

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2019

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.24123 of 2017

1. M/s. Narayanaswamy Boiled Industries
represented by its Managing Partner
Pirikiti Venkateswarulu, NH-5, Boppudi (V)
Chilakaluripeta, Guntur Dist, A.P.
 2. Pirikiti Venkateswarlu ... Petitioners
- Versus
1. Authorized Officer
Andhra Bank
Special SSI Branch
Lodge Centre
Guntur Dist., A.P.
 2. Andhra Bank
Koretipadu
Guntur Dist., A.P.
 3. K.Subbaiah Pillai & Company (India) Limited
NH-5, Boppudi Village
Guntur District, A.P.
 4. The Debts Recovery Appellate Tribunal
Chennai. ... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the order passed by the Debts Recovery Tribunal-II at Chennai dated 17.09.2017 in S.A.No.4 of 2007, which was confirmed by Hon'ble Debts Recovery Appellate Tribunal, on 01.06.2017 in R.A./S.A.No.47 of 2009 and quash the same and consequently, direct the Sub-Registrar, to cancel the sale certificate executed by the first respondent in favour of third respondent dated 15.11.2006 and registered as Doc.No.5379 of 2006 at Sub-Registrar Office, Chilakaluripeta, Guntur District, Andhra Pradesh.

For Petitioners : Mr.P.Subba Reddy
For Respondents 1 & 2 : Mr.Gowthama Narayanan
For Respondent -3 : Mr.Srinivasa Babu

ORDER

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

The present Writ Petition has been filed challenging the order passed by the Debt Recovery Appellate Tribunal, Chennai, dated 01.06.2017 in RA/SA No.47 of 2009, which is an appeal filed against the order dated 17.09.2017 passed in S.A.No.4 of 2007 by the Debt Recovery Tribunal-II, Chennai.

2. The brief facts, as stated by the petitioners in the affidavit filed in support of the writ petition, are that the petitioners borrowed a sum of Rs.1,09,00,000/- from Andhra Bank, Guntur, Andhra Pradesh, the first respondent herein, by offering six properties as security, in which, two properties have been released by the Bank themselves and the remaining four are held by the Bank. The petitioners claim that they had paid almost Rs.79,00,000/-. When the Bank issued recovery notice, during which time, the petitioners entered into an One Time Settlement to pay a sum of Rs.88,50,000/-, which the petitioners could not make and the properties offered by the petitioners as security, were brought for sale and auction was held on 03.04.2006, which was postponed, as there was no bidder.

3. The petitioners approached Debt Recovery Tribunal, Visakapattinam, Andhra Pradesh in S.A.No.133 of 2005, which was subsequently transferred to Debt Recovery Tribunal-II, Chennai and renumbered as S.A.No.4 of 2007, challenging 13(2) notice issued, dated 26.05.2005 and 13(4) notice issued, dated 23.11.2005, under the SARFAESI Act, as not maintainable. The Debt Recovery Tribunal, Chennai, in the re-numbered SARFAESI application in S.A.No.4 of 2007 passed a final order, dated 17.09.2007, dismissing the appeal and consequently dismissed I.As filed therein. The petitioners as against the order passed in S.A.No.4 of 2007, dated 17.09.2007 passed by the Debt Recovery Tribunal-II, Chennai, had filed an application in R.A. (S.A.) No.47 of 2007 before the Debt Recovery Appellate Tribunal, Chennai, which in turn by its order, dated 01.06.2017, confirmed the order passed by Debt Recovery Tribunal-II, Chennai, dated 17.09.2007. As against which, the present writ petition has been filed by the writ petitioners.

4. On notice, first and second respondents representing the Bank have filed counter affidavit stating that the petitioners had committed default in repayment of loan and hence, the loan account had to be classified as 'NPA' and thereafter, the bank invoked the jurisdiction of SARFAESI Act by issuing demand notice, dated 26.05.2005 under Section 13(2) of the Act, demanding Rs.1,05,53,264/-. Since the petitioners defaulted even after the demand notice under Section 13(2), the Bank had taken possession of the property by issuing possession notice, dated 23.11.2005 under Section 13(4) of the Act.

