IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.11.2019
Pronounced on : 21.11.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI

and

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.7645 of 2019

M/s.Annai Enterprises Pvt.Ltd.,
Represented by Managing Director,
S.V.Kannan
SP-146, 1st Main Road,
Industrial Estate, Ambattur,
Chennai 600 058. .. Petitioner

.vs.

The Authorised Officer,
Bank of India,
Thousand Light's Branch,
406, Lloyds Road,
Gopalapuram, Chennai 600 086. .. Respondent

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus directing the respondent Bank to refund the sum of Rs.5,09,85,655/- with interest @ 11.2% from 30.09.2016 till the date of actual payment by the respondent bank within the time frame fixed by this Court.

For Petitioner : Mr.Surya Narayanan

For Respondent : Mr.R.Umasuthan

ORDER

C.SARAVANAN,J.

The petitioner is an Auction Purchaser of the property which was brought to sale by the Respondent Bank. The property in question was auctioned by the respondent Bank on 22.08.2016. The petitioner paid a sum of Rs.5,09,00,000 (Rupees Five Crores and Nine lakhs only) for purchasing the auction property. Thereafter, the respondent Bank had later issued a sale certificate infavour of the petitioner on 04.10.2016. The petitioner had borrowed a sum of Rs.3,85,00,000/- from the respondent Bank had earlier to purchase the auction property.

2.Earlier, the borrower viz., Rohini Weld Tech.rep.by its Partner M.Venkatesan and his wife had filed S.A.No.410 of 2016 before the Debt Recovery Tribunal III, Chennai, under Section 17 (1) of the SARFAESI Act and challenged the sale notice dated 05.07.2016.

3. By an order dated 05.12.2016, the sale notice dated 05.07.2016 scheduling the sale on 29.07.2016 was postponed to 22.08.2016. Later, the sale notice issued by the respondent Bank to recover an amount of Rs.10,90,11,058/- from the said borrower was set aside by Debt Recovery Tribunal on 05.12.2016. Consequently, the respondent bank was directed to return the amount paid by the petitioner towards sale consideration. Debt Recovery Tribunal also directed cancellation of the sale certificate issued in favour of the petitioner. The Respondent Bank was also further directed not to debit the expenses incurred for issuance of the subject impugned sale notice dated 05.07.2016 and the earlier sale notice dated 18.06.2016 to the said borrower's loan amount.

4. Aggrieved by the same, the respondent Bank filed RA(SA) No.13/2017 which came to be eventually dismissed on 24.01.2019 with the following observations. Para Nos.14 & 15 of the said order are reproduced below:

> " 14. Normally, right of third party bonafide purchasers are respected and protected. It is true that R4 Auction Purchaser had spent a sum of more than Rs.5 Crores two to three years age. Facts reveal that R4 Auction Purchaser was the only prospective speculative purchaser. Appellant Bank could have managed to fetch some more money from this property. At the worst, Auction Purchaser will be entitled for refund of money along with interest prevailing for deposits in Bank. It is true that conduct of R1 to R3 borrowers is also not

> fair. They always remained interested in non-payments and delaying and deferring the recovery proceedings. However, on comparison of the attitude and conduct of all parties, it appears to be a fit case for re-auction.
>
> 15. PO of DRT had dealt with the issues in right perspective. Though R1 to R3 borrowers have no case on the grounds of issuance of two Demand Notices and award of Lok Adalat, however, they made out a case on the ground of less valuation of the property and undue favour given to R4 Auction Purchaser by the Appellant Bank. "

5. Meanwhile, the petitioner had also filed W.P.No.17585 of 2017 to direct the respondents Bank to handover the physical possession of the property viz., belonging to the borrower. By an order dated 12.07.2017, the said writ petition was also dismissed with the following observations in para 12 which is reproduced below:

> " 12. In the light of the above discussion, while declining to issue writ of mandamus, as prayed for, we only direct the Authorised Officer, Bank of India, Asset Recovery Branch, Chennai, the 1st respondent to take necessary steps for obtaining orders from the District Magistrate, Thiruvallur. Writ petition is dismissed."

