IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CRP.No.259/2020 & CMP.No.1333/2020

Mrs.Bhargavi Reddy .. Petitioner

Versus

1.ICICI Bank Limited
rep.by its Authorised Officer,
ICICI Regional Tower, 24,
S.P.Arihant Insight, 2nd Floor
East Wing DSWG, Ambattur
Industrial Estate, Ambattur,
Chennai-600 058.
2.S.Ravindranathan .. Respondents

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India praying for setting aside the order passed by the Debts Recovery Appellate Tribunal dated 13.12.2019 in MA.No. [SA] No.68 of 2019 passed by the DRAT, Chennai, affirmed in IA.No.936/2019 in SA.No.370/2018 on the file of the DRT-II, Chennai.

For Petitioner : M/s.Yashwini.V.

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

(1) The Revision Petitioner claims to be the statutory tenant under the Original Borrower/2nd respondent in – and it appears from the materials placed before this Court that the Original Borrower availed financial assistance from the respondent/Bank and in view of the default committed by the Original Borrower, action was initiated under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in short ''the SARFAESI Act''].

(2) It is the claim of the petitioner that even prior to the creation of security documents in favour of the respondent/Bank, there was an unregistered Lease Agreement dated 15.04.2014 followed by an Agreement of Sale dated 13.04.2016 and towards part performance of the obligations, a huge sum of money has also been parted with in favour of the Original Borrower and subsequently, a Memorandum of Understanding dated 20.04.2017 also came into being between the Original Borrower and the petitioner herein, wherein it has been stated among other things, that the petitioner had already transferred a total amount of Rs.9 Crores, both by cheques and NEFT transaction on the understanding that the vendor / Original Borrower will arrange to get the property which is the subject matter of the mortgage in favour of the respondent/Bank to discharge, execute and register the Sale Deed in her favour. The petitioner also expressed her grievance that she became aware of the availment of the loan by the Original Borrower and creation of the security documents pertain to property in her possession as the tenant, only of affixture of the Notice under Section 13[4] of the SARFAESI Act dated 17.10.2018.

(3) The petitioner also expresses her grievance that despite the fact that she is a statutory tenant, the respondent/Bank, by twisting the arm of law, had taken illegal possession of the suit property on 19.07.2019. The petitioner has also filed a suit in OS.No.509 of 2017 on the file of the Court of 17th Assistant City Civil Court at Chennai against the respondent/Bank, restraining them from interfering with her peaceful possession and enjoyment of the same and the suit itself came to be dismissed on 27.10.2017.

(4) The petitioner had also availed statutory remedies by invoking Section 17 of the SARFAESI Act and she failed to get any relief. The petitioner did not remove the entire articles and therefore, the respondent/Bank has filed an application, praying for appointment of an Advocate Commissioner to remove the articles and hand over the possession and it was also put to challenge by filing an appeal in SA.No.370 of 2018 on the file of the Debts Recovery Tribunal-II at Chennai. The DRT-II at Chennai, vide order dated 26.09.2019, having taken note of the averments made in the petition as well as in the counter affidavit, found that the Authorised Officer has an obligation to preserve and safeguard the properties/articles covered by the security documents and taking note of the facts and circumstances, it was necessary to appoint the Advocate Commissioner for the purpose of taking inventory of all the movable items lying in the schedule mentioned property which was not covered under the hypothecation of the respondent/Bank

and to prepare an inventory report for the purpose of handing over the same to the petitioner herein or to remove the same from the subject property and accordingly, an Advocate Commissioner was appointed.

(5) Thereafter, a three weeks' time was sought for by the petitioner, so as to enable her to identify the articles and remove them and the petitioner herein was granted time till 22.10.2019 and in default, the Advocate Commissioner is entitled to remove the same and keep them in an alternate place shown by the respondent/Bank and the expense in this regard, shall also be borne by the petitioner herein.

