IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE R.PONGIAPPAN

W.P.No.17988 of 2017
and W.M.P.Nos.19549 & 27304 of 2017

V.Gnanasekaran ...Petitioner

versus

1.The Authorised Officer,
The South Indian Bank,
Niagra Apartments,
No.1, Sterling Road,
Nungambakkam,
Chennai - 600 034.

2.The South Indian Bank,
Rep. by its Senior Manager,
Arakkonam - 631 001.

3.N.Ganesh
4.G.N.Ramesh

5.The Registrar,
Debts Recovery Appellate Tribunal,
Chennai.

6.Axis Bank Limited,
No.225, Anna Salai Branch,
Opp. to Spencers Plaza,
Chennai - 600 002. ...Respondents
[R-6 - Suo motu impleaded
as per order dated 15.11.2017]

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari, calling for the records of the fifth respondent relating to the order dated 27.02.2017 passed in R.A.(SA)No.176 of 2012 in setting aside the order dated 19.10.2011 passed by the Debt Recovery Tribunal-III, Chennai in S.A.No.242 of 2010.

For Petitioner	:	Mr.S.Shanmugam
For Respondent Nos.1 & 2	:	Mr.E.Kumar
For Respondent No.6	:	Mr.O.R.Santhanakrishnan,
Respondents 3,4 & 5	:	No Appearance

ORDER

(Order of the Court was made by R.PONGIAPPAN, J.)

The petitioner has filed the present writ petition, for a writ of certiorari, calling for the records of the fifth respondent relating to the order dated 27.02.2017 passed in R.A.(SA)No.176 of 2012 in setting aside the order dated 19.10.2011 passed by the Debt Recovery Tribunal-III, Chennai in S.A.No.242 of 2010.

2. Brief facts leading to the filing of the Writ Petition are that, the petitioner, namely, V.Gnanasekaran, is carrying on business in the name and style of M/s.Five Star Cell World, in which, he is the proprietor. He had availed credit facility of CCOL for a limit of Rs.7,50,000/- from the Southern Indian Bank, Arakkonam on 11.04.2008 for the purpose of his business. The repayment of the loan was defaulted and from 30.09.2009, the balance in the account was more than the limit of Rs.7,50,000/- continuously for more than 90 days and therefore, the account was classified as NPA on 31.12.2009.

3. A demand notice was issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act [hereinafter referred to as 'SARFAESI Act'] demanding a sum of Rs.7,96,835.09 and the petitioner did not send any reply on receipt of the said notice. He also did not make any payment as demanded by the Bank. Therefore, the Authorised Officer was constrained to take possession as the demand under Section 13(2) of the SARFAESI Act was not complied with, for which, possession notice was issued by the Authorised Officer on 06.08.2010 and thereby, symbolic possession of the property was taken.

4. The possession notice dated 06.08.2010 was challenged by the petitioner in S.A.No.210 of 2010 before the Debts Recovery Tribunal-III, Chennai, wherein an interim order dated 23.09.2010 was passed granting stay. Subsequently, it was clarified in the order dated 19.10.2010 and thereafter, the Bank issued a sale notice dated 20.09.2010 bringing the property to sale and the date fixed for sale was 28.10.2010 by tender-cum-auction and that the same has also been challenged by the petitioner in S.A.No.242 of 2010.

5. In the above said S.A., the Debts Recovery Tribunal-III, Chennai, by order dated 25.10.2010, granted stay till 01.11.2010, subject to the condition that the petitioner shall deposit Rs.1,00,000/- on (or) before 11.00a.m. on 28.10.2010 and another sum of Rs.2,00,000/- on (or) before 5.00p.m. on 13.12.2010 and also another sum of Rs.2,00,000/- on (or) before 5.00p.m. on 28.01.2011. In the said order, it was further stated that if the petitioner failed to comply with the above condition, the Bank was at liberty to proceed further, as per the sale notice.

6. Admittedly, the conditional order was not complied with by the petitioner. Instead of depositing Rs.5,00,000/-, the petitioner had deposited only Rs.1,92,500/-. However, he filed an Interim Application in I.A.No.552 of 2010 in S.A.No.242 of 2010 seeking extension of time for paying the second installment due on 13.12.2010 and the same was ordered on 15.12.2010 extending time till 03.01.2011 as prayed for by imposing a cost of Rs.2,000/- on the petitioner. It is also noted in the said order that in the event of non-compliance of any one of the conditions stated above, the stay order shall stand vacated without there being any need to pass separate order. Since the said conditional order has also not been complied with by the petitioner, the Bank again proceeded with the sale of property by issuing a fresh tender-cum-auction notice and publishing the same in the newspapers fixing the date of auction on 07.04.2011.

