IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2019

CORAM

**THE HON'BLE MR.JUSTICE S.MANI KUMAR**
**&**
**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN**

C.R.P.(PD).No.2046 of 2016
and C.R.P.(PD).No.84 of 2018
and
C.M.P.No.10662 of 2016
and C.M.P.No.402 of 2018

Pushpalatha Ravindran @ Rani Ravindran ... Petitioner in both CRPs

Vs.

M/s.Indian Bank,
Sterling Road Branch,
Chennai - 600 034. ... Respondent in both CRPs

Prayer in C.R.P.(PD).No.2046 of 2016: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 02.03.2015 passed by the Debt Recovery Tribunal - I in O.A.No.54 of 2006.

Prayer in C.R.P.(PD).No.84 of 2018: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 19.12.2017 passed in waiver application by the Debt Recovery Appellate Tribunal, Chennai, and consequently, allow the said Petition A.I.R(S.A)No.422 of 2017 on the file of DRAT, Chennai, with costs.

For Petitioner : Mr.PL.Narayanan
For Respondent : Mr.R.Ramesh

**O R D E R**

(Order of the Court was made by **V.BHAVANI SUBBAROYAN.J.,)**

C.R.P.(PD).No.2046 of 2016 has been filed against the order dated 02.03.2015 passed by the Debt Recovery Tribunal - I, Chennai, in O.A.No.54 of 2006, and C.R.P.(PD).No.84 of 2018 has been filed against the order dated 19.12.2017 passed by the Debt Recovery Appellate Tribunal, Chennai, in I.A.1261 of 2017.

2. The brief facts of the case are that the petitioner approached the respondent bank for housing loan to purchase a flat. The respondent bank, after scrutinizing the application and after due verification, approved to sanction credit facility vide its letter dated 24.07.1989 for a sum of Rs.4,60,000/-. Subsequently, on 07.08.1989, the petitioner executed a promissory note, mortgaged the immovable properties belonging to her in favour of the respondent bank and created an equitable mortgage as collateral security for the Housing Loan. Thereafter, the respondent bank sanctioned the said loan of Rs.4,60,000/- and the same was acknowledged by the petitioner by letter dated 08.08.1989. However, after sanctioning of the loan, the

petitioner paid Rs.30,000/- on 02.07.1997 and thereafter, the petitioner was not regular in repayment of the loan. The respondent bank made several requests to the petitioner to pay the due amount. Despite the same, the petitioner did not come forward to settle the dues. Hence, the respondent bank issued a legal notice on 27.01.1997 calling upon the petitioner as to why she has not repaid the loans. But, the petitioner did not send any reply to the said notice.

3. Left with no other option, the respondent bank filed a suit in O.S.No.8151 of 1997 before the IV Additional Judge, City Civil Court on 16.09.1997, for recovery of the outstanding dues of Rs.8,52,517/- together with interest and costs. The learned IV Additional Judge, City Civil Court, by order dated 19.03.2002, allowed the suit filed by the respondent bank, directing the petitioner to pay a sum of Rs.9,16,467/- together with interest at 20.75% per annum with quarterly rests on Rs.8,52,517/- from the date of filing the suit, till the date of realisation. Thereafter, based on the said decree, the respondent bank issued a demand notice dated 24.01.2006 under Section 13(2) of the SARFAESI Act 2002, calling upon the petitioner to pay the outstanding amount of Rs.19,77,829/- within a period of 60 days from the date of receipt of the said notice. In spite of the demand

notice, the petitioner did not come forward to settle her dues, and therefore, on 24.03.2006, the respondent bank filed O.A.No.54 of 2006 before DRT, Chennai, seeking for a direction to the petitioner to pay the outstanding due amount of Rs.41,84,816.65 with interest at 20.75% per annum compounded with quarterly rests. Pending the said O.A., the respondent bank affixed a notice dated 29.07.2006 on the doors of the petitioner's house under Section 13(4) of the SARFAESI Act, 2002, and thereafter, the petitioner filed a reply statement to the said O.A. on 05.10.2006. However, on 14.10.2008, an exparte final order came to be passed against the petitioner.

