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

WP.No.34603/2019

K.Selvaraj .. Petitioner

Versus

1.Canara Bank
Asset Recovery Management Branch
No.166, T.V.Samy Road,
West R.S.Puram, Coimbatore.

2.M/s.Visahavel Spinning Mills Pvt Ltd
rep.by its Director Mr.P.Rajesh Kumar
No.34, Water Tank Street
Samalapuram, Palladam
Coimbatore. .. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records relating to the impugned order passed by the DRAT, Chennai in AIR.No.345/2019 on 26.11.2019, quash the same and consequently, direct the DRAT Registry, Chennai to take the appeal on file and decide the same on merits.

For Petitioner : Mr.K.Balamurali for Mr.Shivakumar

For R1&R2 : Mr.P.Raghunathan for M/s.T.S.Gopalan & Co

ORDER

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

(1) By consent, the writ petition is taken up for final disposal.

(2) The writ petitioner is a third party and according to him, he had entered into an Agreement of Sale on 22.12.2019 in respect of a landed property in SF.No.316/1B admeasuring to an extent of 3.05 acres situate at Samalapuram Village,

Palladam Taluk, Coimbatore District.

(3) The learned counsel for the petitioner would submit that the original borrower, viz., the 2nd respondent herein, had entered into the said Agreement of Sale with the petitioner herein and the said fact was also informed to the Chief Manager, Asset Recovery Management Branch, Canara Bank, Coimbatore, vide communication dated 11.03.2019, enclosing a cheque for a sum of Rs.4,50,000/- given by the petitioner in favour of the original borrower and despite receipt and acknowledgment, the Bank did not choose to respond and the petitioner after becoming aware of the fact that the action against the original borrower has been initiated under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in short ''SARFAESI Act''], has filed an appeal and paid a sum of Rs.50,000/- by way of a fee in terms of Rule 13[1][d] of the Security Interest [Enforcement] Rules, 2002. However, the Tribunal, vide impugned order dated 26.11.2019, has held that the property which was the subject matter of Areement of Sale was having a charge in favour of the 1st respondent/Bank and during the pendency of the charge, a Transfer Deed was executed and consequently, the property will go to the writ petitioner herein along with the charge and directed him to pay the required Court fee for the reason that for all practical purposes, he is treated at par with the borrower.

(4) The primordial submission made by the learned counsel for the petitioner is that admittedly, the petitioner is neither a borrower nor a guarantor, but merely an agreement holder with the original borrower and therefore, his case would fall under Rule 13[1][d] of the Security Interest [Enforcement] Rules, 2002 and hence, prays for interference.

(5) Per contra, Mr.P.Raghunathan, learned counsel appearing for the 1st respondent / Bank has invited the attention of this Court to section 2[f] of the SARFAESI Act and would submit that even as per the documents submitted by the petitioner in the form of typed set of documents, no prior consent or permission has been obtained from the Bank by the original borrower to enter into an Agreement of Sale with the petitioner herein and would further point out that in terms of Section 13[13] of the SARFAESI Act, once section 13[2] Notice is issued, no transfer by way of sale, lease or otherwise can be made and as such, the petitioner has no legal legs to stand and would submit that since, for all practical purposes, the petitioner is going to step into the shoes of the original borrower, he has to necessarily pay the balance Court fee of Rs.50,000/- as per Rule 13[1][b] of the Rules.

(6) This Court has carefully considered the rival submissions and also perused the materials placed before it.

(7) Whether the original borrower, viz., the 2nd respondent, had obtained necessary consent or permission from the 1st respondent / Bank for sale of secured asset in favour of the petitioner herein, cannot be gone into by this Court at this

stage.

(8) The present lis pertains to payment of Court fee only. Admittedly, the petitioner is neither a borrower nor a guarantor and for the purpose of payment of Court fee, this Court is of the considered view that he would come within the ambit of Section 13[1][d] of the Act and as such, payment of Court Fee of Rs.50,000/- by him for entertainment of the appeal, in the considered opinion of the Court, is in order. It appears from the impugned order passed by the Tribunal that it construed the Agreement of Sale as a Transfer Deed and in the considered opinion of the Court, it is not so.

(9) Unless and until the 1st respondent/Bank accords permission for sale of the secured assets in favour of the petitioner and also in the light of section 13[13] of the SARFAESI Act, as of now, the writ petitioner is not having any tangible rights in respect of the secured assets in question except the fact that he is an agreement holder.

(10) In the result, the writ petition is allowed and the impugned order passed by the Debts Recovery Appellate Tribunal, Chennai, dated 26.11.2019, in AIR.No.345/2019 is set aside and the Tribunal may entertain the appeal, if the papers are otherwise in order. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

AP

To
1. Th Manager,
Canara Bank
Asset Recovery Management Branch
No.166, T.V.Samy Road,
West R.S.Puram, Coimbatore.

COPY To:- The Registrar/
The Debts Recovery Appellate Tribunal, Chennai.

+1cc to Mr.Shivakumar and Suresh, Advocate SR.No.4201

+1cc to M/s.T.S.Gopalan & Co, Advocate SR.No.4527

WP.No.34603/2019

MP(CO)
GMY(24/01/2020)