IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.348 of 2020
and W.M.P.No.400/2020

S.Chrispinraj ...Petitioner

Versus

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

2.The Authorized Officer,
REPCO Bank,
REPCO Towers,
No.33, North Usman Road, T.Nagar,
Chennai 600 017.

3.C.Selvaraj ...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent, being the impugned order datd 12.12.2019 made in I.A.No.857 of 2019 in AIR.No.287 of 2019 on the file of the Debts Recovery Appellate Tribunal, Chennai and quash the same as arbitrary and illegal and consequently direct the 1st respondent DRAT Chennai to take on file and hear AIR.No.287 of 2019 without insisting on pre condition deposit.

For Petitioners: Mr.AR.L.Sundaresan
Senior Counsel

For Respondents: Mr.Om Prakash
for N.R.Anantha Ramakrishnan
Senior Counsel for Mr.A.Ilangovan for R2

ORDER

[Order of the Court was made by M.SATHYANARAYANAN,J.,]

By consent, the Writ Petition is taken up for final disposal. Mr.Om Prakash, learned Senior Counsel accepts notice on behalf of the second respondent.

2. Mr.A.RL.Sundaresan, learned Senior Counsel assisted by Mr.N.R.Anantha Rama Krishnan, learned counsel appearing for the petitioner would submit that in the auction sale held on 15.11.2017, the secured assets were sold for a sum of Rs.3,03,75,000/- in favour of the 3rd respondent and a Sale Certificate has also been issued and registered on 01.12.2017 and however, physical possession of the secured assets continues to be with the writ petitioner. It is also brought to the knowledge of this Court by the learned Senior Counsel appearing for the petitioner by drawing attention of this Court to the communication of the 2nd respondent dated 01.12.2017, where in, it has been stated among other things that out of the total sale proceeds, balance sum of Rs.32,99,049/- was also given to the petitioner by way of Cheque dated 01.12.2017 and would further add that since the sale is vitiated by irregularities, he filed an appeal before the Debts Recovery Tribunal-III in S.A.SR.No.12096 of 2017 and despite meritable points are raised and elaborate arguments were advanced, the Tribunal has failed to appreciate the points urged by the petitioner in proper perspective and committed a grave and serious error in dismissing the said appeal, vide order dated 07.05.2019 and challenging the legality of the same, the appeal was filed before the Debts Recovery Appellate Tribunal (DRAT) at Chennai and the petition for waiver of the pre-deposit in I.A.No857/2019 was also filed.

3. The learned Senior Counsel appearing for the petitioner by drawing attention of this Court to Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and would submit that as per the 3rd proviso to Section 18(1) of the SARFAESI Act, the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty five percent, of debt referred to in the second proviso and since the chance of success in the appeal filed by the Writ Petitioner / appellant is very bright, prays that this Court may issue appropriate direction by reducing the amount of pre deposit, as ordered by the Tribunal in the impugned order at 25% of the amount demanded under Section 13 (2) of the SARFAESI

Notice for a sum of Rs.1,45,04,023/-.

4. Per contra, Mr.Om Prakash, learned Senior Counsel assisted by Mr.A.Ilangovan, learned counsel appearing for the respondents would submit that despite very many opportunities afforded to the borrower, he was not inclined to settle the amount and therefore, the secured assets were brought for sale and sold in favour of the 3rd respondent and the Sale Certificate was also issued in their favour and in order to drag on the proceedings, the writ petitioner chooses to make a challenge only to the latter communication of the sale and not the main sale certificate itself and further invited the attention of this Court to the order dated 13.10.2018 in C.R.P.(NPDD) Nos.1732 & 1733 of 2018 (Vinosri Vs. the Authorised Officer, State Bank of India) and would submit that admittedly since the petitioner did not comply with the mandate cast upon him under Rule 60 of II schedule of the Income Tax Act, there is no merit in the appeal and prays for dismissal of this writ petition.

5. This Court has carefully considered the rival submission and also perused the materials placed before it.

6. The question "Whether the petitioner is having tenable or meritable ground in the appeal ?" cannot be gone into by this Court at this stage. However the fact remains that in the auction sale held on 15.11.2017, it was knocked down in favour of the 3rd respondent for a sum of Rs.3,03,75,000 and it was also paid and the Sale Certificate was also issued in his favour, vide registered Document No.8058/2017 dated 01.12.2017 registered on the file of the office of the Sub Registrar, Redhills. Though the learned Senior Counsel appearing for the petitioner would pray for an application of the 3rd proviso of Section 18(1) of SARFAESI Act, in the light of the above facts and circumstances, this Court is of the considered view that the Writ Petitioner has to deposit 50% of the amount demanded under Section 13(2) of the SARFAESI Act Notice.

7. In the result, the Writ Petition is partly allowed and the impugned order dated 12.12.2019 is modified to the extent that the petitioner shall deposit 50% of the sum of Rs.1,45,04,023/- demanded under Section 13(2) of SARFAESI notice dated 29.05.2014 in two instalments. 25% of the said amount shall be payable within a period of four weeks from the date of receipt of a copy of this order and rest of the amount shall be paid in another four weeks thereafter and on completion of the same, the Tribunal is directed to entertain the appeal, if the papers are otherwise in order. It is also made clear that if the

petitioner fails to pay any one of the instalments, the original Impugned Order stands restored to file. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To
1.The Registrar,
Debts Recovery Appellate Tribunal,
Chennai.

2.The Authorized Officer,
REPCO Bank,
REPCO Towers,
No.33, North Usman Road, T.Nagar,
Chennai 600 017.

+1cc to N.R.Anantha Ramakrishnan, Advocate sr.1896
+1cc to Mr.A.Ilangovan, Advocate sr.1861

W.P.No.348 of 2020

gmr(co)
nr 13/01/2020