4. Challenging the exparte final order, the petitioner filed I.A.No.54 of 2010 dated 14.09.2010 before DRT-I, Chennai, along with the application in I.A.No.119 of 2010 to condone the delay of 670 days in filing the application to set aside the exparte final order passed in O.A.No.54 of 2006. Prior to that, the respondent bank issued a demand notice under SARFAESI Act on 24.01.2006 and possession notice on 29.07.2008, which was published in the Daily newspaper 'Malaisudar' dated 31.07.2006, and thereafter, bank issued notice of sale calling for Tender on 11.10.2008 for the auction to be conducted on 22.11.2008 fixing the reserve price as Rs.7,38,000/-, and finally,

sold the property to Mr.B.Jacob, who was the highest bidder in the auction, for a sum of Rs.1,08,40,000/- and issued a sale certificate which was registered on 19.12.2008 as Document No.2160/2008 in the office of the Sub Registrar, Adyar, to the said bidder. DRT-I, Chennai, by order dated 14.03.2013, allowed I.A.No.119 of 2010 which was filed to condone the delay of 670 days in filing the application to set aside the exparte final order dated 14.07.2008. Thereafter, on instructions from the respondent bank that the property in question was sold in the year 2008, DRT-I, by order dated 02.03.2015, directed the petitioner to deposit her entire dues in the name of Registrar, DRT-I, Chennai, to entertain the appeal. Challenging the said order, the petitioner has approached this Court by filing C.R.P.(PD).No.2046 of 2016.

5. It could be seen from the records that this Court, as early as 2016, granted an interim stay of the operation of the order dated 02.03.2015 passed by DRT-I, Chennai, in O.A.No.54 of 2006 pending disposal of C.R.P.(PD).No.2046 of 2016.

6. It could be also seen from the records that the petitioner had previously filed S.A.No.143 of 2007 before DRT-I, Chennai,

questioning the possession notice dated 29.07.2008 issued by the respondent bank under Section 13(4) of the SARFAESI Act, but, the said application was dismissed by DRT-I, by order dated 17.06.2017, as it has not found any breach of any of the mandatory provisions of the SARFAESI Act 2002 and the rules made thereunder, relating to the issuance of possession notice.

7. It could be further seen from the records that challenging the order passed by DRT-I, Chennai, in S.A.No.143 of 2007, petitioner has filed an appeal before DRAT along with I.A.No.1261 of 2017, to waive the payment of pre-deposit of 50%, as required under Section 18 of the SARFAESI Act, and the DRAT, by its order dated 19.12.2017, directed the petitioner to make a pre-deposit of Rs.15 lakhs, in the name of Registrar, DRAT, Chennai, within a period of four weeks from the date of passing the order, failing which, the appeal shall stand dismissed automatically. However, without making the said pre-deposit amount, the petitioner has approached this Court by filing C.R.P.No.84 of 2018 seeking to set aside the order of DRAT dated 19.12.2017, and therefore, both the Civil Revision Petitions i.e. C.R.P.(PD).No.2046 of 2016 and C.R.P.(PD).No.84 of 2018 have been taken together for hearing.

8. The learned counsel appearing for the petitioner would vehemently argue that the condition imposed by DRT-I, by its order dated 02.03.2015 is very much onerous, and the Tribunal knowing very well that it cannot be complied with by the petitioner, has imposed such a condition on the petitioner, and thus, the petitioner is not able to comply with the order of DRT-I and further, reopened the Original Application.

9. The learned counsel for the petitioner would further argue that when the respondent bank has appropriated the dues by selling the secured assets, the Tribunal ought to have given 100% waiver of pre-deposit and no such onerous condition could have been imposed on the petitioner.

