IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.2744/2020 & WMP.No.3191/2020

R.Shanmugam ... Petitioner

Versus

1.The Registrar
Debts Recovery Appellate Tribunal
Egmore, Chennai 600 008.

2.The Authorised Officer
Indian Bank, ARM Branch II
IV Floor, Ethiraj Salai
Egmore, Chennai 600 008.

3.Mr.D.Karthikeyan ... Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of certiorari calling for the records of the respondents particularly that of the 1st respondent in RA[SA] No.65/2018 dated 14.01.2020 and quash the same as illegal and unlawful besides unsustainable in law.

For Petitioner : Mr.T.S.Rajamohan

ORDER

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

(1) The petitioner is the borrower and he availed financial assistance from the 2nd respondent/Bank in the form of OCC facilities up to a limit of Rs.9 Lakhs and the guarantee limit of Rs.5 Lakhs and for the due repayment of the loan, an immovable property bearing Old Door No.5A, New No.9, Jesudasan Street, Radha Nagar, Chromepet, Chennai-44, has been given as security. The petitioner, due to vagaries of business

conditions, was unable to service the dues and therefore, the Indian Bank, Radha Nagar Branch, Chromepet, Chennai-44, issued a Notice under section 13[2] of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in short ''SARFAESI Act''] dated 02.09.2002 and it was followed by the Possession Notice under Section 13 [4] of SARFAESI Act dated 24.06.2004.

(2) In the Lok Adalat organized under the provisions of the Legal Services Authority Act, [Act 39 of 1987], an Award came to be passed on 10.09.2004, wherein, as against the total claim of Rs.33.55 Lakhs, the amount to be settled, was arrived at Rs.15.26 Lakhs and taking into consideration, the petitioner has already paid a sum of Rs.4.90 Lakhs and undertook to pay the balance amount on or before 10.03.2005 with interest, the Award came to be passed. It appears that the petitioner has failed to comply with the said Award. Therefore, the secured asset was brought for sale by fixing the date of auction on 30.01.2008 at 10.30 a.m. and for want of bidders, the auction sale could not got through.

(3) The 2nd respondent/Bank also initiated recovery proceedings under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 by filing OA.No.488/2007 on the file of the Debts Recovery Tribunal-III at Chennai, who passed an order of recovery on 17.03.2008, based on which, a Recovery Certificate was issued and it was followed by a Notice of Demand dated 11.03.2009, calling upon the petitioner and his wife to make payment of Rs.53,32,907.98.p., within fifteen days from the date of receipt of the notice, failing which, action will be initiated under the Income Tax [Certificate Proceedings] Rules 1962. The petitioner, subsequently, submitted a representation dated 17.08.2011, to accept the offer of Rs.11,04,769/- and sent another communication dated 08.03.2012, by giving an undertaking to pay a sum of Rs.15 Lakhs within a period of two months from the date of receipt of the communication from the 2nd respondent/Bank and to exhibit his bona fide, also paid a sum of Rs.1.50 Laksh by means of Pay Order dated 08.03.2012.

(4) Since the petitioner did not comply with the terms of the Loak Adalat Award, the 2nd respondent/Bank proceeded further under the provisions of the SARFAESI Act, in respect of the original demand and issued notice dated 16.06.2012 under Rule 6 [2] and 8[6] of the Security Interest [Enforcement] Rules, 2002 to the petitioner and his wife fixing the date and time of auction on 24.07.2012 at 10.30 a.m. The petitioner, challenging the legality of the said auction, filed SA.No.121/2012 on the file of the Debts Recovery Tribunal-I at Chennai, who vide order dated 06.03.2017, has dismissed the

said appeal on merits. The petitioner, aggrieved by the dismissal of the appeal, preferred further appeal before the Debts Recovery Appellate Tribunal, at Chennai and it was entertained. The Debts Recovery Appellate Tribunal, vide impugned order dated 14.01.2020, in RA [SA] No.65/2018, has dismissed the said appeal and thereby, confirmed the order passed by DRT-I, Chennai. Challenging the legality of the same, the present writ petition is filed.