5. It is further stated by the Bank that by notice, dated 13.03.2006, the petitioners were informed that the properties lying with the Bank as security would be brought to sale on 03.04.2006. However, since there were no bidders, the action was deferred on that day. Thereafter, once again sale notice, dated 22.09.2006 was issued fixing the date of auction on 31.10.2006, which sale notice was also communicated to the petitioners. In fact, in the said notice, it was also informed to the petitioners that if they had any proposal of selling the property by private sale or by getting quotations, the same could be done by the petitioners. However, the said proposal was not considered by the petitioners. Hence, the auction was proceeded with on 31.10.2006.

6. In the meantime, the petitioners have filed S.A.No.133 of 2005 before the Debt Recovery Tribunal, Vishakapattinam, challenging the possession notice. The Tribunal by its order, dated 14.12.2005, granted stay of the possession notice, subject to the condition that the petitioners have to pay a sum of Rs.10,00,000/- on or before 31.12.2005 and another sum of Rs.10,00,000/- on or before 31.01.2006 and the remaining amount to be payable on or before 31.03.2006. However, the petitioners fulfilled the first part of the instalment, but failed to deposit the second and third part of instalments. Hence, the Bank issued sale notice, dated 13.02.2006. Thereafter, the petitioners moved the Debt Recovery Tribunal again, to postpone the auction, for which the Debt Recovery Tribunal granted stay of auction upto 03.04.2006.

7. In the meanwhile, the petitioners filed W.P.No.6379 of 2006 challenging the order passed by the Debt Recovery Tribunal before the Andhra Pradesh High Court. The High Court of Andhra Pradesh dismissed the writ petition on 03.04.2006. Simultaneously, the petitioners also moved Debt Recovery Appellate Tribunal, Chennai in M.A.No.60 of 2006, in which, the petitioners undertook to pay a sum of Rs.10,00,000/- on or before 20.04.2006, which the petitioners complied with and thereafter, the appeal was disposed of by the Debt Recovery Appellate Tribunal, Chennai, by its order, dated 04.08.2006

giving the petitioners time upto 15.09.2006 for making payment of Rs.68,50,000/-. The petitioners did not comply with the order passed by the Debt Recovery Appellate Tribunal. Thereafter, the petitioners again filed W.P.No.22252 of 2006 challenging the sale notice, dated 22.09.2006 and the said writ petition was dismissed by the Hon'ble High Court of Andhra Pradesh holding that Debt Recovery Appellate Tribunal order has become final on the failure of the petitioners in paying the remaining amount on or before 15.09.2006 and held that the Bank is entitled to proceed with the sale of the secured asset. Challenging the order passed in the said writ petition, the petitioners had filed W.A.No.1163 of 2006 before the High Court of Andhra Pradesh, which was later withdrawn by the petitioners on 06.11.2006.

8.The respondents 1 and 2 further contend that the petitioners filed an application before the Debt Recovery Appellate Tribunal for transfer of S.A.No.133 of 2005 pending before the Debt Recovery Tribunal, Vishakapattinam, on the ground that the presiding officer has appeared for the Bank against the petitioners and the said S.A. was ordered to be transferred to the file of Debt Recovery Tribunal-II, Chennai, which in turn, had dismissed the application filed by the petitioners in re-numbered S.A.No.4 of 2007, on 17.09.2007. The petitioners thereafter filed R.A.(S.A) No.47 of 2007 before the Debt Recovery Appellate Authority, Chennai, who in turn found no merits in the appeal and confirmed the order dated 17.09.2007 passed in S.A.No.4 of 2007 by the Debt Recovery Tribunal, Chennai.

9.The learned counsel appearing for the respondents 1 and 2 would contend that the writ petition is devoid of merits as the Bank has followed all the procedures contemplated under the SARFAESI Act, Debt Recovery Tribunal as well as Debt Recovery Appellate Tribunal, after considering the legality of the proceedings initiated by the Bank, had dismissed the appeals as there was no merit in the appeals filed by the petitioners. Under these circumstances, the learned counsel appearing for the respondents 1 and 2 prays for dismissal of the writ petition.