10. As against the arguments of the petitioner's counsel, the learned counsel for the respondent bank would argue that the subject matter of the property has already been sold under the auction as early as on 22.11.2008 and sale certificate has also been executed by the bank. But, the petitioner has belatedly approached DRT-I to set aside the order passed in O.A.No.54 of 2006, and filed Waiver

Application before DRAT in I.A.No.1261 of 2017. Hence, they cannot be allowed.

11. The learned counsel for the respondent bank further would argue that only after following all the procedures under the statute, the said property was sold through action to one Mr.B.Jacob, the highest bidder in the auction, and hence, sought for dismissal of both the Civil Revision Petitions filed by the petitioner.

12. In support of the arguments, the learned counsel for the petitioner would rely upon the Judgment reported in **(1999) 8 SCC 511**, in the case of **[U.Nilan Vs. Kannayyan]**. The relevant portion of the Judgment is extracted hereunder:-

*"21. What is the meaning of the phrase "before the confirmation of sale" may now be considered in the light of other relevant provisions of the Code of Civil Procedure.*

*22. Now, an application to set aside the sale can be filed under Order 21 Rule 89 CPC while another application for setting aside the sale on the ground of irregularity or fraud can also be given under Order 21 Rule 90 CPC. Similarly, if the property has been sold, it would be open to the purchaser to make an application for setting aside the* *sale on the ground that the Judgment-debtor had no saleable interest in the property sold in execution of the decree.*

*23. Order 21 Rule 92(1) CPC including the proviso thereto provides as under:*

*"92. Sale when to become absolute or be set aside.--Where no application is made under Rule 89, Rule 90 or Rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute:*

*Provided that, where any property is sold in execution of a decree pending the final disposal of any claim to, or any objection to the attachment of, such property, the Court shall not confirm such sale until the final disposal of such claim or objection."*

13. The learned counsel for the petitioner would also rely upon the Judgment reported in **(2010) 8 SCC 129**, in the case of **[Indian Bank Vs. Blue Jaggers Estates Limited and Others ]**. The relevant portion of the Judgment is as follows:-

*"21. A reading of the order dated 09.06.2008 passed in S.A.No.221 of 2007 makes it clear that the Tribunal had*

*recorded a specific finding that the appellant bank is entitled to claim the entire amount of Rs.11,59,08,727, which was due as on 30.09.2007 with future interest. This is clearly borne out from the following portion of that order:*

> *"Further, in the written arguments dated 08.02.2008, the respondent bank has clearly and also rightly pointed out that the appellants having committed default in making the payments in accordance with joint memo of compromise dated 08.02.2008, the respondent bank has clearly and also rightly pointed out that the appellants having committed default in making the payments in accordance with joint memo of compromise dated 23.03.2005, now they cannot claim that they are liable to pay only a balance amount with interest and the respondent bank is entitled to claim entire amount of Rs.11,59,08,727 as on 30.09.2007 with further (sic future) interest."*

*26. The reasons assigned by the High Court for declaring that the requirement of predeposit will be deemed to have been satisfied do not stand scrutiny. The High Court failed to notice that in terms of the order passed in Writ Petition No.20772 of 2008, the auction of the mortgaged properties was subject to confirmation by the Appellate Tribunal, which had not passed any order in that regard.*

*27. In the result, the civil appeal arising out of SLP (C) No.4981 of 2010 is allowed. The impugned order of the High Court is set aside insofar as it declares that the direction given by the Appellate Tribunal to the respondents to deposit Rs.3 crores Rs.3 crores stands complied. The respondents are given four weeks' time to deposit Rs.3 crores in terms of conditional interim order dated 21.07.2008 passed by the Appellate Tribunal, failing which the appeal filed by them against the order passed by the Tribunal in S.A.No.221 of 2007 shall stand dismissed and the appellant shall be free to recover all the outstanding dues.*

14. The learned counsel for the petitioner would further rely upon the Judgment reported in **(2011) 15 SCC 253**, in the case of **[Persn Medicinal Plants Pvt. Ltd. and Anr. Vs. Indian Bank and Ors]**.

