IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. No.19966 of 2018 and
W.M.P.No.23384 of 2018

V.Padmavathy ... Petitioner

Vs.

1.The State Bank of India
Stressed Assets Management Branch,
No.32, Montieth Road, Egmore,
Red Cross Building, 2nd Floor,
Chennai - 600 008.

2.The Recovery Officer - II,
Debts Recovery Tribunal - I,
6th Floor, Deva Towers,
770-A, Anna Salai, Chennai - 600 002.

3.A.Vinod Kumar

4.The Registrar,
Debt Recovery Appellate Tribunal, Chennai,
IV Floor, Indian Bank Circle Office,
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 pertaining to the order dated 20.07.2018 in R.A.No.157 of 2017 on the file of the Debt Recovery Appellate Tribunal, Chennai and quash the same.

For Petitioners: Mr.K.Sankaranarayanan

For Respondent : Mr.K.Balamurali
for M/s.Shivakumar & Suresh (R1)
R2 & R4 - Tribunal
R3 - no appearance

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 pertaining to the order dated 20.07.2018 in R.A.No.157 of 2017 on the file of the Debt Recovery Appellate Tribunal, Chennai and quash the same.

2.It is not in dispute that M/s.Sastee Appliances Private Limited, represented by its Directors viz., N.Venugopal and his son V.Venkatesh Babu availed cash credit facility of Rs.30 lakhs from the 1st respondent - Bank on 30.01.2008 by mortgaging the property of N.Venugopal. Since the borrowers committed default, the respondent - Bank filed O.A. for recovery of dues and obtained an ex-parte decree on 28.02.2012. Subsequently, one of the Directors viz., N.Venugopal had died on 26.06.2012. The Recovery Officer initiated auction proceedings under E-auction sale on 10.01.2014 and the 3rd respondent, being the sole bidder was found to be the successful bidder, who remitted Rs.6.50 lakhs (i.e.) 10% of the reserve price. The petitioner preferred an appeal before the Debts Recovery Tribunal under Section 30 of the Recovery of Debts Due to Banks and Financial Institutions Act, which was dismissed by the Debts Recovery Tribunal on 25.08.2014 for want of compliance of provisions of Rules 60 & 61 of Second Schedule of Income Tax Act, 1961. The Debts Recovery Tribunal had dismissed the appeal observing that the petitioner had sought to set aside the sale without making any deposit of sale amount, which is mandatory.

3.The learned counsel appearing for the petitioner, in support of his contention, relied upon a judgment reported in AIR 1995 Supreme Court 1971 [Nani Gopal Paul Vs. T.Prasad Singh and others] wherein the Hon'ble Apex Court held as follows:

> "...
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> 4.We are of the view that we can take suo motu judicial notice of the illegality pointed out by the Division Bench, committed by the single Judge of the High Court in bringing the properties to sale. Accordingly, we are of the view that the circumstances are sufficient to vitiate the validity of the sale conducted by the Court Receiver as approved by the learned Single Judge. Confirmation of sale was illegal. Though, as contended by Sri Ganesh that normally an application under Order 21, Rule 89 or 90 or under S.48 C.P.C. need to be filed within limitation to have the sale conducted by the Court set aside and that procedure need to be insisted upon, we are of the view that this Court or appellate Court

would not remain a mute or helpless spectator to obvious and manifest illegality committed in conducting Court sales. We are informed and it is not disputed that the appellant had deposited only Rs.5 lakhs and balance amount was assured to be deposited only after delivery of possession. That also would be illegal.”

4.It is the case of the respondent - Bank that the sale held on 10.01.2014 was confirmed on 11.02.2014 in favour of the 3rd respondent and that the Bank had initiated SARFAESI proceedings by issuing notice under Section 13(2) and 13(4) in the year 2010 itself. Inspite of getting several adjournments, the petitioner's husband had not discharged the loan amount. According to the respondent - Bank, the auction was conducted in a proper and legal manner and therefore, the order passed by the Tribunal does not warrant any interference.

5.In the judgment reported in 2012 (3) CTC 724 [P.Shuyjaath Raheed and others Vs. The State Bank of India, Vaniyambadi Branch, rep by its Chief Manager and others], the Division Bench of this Court held as follows:

“...

10.Section 29 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, which is as follows:

Section 29. Application of certain provisions of Income-tax Act - The provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the Rules referred to the amount of debt due under this Act instead of to the Income-tax:

Provided that any reference under the said provisions and the Rules to the 'assessee' shall be constured as a reference to the defendant under this Act.”

