IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P.No.18172 of 2018

1.Vijaya Lakshmi
2.Thulasi Anjaneyulu .. Petitioners

Vs.

1. The Chairperson,
Debts Recovery Appellate Tribunal,
Chennai.

2. The Authorized Officer,
State Bank of India,
P.K.Puram Branch,
No.51, Katpadi Gudiyattam Road,
P.K.Puram Rusha Post,
Katpadi Taluk,
Vellore District.

3. R.M.Muneer Basha .. Respondents

(First respondent deleted as per the order of the Court dt. 2.8.2018)

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari calling for the entire records in pursuant to the impugned order R.A. (SA) No.1 of 2017 vide order dated 27.4.2018 on the file of the first respondent and quash the same and direct the second respondent to receive the outstanding dues and redeem the property of the petitioners.



For Petitioners : Mr.M.Sathish Kumar

For Respondents : Mr.R.Imayavaramban
for M/s.Ramalingam Associates
for 2nd respondent

R3 - No Appearance
R1 - Deleted

O R D E R

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

The petitioners have filed the above writ petition to issue a Writ of Certiorari to call for the entire records pursuant to the order passed in R.A. (SA) No.1 of 2017 dated 27.4.2018 on the file of the Debt Recovery Appellate Tribunal, Chennai and quash the same and to direct the second respondent to receive the outstanding dues and redeem the property of the petitioners.

2. It is the case of the petitioners that they availed housing loan of Rs.10,00,000/- from the second respondent on 28.12.2005. Since the petitioners had defaulted in repaying the loan amount, the second respondent initiated proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, 'SARFAESI Act'). Thereafter, on 24.2.2016, the petitioners gave a representation to the second respondent for One Time Settlement. On 21.3.2016, the second respondent issued E-auction sale notice for the auction to be held on 21.4.2016. On 23.4.2016, the second respondent rejected the One Time Settlement proposal given by the petitioners. On 25.4.2016, the second respondent had issued a letter informing that the third respondent was the successful bidder in the E-auction held on 21.4.2016. Challenging the sale, the petitioners have preferred an appeal in S.A.No.268 of 2016 on the file of the Debts Recovery Tribunal-III, Chennai.

3. On 09.5.2016, the Debts Recovery Tribunal-III, Chennai had granted an order of status quo on condition the petitioners depositing a sum of Rs.5,00,000/- on or before 10.05.2016. On 10.5.2016, the petitioners appeared before the second respondent to pay a sum of Rs.5,00,000/-. Thereafter, the petitioners had filed an application to pay the entire amount demanded in the sale notice and to set aside the E-auction sale held on 21.4.2016. The Debts Recovery Tribunal-III, Chennai, by an order dated 28.9.2016, allowed the appeal in S.A.No.268 of 2016 and permitted the petitioners to redeem their property. Aggrieved over the said order, the second respondent filed an appeal in R.A. (SA) No.1 of 2017 before the Debt Recovery Appellate Tribunal, Chennai and the Debt Recovery Appellate Tribunal, Chenna by an order dated 27.4.2018 set aside the order passed by the Debts Recovery Tribunal-III, Chennai and allowed the appeal. Aggrieved over the same, the petitioners have filed the above writ petition.

4. The learned counsel for the petitioners contended that the notice dated 21.3.2016 was served on the petitioners only on 28.3.2016 for the auction to be held on 21.4.2016. Further, the

learned counsel submitted that as per Rule 8(6) and sub-rule (1) of Rule 9 of the Security Interest (Enforcement) Rules, 2002, there should be 30 days time between the date of notice and the date of auction and therefore, on this ground alone the auction should be set aside.

5. On a perusal of the materials available on record, it could be seen that the paper publication was effected in both English and Vernacular newspapers on 21.3.2016 fixing the date of auction as 21.4.2016. Therefore, as per the paper publication, there was clear 30 days notice available as per the provisions of Rule 8 (6) and sub-rule (1) of Rule 9 of the Security Interest (Enforcement) Rules, 2002. Therefore, it is clear that the notice published on 21.3.2016 is proper. That apart the second respondent contended that there was also affixure of sale notice on 21.3.2016 and the petitioners have also acknowledged the same. The property was sold on 21.4.2016 in favour of the third respondent and the petitioners have challenged the same in SARFAESI appeal only on 05.5.2016 when third party rights have been created in favour of the third respondent. Since the notice was properly published in accordance with the provisions of Rule 8 (6) and sub-rule (1) of Rule 9 of the Security Interest (Enforcement) Rules, 2002, the Debt Recovery Appellate Tribunal, Chennai has rightly set aside the order passed by the Debts Recovery Tribunal-III, Chennai and allowed the appeal.

6. For the reasons stated above, we do not find any reason to interfere with the order passed by the Debt Recovery Appellate Tribunal, Chennai. Accordingly, the writ petition is dismissed. No costs. Consequently, W.M.P.No.21475 of 2018 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairperson,
Debts Recovery Appellate Tribunal,
Chennai.

2. The Authorized Officer,
State Bank of India,
P.K.Puram Branch,
No.51, Katpadi Gudiyattam Road,
P.K.Puram Rusha Post,
Katpadi Taluk,
Vellore District.

+2 ccs to M/s.Ramalingam Associates, Advocate SR No.85656

+1 cc to M/s.M.Sathish Kumar, Advocate SR No.85586



MG(CO)
SSM(26/12/2018)