15. Heard the learned counsel for the petitioner and the learned counsel for the respondent, and perused the materials available on record.



16. On perusal of the material on record, it could be seen that the present petitions arise in relation to the loan sanctioned to the petitioner on 07.08.1989 by the respondent bank. The respondent

bank filed a suit in O.S.No.8151 of 1997 before the learned IV Additional Judge, City Civil Court, Chennai, to recover the outstanding dues of the petitioner of Rs.8,52,517/- with interest and costs. The learned IV Additional Judge, City Civil Court, by order dated 19.03.2002, passed a Judgment in favour of the respondent bank, directing the petitioner to pay a sum of Rs.9,16,467/- together with interest at 20.75% per annum with quarterly rests on Rs.8,52,517/- from the date of filing the suit, till the date of realisation. With this preliminary decree, the respondent bank issued a demand notice dated 23.08.2002 under Section 13(2) of the SARFAESI Act 2002, calling upon the petitioner to pay the outstanding due amount of Rs.19,77,829/- within a period of 60 days from the date of receipt of the said notice. As there was no response from the petitioner, following 13(2) notice, the respondent bank issued possession notice dated 29.07.2006 under Section 13(4) of the SARFAESI Act, and subsequently, affixed the same on the petitioner's house. As there was no response from the petitioner again, the respondent bank has initiated recovery proceedings on 24.03.2006 before DRT-I, Chennai, in O.A.No.54 of 2006.

17. It could be also seen from the records that subsequent to the

exparte final order which came to be passed on 14.10.2007, notice of sale calling for Tender was issued on 11.10.2008 and the same was published in the daily news papers 'Indian Express' dated 12.10.2008 and Tamil news paper 'Dinamani' dated 13.10.2008 fixing a reserve price of Rs.7,38,000/-. Thereafter, the auction was held on 22.11.2008 and finally, the property was sold to one Mr.B.Jacob, the highest bidder in the auction, for a sum of Rs.1,08,40,000/-, and subsequently, the sale certificate was registered on 19.12.2008 as Document No.2160/2008 at Sub Registrar Office, Adyar, and issued to the said bidder by the respondent bank.

18. It could be further seen from the material on record that the respondent bank, after appropriating the dues of the petitioner by selling the secured assets, has credited the balance amount of Rs.58,67,282.19 to ARMB branch, Chennai, towards the liability of M/s.Cathey Security Printers Pvt Ltd. This information could be found from the documents filed by the petitioner herself.



19. Moreover, it could be seen from the records that when the O.A. was pending, the petitioner has filed S.A.No.143 of 2007 before DRT-I, Chennai, challenging the possession notice dated 29.07.2006

and in the mean while, exparte final order dated 14.10.2007 came to be passed in O.A.No.54 of 2006, and thereafter, the said S.A. was also dismissed by DRT-I, Chennai, by its order dated 17.06.2017. Challenging the said order, the petitioner, belatedly filed I.A.No.54 of 2010 dated 14.09.2010 before DRT-I, Chennai, along with an application in I.A.No.119 of 2010 to condone the delay of 670 days in filing the application to set aside the exparte final order dated 14.10.2007. Thereafter, by order dated 14.03.2013, the delay was condoned and I.A.No.119 of 2010 was allowed by DRT-I, Chennai. Nevertheless, the petitioner was directed to deposit her entire dues in the name of Registrar, DRT-I, to reopen the above said O.A. Therefore, the petitioner has filed an appeal before DRAT along with I.A.No.1261 of 2017, to waive the payment of pre-deposit of 50% as required under Section 18 of the SARFAESI Act. The DRAT, by its order dated 19.12.2017, directed the petitioner to make a pre-deposit of Rs.15 lakhs in the name of Registrar, DRAT, Chennai. Hence, challenging the said order of DRAT in I.A.No.1261 of 2017 dated 19.12.2017 as well as the order of DRT-I in O.A.No.54 of 2006 dated 02.03.2015, the petitioner has filed these Civil Revision Petitions.

