IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2019

CORAM:
THE HON'BLE MR.JUSTICE P.VELMURUGAN
Crl.R.C.No.341 of 2018
and
Crl.M.P.No.4216 of 2018

R.Nabisha Begum
.. Petitioner

Vs.

1. Bank of Baroda
No.52, Montieth Road,
Egmore, Chennai-600 008.

2. Y.Rajesh

3. Soniya
.. Respondents

Criminal Revision filed under Sections 397 and 401 Cr.P.C., praying to set side the order dated 02.02.2018 passed in Crl.M.P.No.1472 of 2017 on the file of the learned Chief Metropolitan Magistrate (FAC), Chennai.

For Petitioner : Mr.N.Saravanan

For Respondents: Mr.S.Pandurangan
for R1

O R D E R

This Criminal Revision has been filed to set aside the order dated 02.02.2018 made in Crl.M.P.No.1472 of 2017 passed by the learned Chief Metropolitan Magistrate (FAC), Chennai.

2. The first respondent-bank filed a petition under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 in Crl.MP.No.1472 of 2017 before the learned Chief Metropolitan Magistrate, Allikulam, Chennai to take possession of the secured assets as described in the schedule therein. After hearing the arguments, the learned Chief Metropolitan Magistrate allowed the petition and appointed an Advocate Commissioner by ordering remuneration of Rs.20,000/- to the Advocate Commissioner and directed the Advocate Commissioner to execute the warrant and submit the report within 60 days from the date of issuance of warrant.

Challenging the said order, one of the aggrieved party filed the present revision before this Court.

3. The learned counsel for the petitioner would submit that the revision petitioner is a tenant in the subject matter of the property. The first respondent-Bank has filed a petition to delete the name of the revision petitioner/third respondent therein and the same was allowed by the trial Court without giving the opportunity to the revision petitioner/third respondent therein. The trial Judge has not given any valid reason to allow the petition filed by the first respondent-Bank, which warrants interference.

4. The learned counsel for the first respondent-Bank would submit that the respondents 2 & 3 approached the first respondent-Bank and mortgaged the property with the first respondent-Bank to the tune of Rs.26,88,935/- on 31.12.2010. The original title deeds relating to the said property were deposited by the second respondent with the first respondent-Bank on 13.01.2012, with an intention to create mortgage over the same to secure the above said credit facility. Despite several request to pay the outstanding amounts together with interest to the first respondent-Bank, the same proved to be futile and the respondents 2 & 3, who are jointly and severally liable, have failed to repay the amount. Hence, the first respondent-Bank issued notice under Section 13(2) of SARFAESI Act on 26.02.2016. Subsequent to the mortgage, the respondents 2 and 3 have entered into a Lease Agreement dated 11.09.2013 with the revision petitioner herein. The revision petitioner issued a legal notice dated 14.07.2016 through her counsel to the first respondent-Bank claiming to be a tenant in the schedule property. The revision petitioner filed a WP.No.23106 of 2016 challenging the auction sale notice dated 16.06.2016 before this Court and obtained interim stay. Thereafter, on 28.07.2016 the said writ petition was dismissed by this Court with liberty to the first respondent-Bank to evict the revision petitioner as a tenant. The first respondent-Bank sold the property by E-Auction on 14.12.2016. The first respondent-Bank filed a petition to take the physical possession of the secured asset and the authorized Officer of the first respondent-Bank has filed an affidavit declaring the aggregate amount of financial assistance granted to the respondents with the period of fault committed by the respondents and all other aspects to fulfil the requirements made in Section 13 and 14 of the Act. After considering the entire materials, the trial Judge allowed the said petition and appointed an Advocate Commissioner to take the possession of the schedule property, which warrants no interference.

5. Heard the learned counsel for the petitioner, the learned counsel for the first respondent and also perused the materials on record.

6. The second respondent is borrower, the third respondent is co-borrower. Both respondents borrowed loan from the first respondent-bank and mortgaged the subject property with the first respondent-Bank to the tune of Rs.26,88,935/- on 31.12.2010. Since the second respondent has failed to repay the loan amount, the first respondent-Bank issued demand notice under Section 13(2) of SARFAESI Act on 26.02.2016. Despite receipt of the same, the respondents 2 and 3 had failed and neglected to repay the dues. Hence, the first respondent-Bank had issued a possession notice under Section 13(4) of the Act dated 11.05.2016 for taking symbolic possession of the property and despatched the same to the respondents 2 and 3. Subsequently the first respondent-Bank filed the petition under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 before the learned Chief Metropolitan Magistrate, Allikulam, Chennai . At this stage, the revision petitioner filed impleading petition, which was dismissed by the trial Court. Subsequent to mortgage and serving the notices, the revision petitioner is alleged to have entered into tenancy agreement with the second respondent herein and hence, she is not entitled to the relief as prayed for.

7. On a perusal of the records, it is seen that the revision petitioner has colluded with the second and third respondents to defeat the right of the first respondent-Bank created the tenancy agreement and made a false claim.

8. In view of the above, this Court does not find any merit in this revision petition and the same is liable to be dismissed. Accordingly, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

kmi

To

The Chief Metropolitan Magistrate,
(FAC), Allikulam, Chennai.

+1cc to Mr.S.Pandurangan, Advocate Sr.41674

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srg 12/06/2019