(5)Mr.T.S.Rajamohan, learned counsel for the petitioner has invited the attention of this Court to the Valuation Report dated 15.09.2012 and would submit that the local market rate as per the Valuation Report was Rs.1 Crore and the Forces/Distress Sale Value was Rs.1,28,65,000/- and despite the fact that the property is located in Chromepet - outskirts of the City of Chennai, it has been sold for a lower amount and the upset price fixed in respect of the said property was also very low. It is the further submission of the learned counsel for the petitioner that the notice of intended sale was published in Trinity Mirror and Makkal Kural, which do not have any wider publication and as a result of which, low offer was received and it was also knocked down in favour of the successful bidder and since mandatory provisions of the SARFAESI Act have not been complied with, the sale is liable to be set aside. The learned counsel, by way of equity, also pleads that the petitioner may be given one more opportunity to approach the 2nd respondent/Bank for an amicable settlement and this Court may issue appropriate direction, directing the 2nd respondent/Bank to consider the said offer.

(6)This Court paid its best attention to the arguments advanced by the learned counsel for the petitioner and also perused the materials placed before it.

(7)A perusal and consideration of the materials, especially, the order dated 06.03.2017 made in SA.No.121/2012 on the file of DRT-I, at Chennai, as well as the impugned order dated 14.01.2020 made in RA [SA] No.65/2018 on the file of DRAT at Chennai, would reveal that the petitioner was provided with two opportunities to settle the amount, i.e., in terms of the Lok Adalat Award and subsequently, in terms of the One Time Settlement and the petitioner had failed to avail the same. The earlier attempts made by the 2nd respondent/Bank to auction the property, became unsuccessful and subsequently, in the sale took place, the property was sold in favour of the auction purchaser and it was also confirmed in his favour Once the sale is confirmed, the petitioner has lost the right of redemption. The 2nd respondent/Bank has also made an endeavour to auction the property and it was unsuccessful twice and the subsequent effort made by them has resulted in the sale of the property.

(8) The petitioner made a challenge to the earlier sale notice dated 26.04.2006 by filing SA.No.88/2007 and it was dismissed by DRT-I at Chennai and the petitioner made a challenge to the subsequent sale notice dated 17.08.2011 by filing SA.No.121/2012 purely alleging material irregularities and the Tribunal, on consideration and appreciation of the materials, found that all the procedural formalities have been complied with.

(9) It is also to be noted at this juncture that the petitioner was also put on notice as to the change of date of sale on 28.04.2012 and he has also approached the 2nd respondent/Bank for One Time Settlement and it was agreed for a sum of Rs.41 Lakhs and despite such indulgence, the petitioner has failed to utilise the said opportunity. Insofar as valuation is concerned, this Court can take note of the fact that the earlier attempts made by the 2nd respondent/Bank became unsuccessful and since it is the Forces/Distress Sale Value, it cannot expect to fetch the market price. The petitioner had obtained the Valuation Report after finalisation of the sale and the DRT found that the said Report was obtained after the date of sale, i.e., 17.08.2011.

(10) The petitioner has been afforded with sufficient opportunity to settle the dues and even now, he has failed to come out with a concrete proposal for settlement of dues except by stating that he may be provided with one more opportunity to approach the 2nd respondent/Bank for settlement.

(11) In the considered opinion of the Court, DRT-1 as well as DRAT at Chennai, had taken note of the points urged on behalf of the petitioner and concluded that there are no merits in the case projected by the petitioner.

(12) This Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, is having a limited power of judicial review in respect of the orders passed by the Tribunals and on an independent application of mind to the entire materials, finds that there is no error apparent on the face of the record or infirmity in the reasons assigned by the DRAT at Chennai.

(13) In the result, the writ petition stands dismissed confirming the order dated 14.01.2020 made in RA[SA]No.65/2018 passed by the Debts Recovery Appellate Tribunal at Chennai. No costs. Consequently, connected miscellaneous petition is closed.

(14) After the dismissal of this writ petition, the learned counsel for the petitioner prays that the pre-deposit made by the petitioner at the time of filing of the appeal before DRAT, may be refunded to him.

(15) If the petitioner is so advised, he is always at liberty to file appropriate application before the Registrar, DRAT, Chennai, for refund of the same and it shall be dealt with in accordance with law as expeditiously as possible.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Registrar
Debts Recovery Appellate Tribunal
Egmore, Chennai 600 008.

2.The Authorised Officer
Indian Bank, ARM Branch II
IV Floor, Ethiraj Salai
Egmore, Chennai 600 008.

+1cc to Mr.T.S.Rajamohan, Advocate Sr.9414

WP.No.2744/2020

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srg 11/03/2020