10.The learned counsel appearing for the third respondent has filed a counter and the third respondent is none other than the auction purchaser of the secured property, who goes to state that they have purchased item Nos.1 and 2 of the property published for sale that took place on 31.10.2006 for a total sale consideration of Rs.1,20,00,000/- and the entire sale consideration was paid and sale certificate was also issued on 01.11.2006 and the same was registered vide Document No.5379 of 2006 at Sub-Registrar's Office, Chillakaluripet, Guntur, Andhra Pradesh on 15.11.2006. The third respondent further claims that

he had purchased the property free from all encumbrances and the third respondent is in possession and enjoyment of the property from 15.11.2006 onwards. Being a bonafide purchaser, the third respondent's interest has to be protected, as the writ petitioners has lost before each and every forum of legal battle and the third respondent supported the contention raised by the first and second respondent-Bank in total and prayed for dismissal of the writ petition.

11.Mr.Subbareddy, learned senior counsel appearing for the petitioners would vehemently contend that there is differences in valuation report, which touches the basic procedure adopted by the Bank and prima facie, the Bank has committed illegality in producing different valuation reports in four occasions and each occasion, the valuation differed. The learned senior counsel would further contend that the lapse on the part of the respondent-Bank by not taking into credit to Rs.22,00,000/- paid by the petitioners and despite the irregularity found by the Debt Recovery Appellate Tribunal, the Debt Recovery Appellate Tribunal confirmed the order passed by the Debt Recovery Tribunal, which is unsustainable in law. The learned senior counsel also submitted that the upset price fixed on the first auction date ie., on 03.04.2006 and the second auction date ie, on 31.10.2006 were totally different, even though the gap of two auctions was only six months, thereby, the Bank had committed irregularity in fixing the upset price, which is illegal.

12.In support of the same, the learned senior counsel appearing for the petitioners referred to the case reported in 2005 (10) SCC 325 (S.Mariyappa (dead) by LRs. and others ..vs.. Siddappa and another) and 1990 AIR (SC) 119 (Ambati Narasayya ..vs.. M.Subba Rao and another) to substantiate that it is the duty cast upon the court under Order 21 Rule 64 of C.P.C., to sell only such property or a portion thereof as may be necessary to satisfy the decree and it is a mandate of the legislature, which cannot be ignored; and also under Section 47, all questions relating to execution, discharge or satisfaction of the decree should be determined by the Executing Court alone. The third citation relied on by the learned senior counsel appearing for the petitioners is reported in CDJ 2009 MHC 3087 (M.Chokalingam ..vs.. The Authorised Officer, Indian Bank and another) to substantiate with regard to failure to give credit towards payment made by the petitioners.

13.In support of his argument, the learned senior counsel appearing for the petitioners drew our attention to the additional typedset of papers pointing out the payments made on 31.03.2003, 30.12.2005 and 20.04.2006, to substantiate that the petitioners had taken rational boost to clear the debts and to secure the property. The learned senior counsel also vehemently

contended that the Bank ought to have seen the plight of the petitioners, as they have shown their bonafide and deposited the partial amount to stall the auction sale.

14.To counter the arguments putforth by the learned senior counsel appearing for the petitioners, Mr.Gowtham Narayanan, learned counsel appearing for the respondents 1 and 2 contended that the petitioners were given sufficient opportunity at each and every stage, when they approached the High Court of Andhra Pradesh as well as Debt Recovery Tribunal and Debt Recovery Appellate Tribunal, however, the petitioners having failed to deposit the amount, as prescribed by the Debt Recovery Tribunal and having shown his dissent to pay the remaining amount of Rs.68.5 lakhs as directed by the Debt Recovery Appellate Tribunal on 15.09.2006, the petitioners having lost before all the legal forums, cannot challenge the order passed by the Debt Recovery Appellate Tribunal, which is a well-considered order and as such, the same has to be sustained.

15.The learned counsel appearing for the third respondent would submit that the argument putforth by the learned counsel appearing for the respondents 1 and 2-Bank would suffice, apart from submitting that he being a bonafide purchaser has already paid 1.2 crores and sale certificate has been issued on 01.11.2006, which subsequently, was registered as Document No.5379 of 2006 and he being put in possession as early as 15.11.2006, which cannot be challenged by the petitioners herein.