20. The petitioner, after almost one year, has filed

C.R.P.(PD).No.2046 of 2016 under Article 227 of the Constitution of India, challenging the order of DRT-I dated 02.03.2015, which came to be admitted and interim stay has been granted by this Court. However, when the appeal remedy is available under the Act, the said petition cannot be maintained under Article 227 of the Constitution of India and the petitioner ought to have approached DRAT under Section 18 of the SARFAESI Act, 2002. This Court, by following the Judgment of the Hon'ble Supreme Court in several cases, has already held that Article 227 can be invoked only if there are any Judicial errors committed by the Subordinate Court or Tribunal. Therefore, unless there are any Judicial errors committed by the Subordinate Court or Tribunal, Article 227 of the Constitution of India, cannot be invoked by questioning the orders of the Subordinate Court or Tribunal, as there are efficacious alternative remedy available under the statute.

21. Hence, the C.R.P.(PD).No.2046 of 2016, questioning the order dated 02.03.2015 passed by DRT-I, Chennai, cannot be interfered by this Court, and accordingly, it has to be dismissed.

22. It could be further seen from the records that the petitioner has not preferred any appeal against O.S.No.8151 of 1997 which was

initially filed by the respondent bank before the learned IV Additional Judge, City Civil Court, Chennai, to recover the outstanding due of the petitioner of Rs.8,52,517/- together with interest and costs. As per Section 30(1) of RDDBI Act, 1993, the decree passed by the Civil Court, can be challenged before the Appellate Tribunal, within a period of 30 days from the date of receipt of a copy of the said order. But, in the present case, no steps have been taken by the petitioner to challenge the order of the learned IV Additional Judge, City Civil Court, Chennai, passed in O.S.No.8151 of 1997 dated 19.03.2002, before the Appellate Tribunal. Further, as per Section 18 of the SARFAESI Act, no appeal shall be entertained by the Appellate Tribunal unless the borrower has deposited 50% of the debt due from him. In the present case, the petitioner has approached DRAT by filing I.A.No.1261 of 2017 to waive the payment of pre-deposit of 50% as required under Section 18 of the SARFAESI Act, and therefore, the Appellate Tribunal has directed the petitioner to make a pre-deposit of Rs.15 lakhs on the basis of due amount, to entertain the appeal, as per Section 18 of the SARFAESI Act.



23. Hence, the C.R.P.(PD).No.84 of 2018, challenging the order of DRAT dated 19.12.2017, also has to be dismissed by this Court, as

it is in consonance with the SARFAESI Act.

24. The citation referred to by the petitioner reported in **(1999) 8 SCC 511**, cannot be applied to the case on hand, as in the present case, the sale has been confirmed, much prior to the appeal proceedings initiated by the petitioner.

25. With regard to the other citation referred to by the petitioner reported in **(2010) 8 SCC 129** and **(2011) 15 SCC 253**, also cannot be applied to the present case on hand, as the facts and circumstances of the case, in the said Judgments, are totally different to the present case on hand.

26. In the light of the discussion, both the Civil Revision Petitions i.e. C.R.P.(PD).No.2046 of 2016 and C.R.P.(PD).No.84 of 2018 are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.



(S.M.K.J.,) (V.B.S.J.,)

24.01.2019

raja

**S.MANI KUMAR.J.,**
and
**V.BHAVANI SUBBAROYAN.J.,**

raja

Index : yes/no
Internet : yes/no
Speaking Order/Non-Speaking Order

To

1. The Registrar,
   Debts Recovery Appellate Tribunal,
   Chennai - 600 008.

2. The Registrar,
   Debts Recovery Tribunal I,
   Chennai - 600 008.

Pre-Delivery Order in

C.R.P.(PD).No.2046 of 2016
and C.R.P.(PD).No.84 of 2018
and
C.M.P.No.10662 of 2016
and C.M.P.No.402 of 2018



24.01.2019