IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.3091 of 2021

and W.M.P.No.3485 of 2021

S.Mahalingam ... Petitioner

Vs.

1. The Registrar,
   The Debt Recovery Appellate Tribunal,
   4th Floor, Indian Bank Circle Office,
   55, Ethiraj Salai, Chennai - 600 008.

2. Canara Bank,
   Asset Recovery Management Branch,
   2nd Floor, Circle Office Building,
   563/1, Anna Salai, Teynampet,
   Chennai - 600 018.

3. Mr.E.Srinivasan ... Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus to call for the records in the order dated 21.12.2020 in IA 288 of 2020 (waiver application) in AIR (SA) 55 of 2020 passed by the 1st respondent and to quash the same and direct the 1st respondent to entertain the appeal without the pre-deposit under Section 18(1) of the SARFAESI Act, 2002 and dispose on merits.

For Petitioner : Mr.A.R.L.Sundaresan, S.C.
For Mr.B.Radhakrishnan

For Respondents : Mr.K.Rajesh
For M/s. T.S.Gopalan & Co.
for respondent-2

Mr.P.Jesus Moris Ravi
for respondent-3

ORDER
(Made by the Hon'ble Chief Justice)

The writ petition is directed against an order dated December 21, 2020 passed by the Debt Recovery Appellate Tribunal.

2. The petitioner says that the petitioner is in possession of an immovable property that has been furnished by way of security by the borrower. It appears that the petitioner initially claimed to be a tenant at the premises since 1988, but later changed tact to claim that the petitioner is owner of the property now by adverse possession. The petitioner had challenged a sale notice issued by the respondent bank before the Debts Recovery Tribunal and, upon such challenge being repelled, the petitioner sought to carry the order in appeal under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

3. By the order impugned dated December 21, 2020, the Appellate Tribunal has directed the pre-deposit of a sum of Rs.64 lakh in two installments of Rs.32 lakh each.

4. The petitioner claims that since the petitioner is not a borrower, the petitioner cannot be called upon to make any deposit. The petitioner says that a Division Bench judgment of this Court passed on a batch of petitions was relied upon before the Tribunal, but the Tribunal was of the view that it has authority to receive an appeal, only upon the relevant proviso being complied with.

5. Even if the petitioner is taken to be the borrower, there is a discretion available to the Appellate Tribunal to permit the deposit of a minimum of 25% of the amount claimed to be due or the amount as determined to be due by the Debts Recovery Tribunal, whichever is less. However, there can be no dispute that second proviso applies only to appeals filed by a borrower as defined in the said Act.

6. The respondent bank repeats the submission recorded in the impugned order of the Appellate Tribunal. According to the bank, it is the present petitioner who seeks to resist realization of the bank's dues and the petitioner herein should be regarded as the borrower. However, there does not appear to be any finding in such regard rendered by the Debts Recovery Tribunal. If such a finding had been rendered, the petitioner could have been regarded as a borrower and made to deposit exactly what the borrower would have been required to.

7. There is a lurking suspicion that the petitioner may either have been set up by the borrower or the petitioner is the borrower. There is no doubt that a tenant or an occupant at a building, whose commencement of continuous occupation is anterior to the creation of a mortgage, may not be thrown out of possession upon the mortgagee enforcing the mortgage; but it cannot be said with certainty that the present petitioner should be accorded such status, though he asserts to be a long term tenant. However, in view of the fair stand taken by the appearing parties, the matter may be resolved, so that the actual business of adjudication can be undertaken without further delay.

8. At the suggestion of the Court, the petitioner has agreed to deposit a sum of Rs.32 lakh, which reflects 25% of the amount in terms of the calculations evident from the order impugned. The petitioner will deposit a sum of Rs.20 lakh within three weeks from date and the balance within three weeks thereafter. The Debts Recovery Tribunal will entertain the appeal upon the first installment being deposited in terms of this order by the petitioner. However, even if the petitioner is entitled to the relief that is sought, the same may not be granted before the petitioner makes the full deposit in terms of this order.

9. W.P.No.3091 of 2021 is disposed of, by modifying the order of the Tribunal passed on December 21, 2020 to the above extent. It is recorded that the merits of the rival claims have not been gone into.

10. There will be no order as to costs. As a consequence, WMP.No.3485 of 2021 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

KPL

To

1. The Registrar,
The Debt Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai, Chennai - 600 008.

2. Canara Bank,
Asset Recovery Management Branch,
2nd Floor, Circle Office Building,
563/1, Anna Salai, Teynampet,
Chennai - 600 018.

+1cc to Mr.B.Radhakrishnan, Advocate, S.R.No.21802

W.P.No.3091 of 2021
and W.M.P.No.3485 of 2021

GPL(CO)
TE (19/04/2021)