IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2019

CORAM :

THE HON'BLE DR.VINEET KOTHARI, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.26651 of 2019

M/s.Al-qalam Educational Trust,
rep. by its Managing Trustee Abdul Quoddoos Azhari,
Residing at Thirupper Village,
Chentrayanpalayam Post,
Poondi via, Thiruvallur District-602 023
Rep. by his Power of Attorney J.Samiudeen
Residing at Plot No.6, Selai Road,
Jaya Nagar, Thiruvallur-602 001. .. Petitioner

-vs-

1.Indian Bank,
rep. by its Branch Manager,
Thiruvottiyur Branch,
Chennai-9.

2.M/s.R.S.Construction Company,
A Partnership Firm,
rep. by its Managing Partner V.Selvaraja Sekar,
23, Anna Nagar I Street,
Sathuma Nagar,
Chennai-600 019.

3.V.Selvaraja Sekar

4.V.Gnanasigamani

5.Saroja Venkatramani

6.A.R.Suseela .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus calling for the records relating to the order dated 28.3.2019 passed by the Hon'ble DRAT, Chennai in R.A.No.14 of 2013 and quash the same and consequently allow the R.A.No.14 of 2013 on the file of the Hon'ble DRAT, Chennai.

For Petitioner : Mr.Sampathkumar

For Respondents : Ms.S.R.Sumathy
for respondent No.1

Not Ready in Notice
for respondent Nos.2 to 5

No Appearance
for respondent No.6

ORDER

(Order of the Court was made by The Hon'ble Acting Chief Justice)

The petitioner, M/s.Al-qalam Educational Trust, represented by its Managing Trustee Mr.Abdul Quddoos Azhari, has filed this writ petition against the order dated 28.3.2019 passed by the learned Debt Recovery Appellate Tribunal, Chennai in R.A.No.14 of 2013 (M/s.Al-qalam Educational Trust, represented by Power of Attorney Mr.J.Samiudeen v. Indian Bank, Thiruvotriyur Branch, Chennai and others). The learned Debt Recovery Appellate Tribunal, Chennai, has dismissed the appeal of the present petitioner, who claims to have purchased the property in question, which was secured by way of mortgage by the borrower and other private respondents/guarantors viz., (i) M/s.R.S.Construction Company; (ii) V.Selvaraja Sekar; (iii) V.Gnanasigamani; (iv) Saroja Venkatramani; (v) S.M.Gopal Chettiar (deceased); (vi) A.Arunachalam (deceased); and (vii) A.R.Suseela.

2. When SARFAESI proceedings were initiated by the first respondent Bank against the borrower M/s.R.S.Construction Company and also its guarantors, it is stated that one of the guarantors Mr.S.M.Gopal Chettiar had since died and without bringing the legal representatives of the said deceased guarantor Mr.S.M.Gopal Chettiar, on record, the proceedings of the SARFAESI proceeded before the learned Debts Recovery Tribunal. The present petitioner is said to have purchased the said property not in any auction under SARFAESI Act, but directly through one Mr. S.K.Shamsudeen, who in turn purchased the said property from the said guarantor Mr.S.M.Gopal Chettiar, since deceased.

3. The learned Debt Recovery Appellate Tribunal, Chennai, has dismissed the appeal of the present petitioner with the following reasons:

"3. On the other hand, the counsel for respondent submitted that borrower and guarantors had admitted the availment of loan, execution of documents and creation of mortgage. The appellant had purchased the property during subsistence of mortgage. Hence appeal should be dismissed.