Contemplates the applicability of the Income Tax (Certificate Proceedings) Rules, 1962 and the Second and Third Schedules to the Income Tax, Act, 1961 which relate to the sale of the properties. Rule 60 of the Rules in the Second Schedule to the Income Tax Act, 1961, which relates to recovery, the procedure of which is directed to be applied as per Section 29 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, is as follows:

“Application to set aside sale of immovable property on deposit-

60(1)Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale, on his depositing:

(a)the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of fifteen per cent per annum, calculated from the date of the proclamation of sale to the date when the deposit is made; and

(b)for payment to the purchaser, as penalty, a sum equal to five per cent of the purchase money, but not less than one rupee.

(2)Where a person makes an Application under Rule 61 for setting aside the sale of his immovable property, he shall not, unless he withdraws that Application, be entitled to make or prosecute an Application under this Rule".

A reading of the said Rule makes it abundantly clear that any person who seeks to set aside the sale of immovable property, being a defaulter in repayment, has to necessarily deposit the amount specified in the proclamation of sale and unless and until he deposits the said amount, there is no possibility for the authority under the Act to decide the appeal. Therefore, the contention of the learned counsel for the petitioners that even without deposit of the amount the Appellate Tribunal should have decided in their favour is totally fallacious."

6.On a perusal of the materials available on record, it could be seen that the sale notice was issued on 03.12.2013 and the 3rd respondent - auction purchaser made EMD of Rs.6.50 lakhs on 02.01.2014 and remitted a sum of Rs.9.75 lakhs on 10.01.2014 and paid the balance consideration of Rs.49.40 lakhs on 23.01.2014. Hence, the sale was confirmed on 11.02.2014. The Sale Certificate was also issued in his favour on 28.02.2014 and the same was registered on 03.03.2014. After the registration of the Sale Certificate on 03.03.2014, the petitioner has filed an appeal in Appeal No.1 of 2015 before the Debts Recovery Tribunal, which ended in dismissal for want of deposit in terms of Rules 60 & 61 of Second Schedule of Income Tax Act, 1961. After the registration of the Sale Certificate on 03.03.2014, the petitioner has challenged the sale made on 10.01.2014, without making any deposit as contemplated under Rules 60 & 61 of Second Schedule of Income Tax Act, 1961. Even the records reveal that the cheque given by the petitioner's late husband before the Debt Recovery Appellate Tribunal, Chennai for Rs.5 lakhs was also dishonoured. Subsequently, he remitted only a sum of Rs.4.95 lakhs and failed to pay the entire cheque amount. The petitioner's late husband has also failed to pay the additional sum of Rs.5 lakhs as per the order dated 29.07.2011. In the case on hand, though the sale was conducted on 10.01.2014 and the Sale Certificate was registered as early as on 03.03.2014, the petitioner has challenged the auction beyond the period of limitation prescribed under Rules 60 & 61 of Second Schedule of Income Tax Act, 1961, that too, without depositing the sale amount as contemplated under the Rules. The Tribunal has rightly found that the sale was conducted in a proper and legal manner.

7.Since the facts and circumstances of the case differs from the case on hand, the ratio laid down by the Hon'ble Supreme Court in AIR 1995 Supreme Court 1971 [Nani Gopal Paul Vs. T.Prasad Singh and others] is not applicable.

8.The ratio laid down by the Division Bench of this Court in 2012 (3) CTC 724 [P.Shuyjaath Raheed and others Vs. The State Bank of India, Vaniyambadi Branch, rep by its Chief Manager and others] squarely applies to the present case (i.e.) any person, who seeks to set aside the sale of immovable property, being a defaulter in repayment, has to necessarily deposit the amount specified in the proclamation of sale and unless and until he deposits the said amount, there is no possibility for the authority under the Act to decide the appeal.

9.In these circumstances, we do not find any ground to interfere with the order passed by the Debt Recovery Appellate Tribunal. The Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Recovery Officer - II,
Debts Recovery Tribunal - I,
6th Floor, Deva Towers,
770-A, Anna Salai, Chennai - 600 002.

2.The Registrar,
Debt Recovery Appellate Tribunal, Chennai,
IV Floor, Indian Bank Circle Office,
55 Ethiraj Salai, Chennai - 600 008.

+1cc to M/S.Shivakumar & Suresh, Advocate Sr.70669
+1cc to Mr.Manogin.H, Advocate Sr.70964

W.P. No.19966 of 2018 and
W.M.P.No.23384 of 2018

srg 23/10/2018