

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.3545 of 2019 and
W.M.P.Nos.3863, 3864 & 3866 of 2019

- 1.M/s.Sai Krishna Cotton Mills,
A Partnership Firm,
rep by its Managing Partner K.Parasuraman,
Door No.230/1, A1, 230/9,
Koppampatty, Moorpatty Post,
Vadamadurai, Dindigul - 624 802.
- 2.K.Parasuraman
3.K.Thilagavathi .. Petitioners
- Vs.
- 1.Bank of Baroda,
rep by its Chief Manager/Authorized Officer,
Regional Office, Madurai, 1st Floor,
Aparna Towers, 2, 3 Bye-pass Road,
Ponmeni, Madurai - 625 016.
- 2.The Registrar,
Debt 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 to call for the order dated 11.01.2019 in AIR 698 of 2019 passed by the Debt Recovery Appellate Tribunal and to quash the same and consequently direct the 2nd respondent to number the appeal by waive and mandatory deposit.

For Petitioners : Mr.V.Raghavachari
for Mr.R.Venkata Varathan

For Respondents : Mr.S.Umasudhan (R1)
R2 - Tribunal

O R D E R
(Order of the Court made by the Hon'ble Chief Justice
and 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 11.01.2019 in AIR No.698 of 2018 on the file of the Debt Recovery Appellate Tribunal and to quash the same and consequently to direct the 2nd respondent to number the appeal by waiving pre-deposit.

2.It is the case of the petitioners that the 1st petitioner availed loan from the respondent - Bank. The 3rd petitioner stood as a guarantor for the said loan. Since the 1st petitioner committed default in repaying the loan amount, the respondent issued a notice dated 13.08.2013 under Section 13(2) of the SARFAESI Act. Thereafter, the respondent issued a possession notice dated 25.11.2013 under Section 13(4) of the Act. Thereafter, the property was brought to sale and a sale notice dated 25.10.2018 was issued.

3.Challenging the e-auction sale notice dated 25.10.2018, the petitioners filed an appeal in S.A.No.609 of 2018 on the file of the Debts Recovery Tribunal, Madurai. In the said appeal, the petitioners filed an application in I.A.No.3013 of 2018 seeking to stay all further proceedings pursuant to the impugned e-auction sale notice dated 25.10.2018 pending disposal of the main application. The Debts Recovery Tribunal, by order dated 03.12.2018, dismissed the application. Aggrieved over the same, the petitioners preferred an appeal in AIR (SA).No.698 of 2018 before the Debt Recovery Appellate Tribunal, Chennai along with a petition for waiver of pre-deposit. The Debt Recovery Appellate Tribunal, by order dated 11.01.2019, directed the petitioners to make a pre-deposit of Rs.58 lakhs within four weeks. While arriving at the said figure, the Debt Recovery Appellate Tribunal took into consideration the claim made by the respondent - Bank in the Section 13(2) dated 13.08.2013 wherein they claimed a sum of Rs.2.29 crores. Challenging this order, the petitioners have filed the above Writ Petition.

4.When the matter is taken up for hearing, the learned counsel for the respondent - Bank submitted that the e-auction sale notice dated 25.10.2018 itself has become infructuous for the reason that the auction was not conducted on 04.12.2018 pursuant to the said sale notice.

5.Since the subject matter of the appeal in S.A.No.609 of 2018, which is the e-auction sale notice dated 25.10.2018 has become infructuous for the reason that the property was not sold pursuant to the said notice, the relief sought for in the said

appeal before the Debts Recovery Tribunal itself has become infructuous. While so, the appeal filed as against the order passed in I.A.No.3013 of 2018 has become unnecessary. Consequently, there is no necessity for prosecuting the waiver application.

6.In these circumstances, the Writ Petition is dismissed. In the event of the respondent - Bank issuing a fresh sale notice, it is always open to the petitioners to challenge the same in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Manager/Authorized Officer,
Bank of Baroda,
Regional Office, Madurai, 1st Floor,
Aparna Towers, 2, 3 Bye-pass Road,
Ponmeni, Madurai - 625 016.

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

+1 cc to Mr.R.Venkata Varathan, Advocate SR.No.14368

सत्यमेव जयते

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SJ(CO)
CSL/08.03.2019

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