4. On careful perusal of pleadings of parties and submissions of counsel of parties and record, it becomes clear that bank had looking for recovery of money since 1997 and after about the period of more than 15 years OA could be decreed. The deceased guarantor, S.M.Gopal Chettiar mortgaged the property by deposit of title deeds to the extent of 7.82 acres comprising of different survey numbers in Poondi Panchayat Union. In such a situation any subsequent sale by Mr.S.M.Gopal Chettiar in favour of Mr.S.K.Shamsudeen will be of no use and help for the appellant. If Shamsudeen has purchased the property innocently or decisively from Gopal Chettiar then it will go along with charge of the bank created on it by mortgage of title deeds by seller in favour of bank. Similarly any subsequent purchase whether bonafidely or malafidely will not help the appellant who purchased this property from S.K.Shamsudeen. The charge of the bank on the property is still subsisting.

5. In so far as death of some of the defendant is concerned, it may be technical lapse on the part of the bank not to bring LRs on record in time. But even this will not help the appellant because he had purchased the property on which bank was having charge and original title parent document is available with the bank.

6. In so far as impugned order is concerned, it is based on the evidence on record and is a correct order. Hence deserves to be and is hereby affirmed. The bank has right to recover from borrowers and guarantors jointly and severally. Hence, bank cannot be forced not to proceed against particular portion of the property. However, bank is expected to consider the deposits already made by appellant before taking further steps for recovery of dues on the basis of property of the appellant.

7. With aforesaid observations, the appeal deserves to be and is hereby dismissed and impugned order is hereby affirmed. The bank will appropriate the

pre-deposit amount according to law."

4. The learned counsel for the petitioner, Mr.Sampathkumar, has urged before us that since the property in question was purchased by the petitioner without bringing the legal representatives of the deceased guarantor on record and without proceeding against the assets of the other guarantors, the first respondent Bank could not have proceeded to realise its amount under SARFAESI proceedings taken against the borrower M/s.R.S.Construction Company and its guarantors. He further submitted that the petitioner had deposited a sum of Rs.10.00 lakhs by way of pre-deposit before the learned Debt Recovery Appellate Tribunal to maintain the said appeal and further deposited Rs.1.00 lakh on 6.11.2011 with the first respondent Indian Bank, which may be refunded in case the Court does not agree with the submission made by the petitioner.

5. The learned counsel for the first respondent Bank, Ms.S.R.Sumathy, however, supported the impugned order.

6. Having heard the learned counsel for parties, we are of the opinion that there is no error in the order passed by the learned Debt Recovery Appellate Tribunal and the learned Debt Recovery Appellate Tribunal has rightly held that the the property purchased by the petitioner through the private parties is subject to the charge of the first respondent Bank and the petitioner cannot claim a superior right over the auction purchaser of the property, to whom the property in question might have been sold by the first Bank. In any case, the present petitioner, who is said to have purchased the said property in question subject to the charge of the first respondent Bank, cannot claim exclusive right, title or possession of the property in question.

7. The findings of the learned Debt Recovery Appellate Tribunal that the death of one of the guarantors is no ground to set aside the sale in question is correct in our opinion and, therefore, the said submission made by the learned counsel for the petitioner is also of no help to the present petitioner.

8. In view of the above, we do not find any merit in this petition and the same is liable to be dismissed. Accordingly, the writ petition is dismissed. We are giving liberty to the petitioner to apply for refund of the pre-deposit made by it before the learned Debt Recovery Appellate Tribunal and the learned Debt Recovery Appellate Tribunal is expected to decide the same. In case, the petitioner had deposited Rs.1.00 lakh on 6.11.2011 with the first respondent Bank for maintaining the appeal under the order of the learned Debt Recovery Appellate Tribunal, even that may be refunded to the petitioner. Further, the petitioner is also free to raise its claims against the

seller of the property. No costs. Consequently, W.M.P.Nos.26040 and 26043 of 2019 are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

bbr

To:

The Branch Manager,
Indian Bank,
Thiruvottiyur Branch,
Chennai-9.

+1cc to Mrs.S.R.Sumathy , Advocate SR.No. 91244
+2ccs to Mr.Sampathkumar , Advocate SR.No. 91351

W.P.No.26651 of 2019

A.SK(18/12/2019)