7. In the sale conducted on 07.04.2011, the auction proceedings are started at 11.30a.m. and around 8 people submitted tenders and the same were opened by the Authorised Officer. After opening the tenders, inter se bidding was permitted by the Authorised Officer and the sale was confirmed in favour of the highest bidders, namely, N.Ganesh and G.N.Ramesh [respondents 3 and 4] and the highest bidders remitted 25% of the bid amount on the auction date. According to the second respondent, the entire auction proceedings was completed by noon.

8. After completing the sale proceedings, the petitioner as well as the Guarantor has not deposited the entire amount within a stipulated time. However, the successful bidders deposited the balance 75% of the bid amount and the Sale Certificate dated 06.05.2011 was issued in favour of the respondents 3 and 4.

9. Challenging the said proceedings, the petitioner herein has filed SARFAESI Application in S.A.No.242 of 2010 before the Debts Recovery Tribunal-III, Chennai. The Presiding

Officer, Debts Recovery Tribunal-III, after affording an opportunity to the respondents herein allowed the SARFAESI Application filed by the petitioner by stating that the secured creditor sold the secured asset in violation of sub clause (8) of Section 13 of the SARFAESI Act. Since the wife of the petitioner has furnished a copy of the Demand Draft obtained on the date of sale for the entire dues, ultimately, the sale conducted by the second respondent was set aside.

10. Aggrieved over the order passed by the Debts Recovery Tribunal-III, Chennai, the respondents 1 and 2 had preferred R.A.(SA)No.176 of 2012 before the Debts Recovery Appellate Tribunal, Chennai, and the same has ended in favour of the respondents 1 and 2. Before holding the said proceedings in favour of the respondents 1 and 2, the Debts Recovery Appellate Tribunal, doubted against the Demand Draft obtained by the wife of the petitioner and holding that the Demand Draft was prepared by the wife of the petitioner is a paper evidence only. Challenging the said finding, the petitioner has filed the present Writ Petition.

11. The specific case of the petitioner before the Tribunal is that, after the sale notice dated 29.09.2010, the sale of auction was fixed on 07.04.2011. On 07.04.2011, before the auction was held, the wife of the petitioner took a Demand Draft for a sum of Rs.8,30,000/- and went to the respondent's Office at Nungambakkam, which was the venue fixed for auction. When at the time of entering the Office by the wife of the petitioner, the second respondent was present. After seeing the second respondent, the wife of the petitioner tendered the Demand Draft to him and requested him to stop the auction. Immediately, the second respondent directed her to approach the first respondent. When the wife of the petitioner attempted to give the Demand Draft to the first respondent, he refused to receive the Demand Draft but informed that she should obtain orders from the Tribunal to stop the auction. Hence, the petitioner has filed three Applications in Sr.Nos.1525, 1526 and 1527 of 2011 for a direction to the Bank to receive the amount due and release the property from the charge and for advance hearing and interim stay. Inspite of that, the Bank proceeded with the auction and issued a Sale Certificate dated 06.05.2011 in favour of the respondents 3 and 4.

12. On the other hand, it is the specific case of the respondents 1 and 2 that, on the day of auction, time fixed for auction was at 11.30a.m., in fact, the auction proceedings was completed before noon. Before completing the auction proceedings, wife of the petitioner has not approached anybody

and submitted the Demand Draft for Rs.8,30,000/-. So without any alternative, after receiving 25% of the sale amount from the respondents 3 and 4, the sale was confirmed and thereafter, as per the norms, after receiving the balance 75% of the sale amount, Sale Certificate dated 06.05.2011 was issued in favour of the respondents 3 and 4, in which, the respondents 1 and 2 did not commit any illegality.

13. The learned counsel appearing for the petitioner would contend that in the order passed by the Debts Recovery Tribunal-III, Chennai, there was a specific finding that, on the day of auction, the wife of the petitioner had tendered the entire dues by means of a Demand Draft for a sum of Rs.8,30,000/- and the respondents 1 and 2 had no right to sell the property after the mortgage money was tendered by the borrower and only after holding the above, allowed the S.A.No.242 of 2010 filed by the petitioner. However, the Debts Recovery Appellate Tribunal, without considering the said fact, has set aside the order passed by the Debts Recovery Tribunal-III, in which, interference of this Court is necessary.