(6) There was a further order dated 14.11.2019, wherein a direction was issued by directing the petitioner to deposit 50% of the amount mentioned in the Memo given by the respondent/Bank and the same was put to challenge by the petitioner by filing WP.No.30991/2019 and vide order dated 01.11.2019, this Court had allowed the writ petition with a direction that the pre-deposit for preferring the SARFAESI Appeal, cannot be insisted. The petitioner filed a SARFAESI Appeal challenging the appointment of the Advocate Commissioner before the Debts Recovery Appellate Tribunal [DRAT] at Chennai and the Tribunla had taken note of the earlier facts and circumstances, especially, the dismissal of OS.No.509/2017 filed by the petitioner against the respondent/Bank by the Court of 17th Assistant City Civil Court, Chennai, on 27.10.2017 and that, on 19.07.2019, the petitioner has also been dispossessed, found that the appointment of the Advocate Commissioner sought for by the respondent/Bank, is justified and having found that no interference is warranted in the order passed by DRT-II at Chennai, in dismissing the appeal and a challenge is made to the said order, by filing this Civil Revision Petition.

(7) The learned counsel for the petitioner has invited the attention of this Court to the voluminous typed set of documents and would submit that admittedly, the petitioner became the statutory tenant prior to the creation of the security documents and the said fact has also been acknowledged by the respondent/Bank vide communication dated 16.12.2016 addressed to M/s.MPL Automobiles Private Limited and despite that, by twisting the arm of law, the respondent/Bank has taken possession illegally and at the time of taking possession, the petitioner was undergoing dialysis and she continues to suffer kidney ailments and as such, appointment of the Advocate Commissioner sought for by the respondent/Bank is wholly unjustified and also prays for appropriate direction, directing

the DRT-II at Chennai to accord priority and dispose of the pending SARFAESI Appeal No.370/018.

(8)The Court heard the arguments advanced by the learned counsel for the petitioner and also perused the materials placed before it.

(9)Whether the respondent/Bank had illegally taken possession of the secured assets by invoking the provisions under Section 14 [1] of the SARFAESI Act, is the subject matter of adjudication in SA.No.370/2018 on the file of the DRT-II at Chennai and therefore, this Court is not expected to give any findings in this regard and it is beyond the scope of the present revision.

(10)In fact, the Tribunal, in paragraph No.9 of the impugned order which is the subject matter of challenge in this Civil Revision Petition, has also made an observation that the DRT-II, at Chennai, will address the said issues on facts and law in SA.No.370/2018. Insofar as the order of appointing the Advocate Commissioner is concerned, admittedly, some of the movable items belonging to the petitioner, have not been removed from the premises and despite two opportunities have been granted to enable the petitioner to remove the said articles, it has not been done. Therefore, the Advocate Commissioner was directed to remove the movables ; prepare the inventory and keep it in the safe custody.

(11)The scope of interference in such kind of orders by this Court, in exercise of its jurisdiction under Article 227 of the Constitution of India, is very limited.

(12)This Court, on going through the materials, is of the considered view that there is no error or infirmity in the reasons assigned by the Tribunal for appointing the Advocate Commissioner as affirmed by the DRAT at Chennai in the impugned order. As rightly observed by the DRAT at Chennai, the alleged illegal possession taken by the respondent/Bank can be gone into by the DRT-II at Chennai in the pending SA.No.370/2018. However, taking note of the plea made by the learned counsel for the revision petitioner, the DRT-II at Chennai, is directed to accord priority and dispose of SA.No.370/2018 as expeditiously as possible and not later than six weeks from the date of receipt of a copy of this order.

(13)In the result, the Civil Revision Petition stands dismissed confirming the order passed by the Debts Recovery Appellate Tribunal dated 13.12.2019 in MA.No. [SA] No.68 of 2019 passed by the DRAT, Chennai, affirmed in IA.No.936/2019 in

SA.No.370/2018 on the file of the DRT-II, Chennai. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

AP

To
The Authorised Officer, ICICI Bank Limited,
ICICI Regional Tower, 24,
S.P.Arihant Insight, 2nd Floor
East Wing DSWG, Ambattur
Industrial Estate, Ambattur,
Chennai-600 058.

+1cc to M/s.Yashwini, Advocate SR.6001

BS(CO)
CB(04/03/2020)