IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.11.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.41265 of 2016

Dr.A.Joseph Navaseelan ... Petitioner

Versus

1. The Authorised Officer &
Chief Manager,
Indian Bank, Chetpet Branch,
Chennai 600 010.

2. The Registrar,
Debt Recovery Tribunal-I,
Chennai. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records of the 2nd respondent in S.A.No.278 of 2009 dated 28.4.2015, quash the same and consequently direct the 1st respondent to refund the EMD deposited by the petitioner on 26.4.2007 to the tune of Rs.1,99,000/- for the purpose of purchase of 4 flats situated at Flat No.1, 2, 3 and 4, Ground Floor, Flat No.18, Elumalai Nagar, Chrompet, Chennai 600 044, by way of auction sale on 27.4.2007 with due interest.

For petitioner : Mr.Prabhu Mukunth Arunkumar

For R1 : Ms.S.R.Sumathy

ORDER

(Order of the court was made by Dr.VINEET KOTHARI, J.)

This Writ Petition is directed against the order dated 28.4.2015 passed by the learned DRT in S.A.No.278 of 2009 (Dr.A.Joseph Navaseelan v. Indian Bank).

2. The said order was passed in pursuance of a remand direction of this court in the order dated 24.10.2009 W.P.No.21679 of 2009 filed by the petitioner herein (Dr.A.Joseph Navaseelan v. Indian Bank). The relevant portion of the order passed by the co-ordinate Bench is quoted below for ready reference:-

"3. The transaction arises out of the property, which was brought to sale in exercise of power to sell under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). As per section 17 of the said Act, any persons (including borrower), aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application alongwith such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within 45 days from the date on which such measures had been taken. When efficacious alternative remedy is available in the statute itself, the Writ Petition cannot be entertained.

4. Hence, the Writ Petition is dismissed giving liberty to the petitioner to move the Debt Recovery Tribunal, if he is so advised. No costs. Consequently, connected Miscellaneous Petition is closed."

3. Despite such a direction given by the co-ordinate Bench of this court, the learned DRT has held that that such a petition under Section 17 of the SARFAESI Act was not maintainable before it as the Petitioner/Auction Purchaser could not claim refund of the EMD from the Bank as the auction in question failed. The relevant portion of the impugned order passed by the Tribunal is quoted below for ready reference:-

"5) Observation of this Tribunal: I have carefully gone through the averments made by the appellant in the memorandum of appeal and its grounds, counter affidavit filed by the respondent bank and the 'written submissions' filed on behalf of the appellant. The main contention of the appellant is that the bank is not justified in demanding the appellant to pay a balance sum of Rs.68,57,000/- to purchase the encumbered properties and invite further litigation and suffer on account of the same and therefore, the bank's decision of forfeiture of the appellant's EMD is illegal. On the other hand the respondent bank stated in the counter affidavit that first of all the appeal is not maintainable as there is no cause of action for the above appeal under Section 13(4) of the SARFAESI Act and that it is only the person who aggrieved by any of the measures taken by the bank under sub-clause (a) to (d) can challenge the same by filing an appeal under Section 17 of the said act and that in the instant case the appellant is neither a borrower nor a person aggrieved by the measures taken by the bank under the provisions of the SARFAESI Act. Secondly the bank stated that clause 33 of the Tender cum Auction Document it has been clearly mentioned that 'failure to deposit the balance amount within such stipulated or within such extended time shall be construed as breach and the EMD and initial deposit paid by the successful Tenderer will be forfeited' which goes to prove that the bank is right in informing the appellant vide its letters dated 16.5.2007 and 5.7.2007 that the EMD is forfeited as the appellant failed to pay the balance amount within the stipulated period. Further Rule 9(5) read with sub-rule (4) of the Security Interest (Enforcement) Rules, drives this tribunal to come to the conclusion that there is no provision for this tribunal to direct the respondent bank not to forfeit the amount deposited by the appellant and such being the case this tribunal is further driven to conclude that the present appeal is not maintainable under Sec.17 of the SARFAESI Act and is liable only to be dismissed and that the decisions relied upon by the appellant in this regard are not applicable to the facts and circumstances of the present case.

6. In the result the application is dismissed with no order as to costs. Copy of the order be communicated to the parties concerned immediately by the Registry."

4. Having heard the learned counsel for the parties, we are satisfied that the impugned order passed by the DRT cannot be sustained and the DRT ought to have discussed the relevant facts relating to justification on the part of the Bank in refusing to refund the EMD to the Petitioner. The observation of the learned Tribunal that the Appeal/Application under Section 17 of the Act for this relief was not maintainable, is contrary to the directions of this court in the order dated 24.10.2009 quoted above.

5. Therefore, we allow the Writ Petition and set aside the order dated 28.4.2015 passed by the DRT in S.A.No.278 of 2009 and remit the matter to the learned DRT to decide the Application under Section 17 of the Act after affording

opportunity to both the parties. In the first instance, the Petitioner may appear before the learned DRT on 10.12.2019 and the learned DRT is directed to decide the case within 3 months thereafter. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssk.
To:

1. The Authorised Officer &
   Chief Manager,
   Indian Bank, Chetpet Branch,
   Chennai 600 010.

2. The Registrar,
   Debt Recovery Tribunal-I,
   Chennai.

+1cc to Ms.S.R.Sumathy , Advocate SR.No.94455
+1cc to Mr.Prabhu Mukunth Arunkumar , Advocate SR.No. 95313

W.P.No.41265 of 2016

A.SK(25/11/2019)