14. Per contra, the learned counsel appearing for the respondents would contend that on the day of auction, the wife of the petitioner had obtained a Demand Draft bearing serial no.101143 for the amount of Rs.8,30,000/- only at 5.10p.m. from Axis Bank. On the other hand, towards the payment of 25% of the sale amount, the respondents 3 and 4 produced the Demand Draft bearing serial no.101141, which is the earlier serial number of the Demand Draft having by the wife of the petitioner. Thus, it shows that the wife of the petitioner has not appeared before the respondents 1 and 2 and produced the alleged Demand Draft before conducting the auction. Further, they have not complied with the earlier direction given by the Debts Recovery Tribunal-III.

15. Upon considering the arguments advanced by either side, while at the time of enquiry, Axis Bank, No.225, Anna Salai, Opposite to Spencers Plaza, Chennai - 600 002, was suo motu impleaded as 6th respondent, only in order to know at what time the Demand Draft was taken by the wife of the petitioner. In response to the direction given by this Court, the Authority of Axis Bank submitted the details of challan and Demand Draft issued in favour of the successful bidders and also the details of the Demand Draft issued in favour of the wife of the petitioner.

16. No doubt, the Demand Draft issued to the wife of the petitioner is having the serial number subsequent to the Demand Draft issued in favour of the auction purchasers. Further, as per the Register maintained at the time of auction, it was identified that the auction was initiated at 11.30a.m. on 07.04.2011 and completed after receiving 25% of the sale amount from the respondents 3 and 4. In fact, the time at which the auction proceedings was completed has not been mentioned in the Register maintained by the Authorities.

17. Before the Debts Recovery Tribunal, on the side of the petitioner, no relevant document has been produced on 07.04.2011 to show the bona fide intention of the petitioner. However, without receiving any relevant document from the petitioner, only by mentioning the reason that the Demand Draft obtained by the wife of the petitioner dated 07.04.2011, the Debts Recovery Tribunal has allowed the Application filed by the petitioner and set aside the sale.

18. Now, looking into the order passed by the Debts Recovery Appellate Tribunal, it appears that if really the petitioner had approached the Court with bona fide intention, it is his duty to establish on the day of auction, he was having the Demand Draft for Rs.8,30,000/- and utmost, he has to produce the same on the next day of auction. Without doing anything as above, contending that on the day of auction, the respondents 1 and 2 had refused to receive the Demand Draft of entire dues cannot be accepted.

19. It is true if really the petitioner is having the bona fide intention, even assuming the Demand Draft was obtained at 5.00p.m. on 07.04.2011, it is her duty to produce the same on the next day of sale or at least he should send a notice to the Bank for not confirming the sale by mentioning the above reasons. But without doing anything, now approaching this Court by way of filing the Writ Petition create a suspicious circumstances over the case of the petitioner.

20. Furthermore, the next point to be considered in this matter is the property which was sold during the time of auction belongs to the wife of the petitioner. So, she is the aggrieved party, because of the auction she has lost her title over the suit property. Even though it was stated in the affidavit filed in support of this petition to set aside the sale, 3 applications have been filed in Sr.Nos.1525, 1526 and 1527 of 2011, but the details of the said applications have not been brought before this Court, which had already decided. Even

before this Court, the details of applications filed by the petitioner to stop the auction has not been produced. Therefore, we are of the opinion that the petitioner has approached the Debts Recovery Tribunal only with the paper evidence and not with bona fide documents. In this regard, the order passed by the Debts Recovery Appellate Tribunal is having valid reasons.

21. For the foregoing reasons, Writ Petition fails and it is accordingly dismissed. No Costs. Consequently, connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Registrar,
Debts Recovery Appellate Tribunal,
Chennai.

+1 cc to M/s.O.R.Santhanakrishnan,Advocate Sr.No. 80079
+1 cc to Mr.K.N.Chinnakrishnan, Advocate Sr.No.79171

AKM/30.10.19/7P-4C /

order made in
W.P.No.17988 of 2017
and W.M.P.Nos.19549
& 27304 of 2017