IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2019

CORAM

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

Writ Petition No.24332 of 2017
and
W.M.P.Nos.25743 & 25744 of 2017

Indian Bank,
The Authorised Officer,
Asset Recovery Management Branch,
Wellington Estate, No.55, Ethiraj Salai,
Chennai-600 008. .. Petitioner

-vs-

1.The Debts Recovery Appellate Tribunal,
No.55, Etiraj Salai,
Chennai-600 008.

2.M/s.Parsn Medicinal Plants (P) Ltd.,
Rep., by its Director,
Sujatha Centre, No.4,
Seshadri Road, Alwarpet,
Chennai-600 024.

3.M/s.Coconut Groves Pvt. Ltd.,
Rep., by its Director,
Sujatha Centre,
No.4, Seshadri Road,
Alwarpet, Chennai-600 024.

4.The Debts Recovery Tribunal-III,
No.770A, Dewa Towers,
5th Floor, Anna Salai, Chennai-600 002. .. Respondents

Writ Petition under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records pertaining to the order dated 21.08.2017, passed by the Debts Recovery Appellate Tribunal, Chennai in M.S.(SA)No.62 of 2016 and quash the same.

For Appellant : Mr.Kalyanaraman
for M/s.Aiyar and Dolia

For RR 1 & 4 : Tribunal

For RR2 and 3 : Mr.R.Nagasundaram

For Auction Purchaser : Mr.R.Srinivasan

ORDER

(Order of the Court was made by Dr.Vineet Kothari, J. )

The petitioner, Indian Bank has filed this writ petition aggrieved by the interlocutory order dated 21.08.2017, passed by the Debts Recovery Appellate Tribunal, Chennai by which, the learned Debts Recovery Appellate Tribunal dismissed both the appeals as devoid of merits by which the petitioner-Bank had challenged the order passed by the learned Debts Recovery Tribunal allowing the amendment applications filed by the borrowers. The reasons assigned by the learned Debts Recovery Appellate Tribunal in the order impugned before us are given below for ready reference:-

> "5.On careful perusal of pleadings of the parties, submissions of Counsel of the parties and record, it appears that Appellant Bank could not succeed to recover the amount though Bank had preferred the OA for recovery of the amount as well as initiated SARFAESI proceedings simultaneously. With great difficulty and efforts, Bank succeeded to find auction purchaser who was put in possession of the land also. At the same time, Respondents though they are in habit of indulging in litigation, but somehow, they managed to make some deposits towards the debt amount, though under compulsion and under compliance of directions of the Courts.
>
> 6.In recovery laws, Bank has a right to take recourse of RDDB&FI Act by filing Original Application for recovery of the amount as well as to take recourse of SARFAESI Act and to go for sale of immovable property according to law and procedure to recover the dues. Simultaneously, borrowers/guarantors have a right to file as many SARFAESI Appeals as they wish. It acts like a check and balance to ensure recoveries of the public money of the Bank as well as to ensure that

> borrowers/guarantors are not deprived of their immovable property in illegal manner. A balanced approach is required to ensure justice to both the parties, i.e., the Banker and the borrower/guarantor.
>
> 7.In my considered opinion, Respondents have raised some additional grounds to challenge the legality of SARFAESI proceedings at a belated stage and in repeated manner. But still they have a right to raise objections. Whatever has been averred by the Appellant Bank in Appeal Memo will be at the most, a Counter to the additional grounds in SARFAESI Appeal No.95/2009. For the sake of argument, if it is presumed that Respondents are chronic defaulters and habitual litigants, this fact shall be brought on record before PO of DRT so that motive behind raising the objection can be understood. It may help the PO of DRT to deal with the merits of the additional grounds. But a party should not be and cannot be deprived or restricted at least from raising the objections. Ld.PO of DRT has dealt with the matter in right perspective and has correctly passed the impugned order.
>
> 8.Both the Appeals being devoid of substance are hereby dismissed with direction to the PO of DRT to adjudicate the SARFAESI Appeal S.A.No.95/2009 as early as possible without being influenced by the discussions and observations made in this order whatsoever.”

2.Learned counsel for the petitioner-Bank Mr.Kalyanaraman, submitted that since the amendment was allowed by the learned Debts Recovery Tribunal without giving any reason, hence, appeals were filed before the learned Debts Recovery Appellate Tribunal, which also has dismissed the appeals in question by the impugned order dated 21.08.2017. Hence, the present writ petition has been filed.

3.On the other hand, the learned counsel for the respondents/ borrowers/ guarantors, Mr.R.Nagasundaram, opposed the said submission.

4.The learned counsel for the auction purchaser, Mr.R.Srinivasan submitted that the auction purchaser has not been impleaded in the present writ petition also, even though the auction in his favour took place way back in the year 2009 and he has been put in possession of the land in question.

5.Having considered the submissions made by the learned counsel appearing on behalf of the parties, we are of the considered opinion that the present writ petition filed by the petitioner-Bank is misconceived and deserves to be dismissed. The amendment applications allowed by the learned Debts Recovery Tribunal does not cause any prejudice to the petitioner-Bank as such. The petitioner Bank has all the rights to raise additional grounds in additional counter in defence in Section 17 proceedings initiated against the respondents/ borrowers/ guarantors. Therefore, it is for the petitioner-Bank to contest and pursue the Section 17 proceedings before the Debts Recovery Tribunal itself. The said proceedings are pending in the Debts Recovery Tribunal for long and these further proceedings have unnecessarily delayed the same.

6.We accordingly, dismiss this writ petition and permit the writ petitioner to pursue the proceedings under Section 17 of the SARFAESI Act filed by the respondents before the Debts Recovery Tribunal. We make it clear that the auction purchaser shall also have a right to defend the sale in his favour before the Debts Recovery Tribunal and the said auction purchaser shall also be impleaded before the Debts Recovery Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

abr

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.The Debts Recovery Appellate Tribunal,
No.55, Etiraj Salai,
Chennai-600 008.

2.The Debts Recovery Tribunal-III,
No.770A, Dewa Towers,
5th Floor, Anna Salai, Chennai-600 002.

+1cc to M/S.Aiyar & Dolia, Advocate, SR.No.78775
+2cc to Mr.T.K.M.Saikrishnan, Advocate, SR.No.78774

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Kak(16/10/2019)