated 04.04.2012 passed by the Debts Recovery Tribunal, Coimbatore in S.A.No.61 of 2009 are set aside and the matter is remitted back to the Debts Recovery Tribunal, Coimbatore for fresh consideration. The Debts Recovery Tribunal, Coimbatore is directed to decide the appeal in S.A.No.61 of 2009, on merits and in accordance with law, without insisting on the deposit amount of Rs.48.50 lakhs, as expeditiously as possible by giving due opportunity of hearing to all the parties. We make it clear that the outcome of the appeal in S.A.No.61 of 2009 shall decide the fate of the sale made in favour of the 3rd respondent and the Sale Certificate dated 29.07.2010 issued in his favour.

13.With these observations, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To
1.The Registrar,
Debt Recovery Appellate Tribunal,
Chennai.
2.The Authorized Officer,
Punjab National Bank,
Asset Recovery Management Branch,
448 A, Dr.Nanjappa Road,
Coimbatore - 641 009.
+ 1 cc to Mr.M.L. Ganesh, Advocate Sr.81997
+ 1 cc to Mr. S. Saravanan, Advocate sr.82035
+ 1 cc to Mr.P.H. Kumaraguru, Advocate Sr.81986

W.P. No.5011 of 2016 and
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RGN(CO)
EU(13/12/2018)