

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN &

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

W.P.No.3599 of 2020 &
WMP.No.4226 of 2020

R. Vijayakala ... Petitioner

Vs.

1. G. Ragulan

2. The Authorised Officer,
M/s.Canara Bank,
Asset Recovery Management Branch,
No.166, T.V.Samy Road (West),
R.S.Puram, Coimbatore 641 002.

3. M/s.Sri Varahiamman Steels (P) Ltd.,
No.19/1, M.G.Chettipalayam (Post),
S.S. Kulam (Via), Coimbatore 641 107.

4. The Registrar,
Debts Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
No.55, Ethiraj Salai, Chennai. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records pertaining to the order dated 13.01.2020 in AIR (SA) 367 of 2019 on the file of Debts Recovery Appellate Tribunal, Chennai and quash the same.

For Petitioner : Mr. V.V. Uthira

For Respondents : M/s.S.R.Sumathi,
Standing Counsel for R2

O R D E R

The petitioner claims to be the tenant under the original borrower, namely G.Ragulan/1st respondent, who availed financial assistance from the 2nd respondent Bank. In view of defaults committed by the borrower, the 2nd respondent Bank initiated proceedings under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (in short, SARFAESI Act) by issuing e-auction sale notice dated 8.8.2019 for recovery of Rs.30,25,39,400.16p as on 31.7.2019 and also intend to bring the secured assets for sale to realise the amount.

2. The petitioner claims to be a tenant in respect of Schedule B property mentioned in sale notice and challenging the said sale notice, she filed appeal under SARFAESI Act in SA.SR.8247 of 2019 before the Debt Recovery Tribunal, Coimbatore and the said appeal, vide order dated 25.9.2019 came to be dismissed. The petitioner, aggrieved by the said order, filed an appeal in R.A.(S.A.)No.367 of 2019 on the file of Debt Recovery Appellate Tribunal, Chennai and paid Court fee of Rs.50,000/-. The Appellate Tribunal vide impugned proceedings dated 13.1.2020, having found that the appellant/writ petitioner is running a factory and there is a presumption and inference that he has stepped into the shoes of the borrower, found that she is liable to pay the balance deficit court fee and accordingly, passed the said direction. Making a challenge to the same, present writ petition is filed.

3. Learned counsel appearing for the petitioner, has drawn the attention of this Court to Rule 13 of the Security Interest (Enforcement) Rules 2002 and would submit that the petitioner comes under 13(2)(1)(d) for the reason that admittedly she is not the borrower and as such, she can be asked to pay a sum of Rs.50,000/-towards Court fee and the said amount has also been paid and hence prays for interference.

4. Ms.S.R.Sumathi, learned Standing Counsel, who accepts notice on behalf of 2nd respondent Bank, on merits, would contend that the petitioner has failed to produce any tenable materials to show that she became the tenant under the borrower/1st respondent.

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

6. A perusal and consideration of Rule 13(2)(1)(d) of the Security Interest (Enforcement) Rules 2002 would reveal that the petitioner cannot be termed as a borrower, thus she claims to be a tenant and the tenability of the said claim is to be

adjudicated in the pending appeal. No doubt, petitioner lost the proceedings before the jurisdictional Debt Recovery Tribunal. Since the petitioner is not the borrower, payment of court fee of Rs.50,000/- already paid by her, is in order.

7. In the result, the Writ Petition is allowed and the impugned proceedings are set aside and the tribunal is directed to entertain the appeal, if it is, otherwise, in order and give disposal in accordance with law. No costs. Consequently, the connected W.M.P.No.4226 of 2020 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

msr

To

1. The Authorised Officer,
M/s.Canara Bank,
Asset Recovery Management Branch,
No.166, T.V.Samy Road (West),
R.S.Puram, Coimbatore 641 002.
2. The Registrar,
Debts Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
No.55, Ethiraj Salai, Chennai.

+2cc to Mr.K.J.Parthasarathy, Advocate, Sr.No.12496

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SSI (CO)
GS (29/05/2020)