16.On a perusal of the entire records, it is not out of place to state that the petitioners had in fact committed default of payment of Rs.1 crore 9 lakhs which he borrowed from the respondent-Bank. In fact, out of six properties, the Bank had released two properties to the petitioners. On perusing the records, it is clear that the petitioners were given sufficient opportunity, when the first respondent Bank issued 13(4) notice and when the property was brought for sale, the bank has also intimated the same to the petitioners for a proposal of selling the property by way of private sale or even getting quotation by private sale which ought to have been communicated to the Bank. But the petitioners did not respond to the same and instead of it, he challenged 13(4) notice issued by the Bank before the Debt Recovery Tribunal at Vishakapattinam in S.A.No.133 of 2005.

17.There is no allegation neither before the Debt Recovery Tribunal nor before the Appellate Tribunal or even before this Court, when the petitioners challenging the order in Debt Recovery Tribunal, that the Bank had committed procedural irregularities by invoking the jurisdiction of SARFAESI Act. Though the writ petitioners were benefited by the interim orders

passed by the Debt Recovery Tribunal as well as the High Court of Andhra Pradesh, however had failed to sustain the same in the final hearing. The final outcome was all against the petitioners.

18. With regard to the valuation of the property as arrived by the Bank before bringing it for auction, the argument of the learned senior counsel appearing for the petitioners is that the valuation in April 2001 was Rs.147.27 lakhs and the valuation in March 2005 was Rs.124 lakhs and subsequently in September 2005, the valuation was Rs.98.44 lakhs and thereafter, in January 2006, the valuation was Rs.156.80 lakhs. The learned counsel also pointed out that the distress value as quoted in the valuation report is Rs.118.00 lakhs and vehemently contended that there was no uniformity in each of them and the Bank has involved in fabricating the document to satisfy the Tribunal so as to bring the last valuation for Rs.118 lakhs. It could be seen from the records that the first valuation was dated 04.04.2001, which was valued at Rs.22,96,000/- for rice mill and vacant site and for the plant and machineries at Rs.39,30,000/-. However, in the second valuation that took place on 26.03.2005, both rice mill and vacant site was valued at Rs.37,66,000/- and the plant and machineries was valued at Rs.38,68,000/-. In the third valuation report dated 10.09.2005, the value of the land shown as Rs.12,50,000/- (rice mill area only) and the plant and machinery shown as Rs.38,68,000/-. In the last valuation report dated 02.01.2006, the value of the land shown as Rs.57,06,000/- (both the rice mill area plus vacant site) and the plant and machinery shown as Rs.40,00,000/-. Obviously, the second and third valuation adopted by the Bank was increased according to the market value then existed. This Court do not find any valuable reason to interfere with the valuation, as the valuation of the Bank was on four different periods and it could be seen further that each and every valuation, the value of the property was fixed by the valuer of the Bank and the same has been increased.

19. On a perusal of the orders passed by the Debt Recovery Tribunal as well as Debt Recovery Appellate Tribunal, the Debt Recovery Tribunal as well as Debt Recovery Appellate Tribunal, has considered the entire effect of the difference in valuation and we do not find any reason to disagree with both the Tribunals. Under these circumstances, the petitioners having not brought out any valid reason to crave leave of this Court to interfere in the order passed by the Debt Recovery Appellate Tribunal, we are of the view that the writ petition need not be entertained and the same has to be dismissed. The Judgments cited by the learned senior counsel appearing for the petitioners are also not reliable to the present case on hand.

20.For the above said reasons, the Writ Petition is dismissed. No costs.

ps/mra

Sd/-
Assistant Registrar(C.O)

//True Copy//

Sub Assistant Registrar

To

1. The Debts Recovery Appellate Tribunal
Chennai.
2. The Debts Recovery Tribunal - II
Chennai.
3. The Authorized Officer
Andhra Bank
Special SSI Branch
Lodge Centre
Guntur District
Andhra Pradesh.
4. Andhra Bank
Koretipadu
Guntur District
Andhra Pradesh.

+2cc to Mr.P.Subba Reddy, Advocate, SR.No.46609
+1cc to Mr.V.Srinivasa Babu, Advocate, SR.No.46071
+1cc to Mr.R.Gowthamanarayanan, Advocate, SR.No.46582

W.P.No.24123 of 2017

Kak(25/07/2019)

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