IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CRP.No.3804 of 2019

1.Dr.N.Pon Nixson

2.Dr.N.Gold Pearlinmary ...Petitioners/Appellants

Versus

1.The Authorized Officer,
Indian Overseas Bank
Regional Office,
No.20-21, kamarajar Street,
Kancheepuram 631 501.

2.Indian Overseas Bank
rep.by its Branch Manager,
Perungalathur Branch,
No.14, VeeraRagahavan Street
NDP Complex New Perugalathur,
Chennai 600 063.

3.Mr.New Begin Selvakumar

4.Mrs.Amirthakumari ...Respondents/Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the proceedings dated 30.10.2019 passed in AIR(SA)No.328 of 2019 on the file of Debt Recovery Appellate Tribunal, Chennai.

For Petitioners : Mr.P.Tamilavel

For Respondents : Mr.Y.T.Arvind Gose

ORDER

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

The petitioners, aggrieved by the impugned order dated 30.10.2019 passed by the Debts Recovery Tribunal (DRT) at Chennai by directing him to pay the balance Court Fee of Rs.50,000/- in terms of the provisions of Rule 13(1)(d) of Securitisation of Financial Assets and Enforcement Act 2002. came forward to file this Writ Petition.

2. The learned counsel appearing for the petitioners would submit that their parents are respondents 3 and 4 and they availed financial facilities from the Indian Overseas Bank for their business purpose and mortgaged an immovable property. According to the learned counsel appearing for the petitioners, it is the specific case of the petitioners that their grand father during his life time has executed a registered will bearing Document No.14/1984 on the file of the Sub Registrar, Tambaram dated 13.11.1994, in and by which life interest alone was given in favour of the 3rd respondent, without any power to alienate and after the life time of the 3rd respondent, the subject property shall devolve on writ petitioners with absolute right, title and possession and as such, they are not entitled to create security interest in respect of the said property and hence aggrieved by the action initiated by the respondent Bank under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), they filed an appeal and since they are not borrowers, paid the Court fee of Rs.50,000/- under Rule 13(1)(d) of the said Rules. It is the further submission of the learned counsel appearing for the petitioners that the Tribunal, without understanding the scope and purport of Rule 13, directed the petitioners to pay the balance court fee and the same is unsustainable under law and hence prays for interference.

3. Per contra, learned counsel appearing for the respondent Bank would submit that admittedly, the 1st petitioner as well as the respondents 3 and 4 are residing in one and the same roof and it is not even the case of the petitioners that they are not with talking terms and it is the further submission of the learned counsel appearing for the respondent Bank that the immovable property security was created by respondents 3 and 4 and though the petitioners claim that after the life interest of the 3rd respondent, they are having absolute right, their right is yet to be crystallized and though the petitioners would come within the definition of Borrowers under Section 2(f) of the SARFAESI Act and further points out that the petitioners also filed Civil Suit in O.S.No.31/2018, on the file of the Court of

District Munsif, Tambaram for declaration of title and other consequential relief and their parents, who were arrayed as defendants were also set exparte, so also the respondent Bank and steps are being taking to set aside the exparte order.

4. This Court has carefully considered the rival submissions and also perused the materials placed before.

5. It is relevant to extract Section 2(f) of the SARFAESI Act 2002 and Rule 13 (1) (d) of SARFAESI Rules.

> Section 2(f). ''Borrower'' means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a asset reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance or who has raised funds through issue of debt securities.

Rule 13 (1) (d) of SARFAESI Rules:

> (d) Where the applicant is an aggrieved party other than the borrower and where the amount of debt due is Rs.10 lakhs and above, Rs.1250+Rs.125 for every Rs.1 lakh or part thereof in excess of Rs.10 lakhs subject to a maximum of Rs.50,000/-

6. The petitioners neither in the affidavit filed before the Tribunal nor in the affidavit filed in support of this petition have disclosed the relevant facts, especially with regard to the availment of loan by the parents, though they have stated that for that loan, an immovable property security has been created in favour of the respondent Bank. Be that as it may, the petitioners did not avail the loan along with their parents and it prima facie appears that they would not come within the definition of Borrowers. In that event, Rule 13(1)(d) would not come into operation and it is brought to the knowledge of this Court that the petitioners had already paid a sum of Rs.50,000/-. Once this Court holds that prima facie, the petitioners would not come within the definition of Borrower, as regards payment of fees, Rule 13(1)(d) have no application to the case on hand and therefore, the impugned order passed by the Debts Recovery Appellate Tribunal warrants interference. However taking into consideration of the fact that the petitioners have not disclosed the full facts either before the Tribunal or before this Court, this Court is of the view that they should be imposed with costs for not disclosing the same.

7. In the result, the Civil Revision Petition is allowed and the impugned order dated 30.10.2019 in AIR (SA) 328/2019 on the file of DRT-III, Chennai, is set aside and the Debts Recovery Tribunal may entertain the appeal in AIR (SA) 328/2019, if the papers are otherwise in order.

8. The petitioners are directed to pay a costs of Rs.10,000/- within a period of two weeks from the date of receipt of a copy of this order by way of demand draft in favour of Anbagam Orphanage, Dindigul Aids Control Society (DACS), Plot No.8, Kanmani Nagar, Nandhavananpatti, Dindigul, Tamil Nadu, South India, PIN 624 001, Phone Nos.+91 9442749959 and 91 4512427871. Consequently connected miscellaneous petition is closed.

Call on 12.02.2020 ''For Reporting Compliance''.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sk
To
1.The Registrar,
Debt Recovery, Appellate Tribunal,
Chennai.

2.The Section Officer,
Judicial Department,
High Court, Madras.

Copy to:
Anbagam Orphanage,
Dindigul Aids Control Society (DACS),
Plot No.8, Kanmani Nagar,
Nandhavananpatti, Dindigul,
Tamil Nadu, South India,
PIN 624 001,
Phone Nos.+91 9442749959 and 91 4512427871.

+1cc to Mr.P.Tamilavel, Advocate Sr.4159

CRP.No.3804 of 2019

rsi[co]
srg 03/02/2020