6. It is the contention of the petitioner that he requested for refund the amount of Rs.5,09,85,655/- paid to the respondent bank as sale consideration together with interest at 11.20% being interest charged by the Respondent bank for financing the purchase of the property from the petitioner. The petitioner has continued to repay the aforesaid loan to the Respondent bank. The Respondent Bank however failed to repay the amount even though sale was set aside as early as 05.12.2016. The Respondent bank has now agreed to repay the amount with interest only at 7.5%. According to the petitioner, the interest burden borne by him in servicing the loan is substantial.

7. It is the contention of the petitioner that will be caused no prejudice to the Respondent Bank as it will recover the loss if any on account of the delay in repayment from the borrower and therefore the petitioner should be given refund of the amount and the difference in the interest also i.e. the

interest offered by the Respondent Bank for the refund of the amount and the interest charged by the respondent Bank for financing the purchase of the auction property.

8. We have given an anxious consideration to the issue. Purchase of the auction property in an auction conducted by the respondent bank under the provisions of the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the collateral financing of the auction purchase of the auction property by the respondent Bank are independent transactions. We are of the view that the petitioner knowing the risk auction involved in the auction property took a calculated risk of investing in it by bidding in the auction conducted by the respondent bank on 22.08.2016.

9. The sale consideration financed by the Respondent Bank was paid by the petitioner on 30.09.2016 and thereafter the sale certificate was also issued in favour of the petitioner.

10. Meanwhile, the Debt Recovery Tribunal passed an order dated 05.12.2016 in S.A.No.410/2016 and set aside auction sale notice with a direction to the respondent Bank to refund the amount to the petitioner in S.A.No.410 of 2016 filed by the borrowers. The Respondent Bank took up the issue in appeal before the Debt Recovery Appellate Tribunal on 03.01.2017 vide R.A.S.A.No.13/2017. The said appeal came to be dismissed only on 24.01.2019. Thus, the writ petitioner has been burdened to pay 11.2% on the borrowed amount for the period after 05.12.2016 due to recalcitrant attitude of the Bank in refunding the amount promptly. We are informed that till date the respondent Bank has not repaid the amount by the petitioner.

11. After the sale was set aside on 05.12.2016 by the Debt Recovery Tribunal in S.A.No.410/2016, the respondent Bank should have taken prompt steps to comply with the said order of the Debt Recovery Tribunal by refunding the amount as was ordered. The respondent Bank however preferred R.A.No.13/2017 before the DRAT, Chennai which was later dismissed vide order dated 24.01.2019. The petitioner also partly fueled the litigation by filing W.P.No.17585 of 2017 and prayed for handing over possession of the property.

12. In our view, the respondent Bank was not justified in delaying the repayment of the amount to the petitioner. Since the petitioner has been servicing the aforesaid loan and has repaid the outstanding substantially, we are therefore of the view that to partially mitigate the hardship caused to the petitioner, partial relief can be granted to the petitioner. The learned counsel submits that the difference in the interest paid and received on Rs.3,85,00,000/- is 3.7%. (11.2 - 7.5%)

which is approximately Rs.14,24,500/- p.a. in the first year alone

13. Therefore, to meet the ends of justice and to mitigate the loss to the petitioner we direct the respondent Bank to pay a sum of Rs.21,00,000/- as compensation to the petitioner in the peculiar facts of the case together with the aforesaid sale consideration of Rs.5,09,85,655/- and the interest at 7.5% within a period of four weeks from the date of receipt of a copy of this order.

14. With the observations, this Writ Petition is disposed of. No order as to costs.

Sd/
Assistant Registrar

// True Copy//

Sub Assistant Registrar

kkd

To

The Authorised Officer,
Bank of India,
Thousand Light's Branch,
406, Lloyds Road,
Gopalapuram, Chennai 600 086.

+1cc to Mr.G.Surinarayanan, Advocate, SR.No.097322.

Order in
W.P.No.7645 of 2019

RSV (CO)
CSR(20/12/2019)