

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2019

CORAM :

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

AND

THE HON'BLE MR.JUSTICE M.DURAIWAMY

W.P. No.16578 of 2014 and
M.P.No.1 of 2014

Mrs. J.Girija Bai

.. Petitioner

v.

1 The Registrar,
Debts Recovery Appellate Tribunal,
Indian Bank Zonal Office Buildings,
IV Floor, NO.55, Ethiraj Salai,
Chennai - 600 105,

2 Kotak Mahindra Bank Ltd.,
Represented by its Authorised Officer,
Retail ARD No.3, Das India Tower,
Second Floor, II Line Beach, Parrys,
Chennai - 600 001.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue of Writ of Certiorarified Mandamus, to call for the records in the order dated 01.04.2014 made in I.A.No.425 of 2014 in R.A.(S.A.) No.134 of 2012 on the file of the Debts Recovery Appellate Tribunal, Chennai, the 1st respondent herein and quash the same and consequently direct the 1st respondent to entertain the appeal without insisting upon the pre-deposit as contemplated under Section 18(1) of the SARFAESI Act.

For Petitioner : Mr. A.V. Arun

For Respondents : R1 - Tribunal

Mr.Elayaraj Kumar

for M/s.Ramalingam Associates - for R2

O R D E R

(ORDER OF THE COURT WAS MADE BY M.DURAIWAMY, J.)

The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus, to call for the records in respect of the order dated 01.04.2014 made in

I.A.No.425 of 2014 in R.A.(S.A.) No.134 of 2012 on the file of the Debts Recovery Appellate Tribunal, Chennai, to quash the same and consequently direct the 1st respondent to entertain the appeal without insisting upon the pre-deposit as contemplated under Section 18(1) of the SARFAESI Act.

2. Challenging the order passed in S.A.No.217 of 2010 on the file of the Debts Recovery Tribunal-III, Chennai, the petitioner preferred an appeal in R.A.(S.A.) No.134 of 2012 before the Debt Recovery Appellate Tribunal. In the said appeal, the petitioner filed an application in I.A.No.425 of 2014 for waiver of pre-deposit. The Appellate Tribunal, by order dated 01.04.2014, directed the petitioner to make a pre-deposit of Rs.4,60,000/- [Rupees four lakhs and sixty thousand only] on or before 01.07.2014. Challenging this order, the petitioner has filed the above Writ Petition.

3. The learned counsel appearing for the petitioner submitted that the petitioner is a subsequent purchaser of the property and therefore, she is not liable to make any pre-deposit. However, in the Judgment reported in 2019(3) CTC 497 [Sree Jeya Soundharam Textile Mills Pvt. Ltd. v. Canara Bank and others], we have held third parties who had purchased the property either after the date of mortgage or derived/accrued title or right or tenancy right in respect of the property in question or after the initiation of SARFAESI proceedings are liable to make the pre-deposit and they should be treated on par with the borrower and the guarantor as per the provisions of the SARFAESI Act.

4. In the case on hand, the petitioner purchased the property on 25.06.2008 whereas, the property was mortgaged with the respondent-bank on 07.06.2006 itself. Therefore, when the purchase made by the petitioner is subsequent to the date of mortgage, the ratio laid down in the Judgment cited supra would squarely applies to the present case.

5. In such view of the matter, we do not find any error or irregularity in the order passed by the Appellate Tribunal. The Writ Petition is liable to be dismissed. The learned counsel appearing for the petitioner submitted that the petitioner may be granted two weeks time to make the pre-deposit before the Debt Recovery Appellate Tribunal for which, the learned counsel appearing for the respondent-bank has no objection. In view of the submission made by the learned counsel on either side, the petitioner is granted two weeks' time to make the pre-deposit of Rs.4,60,000/- [Rupees four lakhs and sixty thousand only] before the Debt Recovery Appellate Tribunal, Chennai.

With these observations, the Writ Petition is dismissed.
No costs. Consequently, the connected Miscellaneous Petitions
are closed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

Rj
To

- 1 The Registrar,
Debts Recovery Appellate Tribunal,
Indian Bank Zonal Office Buildings,
IV Floor, NO.55, Ethiraj Salai,
Chennai - 600 105,
- 2 Kotak Mahindra Bank Ltd.,
Represented by its Authorised Officer,
Retail ARD No.3, Das India Tower,
Second Floor, II Line Beach, Parrys,
Chennai - 600 001.
- +1 CC to Mr.A.V.Arun, Advocate sr 59271.
+2 Ccs to M/s.Ramalingam & Associates sr 58423.

W.P. No.16578 of 2014 and
M.P.No.1 of 2014

RJI (CO)
SP (05/08/2019)

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