IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2019

CORAM :

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

AND

THE HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. No.31739 of 2018 and
W.M.P.Nos.36963 and 37287 of 2018

1. R. Bernard Jothi
2. R.B. Anto Ramesh Paul
3. B.Asir Roy Dinesh .. Petitioners

v.

1. Asset Reconstruction Company of India Limited,
   Represented by its Authorised signatory,
   715, 7th Floor, Spencer's Plaza Phase II,
   769, Anna Salai,
   Chennai - 600 002

2. State Bank of India,
   Rep. By its Assistant General Manager,
   Stressed Assets Resolution Centre,
   Red Cross Buildings, II Floor,
   No.32, Montieth Road, Egmore,
   Chennai - 600 008

   (R2 - Impleaded vide order dated 10.06.2019
   made in WMP No.11853/2019
   .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue of Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 01.05.2018 made in R.A.No.56 of 2012 on the file of Debt Recovery Appellate Tribunal and quash the same and consequently dismiss the Original Application No.2 of 2010 on the file of Debts Recovery Tribunal-II, Chennai.

For Petitioner : Mrs. Rita Chandrasekaran
for Mr. Jeyash B. Dolia
for M/s. Aiyar and Dolia

For Respondent : Mr. K. Shankar - for R1

Mr.M.L. Ganesh - for R2

O R D E R

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

The above Writ Petition has been filed by the petitioners to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order dated 01.05.2018 made in R.A.No.56 of 2012 on the file of the Debt Recovery Appellate Tribunal to quash the same and consequently dismiss the Original Application No.2 of 2010 on the file of the Debts Recovery Tribunal-II, Chennai.

2.1 Originally, the 1st petitioner availed working capital facility for SSI Unit (Maharaja Lining Industries) with the State Bank of India, Stressed Assets Resolution Centre, Egmore, Chennai and the petitioners 2 and 3 stood as guarantors. Since the 1st defendant defaulted in repaying the loan amount, the State Bank of India initiated legal proceedings for the recovery of the outstanding loan amount and during the course of the proceedings, the 1st defendant liquidated the outstanding loan amount in respect of SSI Unit. Thereafter, the 1st petitioner availed housing loan in the year 2006 for a sum of Rs.16,98,000/- by mortgaging the property by deposit of title deeds.

2.2 Since the 1st petitioner failed to repay the loan amount, the State Bank of India, filed an application in O.A.No.2 of 2010 on the file of the Debts Recovery Tribunal-II, Chennai, for recovery of a sum of Rs.20,24,169.39 together with interest @ 9.75% per annum with monthly rests. During the pendency of the proceedings, the original title deeds pertaining to the mortgaged property was lost.

2.3 The Debts Recovery Tribunal, by order dated 15.04.2011, decreed the Original Application as prayed for.

2.4 As against the same, the petitioners preferred an appeal in R.A.No.56 of 2012 before the Debt Recovery Appellate Tribunal, Chennai and the Appellate Tribunal, taking into consideration the fact that the bank had lost the documents, reduced the rate of interest from 9.75% per annum with monthly rests to 9.75 per annum (simple).

2.4 Further, during the proceedings pending before the Debts Recovery Tribunal, the State Bank of India, assigned the debt in favour of the 1st rspondent-ARCIL. As against the order passed by the Debt Recovery Appellate Tribunal, the petitioners have filed the above Writ Petition.

3. The learned cousnel appearing for the petitioners submitted that since the respondents have lost the original title deeds, the petitioners were not in a position to repay the loan amount by selling the property.

4. Mr.M.L.Ganesh, learned counsel appearing for the 2nd respondent submitted that the housing loan was sanctioned in favour of the 1st petitioner only based on the certified copy of the title deeds for the reason that the original documents were lost even prior to the sanction of the said loan.

5. Though the original documents are necessary for selling the property, in case, the original sale deed is lost, it cannot be said that the owner of the property cannot sell the property at all. The owner of the property can very well obtain certified copy from the Sub Registrar's office and follow the procedures for selling the property to a third party. The petitioners can also give paper publication with regard to the lost documents. Therefore, the only contention raised by the learned counsel for the petitioners that since the original document has been lost by the respondents, they cannot sell the property and settle the loan amount cannot be accepted. Apart from that, the petitioners have not pointed out any error in the order passed by the Debt Recovery Appellate Tribunal.

6. The order passed by the Appellate Tribunal is just and proper. In fact, the Appellate Tribunal shown indulgence to the petitioners by reducing the rate of interest from 9.75% per annum with monthly rests to 9.75 per annum (simple).

7. In these circumstances, we do not find any error or irregularity in the order passed by the Appellate Tribunal. The Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Rj

To

1. Asset Reconstruction Company of India Limited,
   Represented by its Authorised signatory,
   715, 7th Floor, Spencer's Plaza Phase II,
   769, Anna Salai,
   Chennai - 600 002

2. State Bank of India,
   Rep. By its Assistant General Manager,
   Stressed Assets Resolution Centre,
   Red Cross Buildings, II Floor,
   No.32, Montieth Road, Egmore,
   Chennai - 600 008

3. The Debt Recovery Appellate Tribunal,
Chennai.

+1cc to Mr.M.L.Ganesh, Advocate sr.61494
+1cc to M/s. Aiyar and Dolia, Advocate sr.61084
+1cc to Mr. K. Shankar, Advocate sr.61083

W.P. No.31739 of 2018 and
W.M.P.Nos.36963 and 37287 of 2018

rgn(co)
nr 22/08/2019
nr 25/09/2019