IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.No.19152 of 2021
and W.M.P.No.20453 of 2021

P.Padmavathy .. Petitioner

Vs.

1. State Bank of India,
The Authorised Officer,
Retail Asset Central Processing Centre,
Kurinji Complex, First Floor,
State Bank Road, Coimbatore 641 018.

2. M/s.Sri Vari Industries,
Coimbatore 641 002.

3. P.Mohan Kumar
4. M.S.Subha
5. The Registrar,
Debt Recovery Appellate Tribunal,
Chennai. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the 5th respondent pertaining to AIR (SA) No.23 of 2021, dated 11.08.2021, to quash the same as illegal and consequently direct the 5th respondent to consider the case on merits subject to the payment of 25% of claim amount in notice under section 13 (2) of the SARFAES Act dated 08.05.2019 as pre-deposit.

For the Petitioner : Mr.K.Rathinavel

* * * * *

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The petitioner complains of the rejection of an appeal by the Debt Recovery Appellate Tribunal on the ground that the petitioner herein had failed to make the pre-deposit of Rs.18

lakh in terms of an order dated July 1, 2021 passed by the appellate tribunal. The order impugned is dated August 11, 2021 when the petitioner, as the appellant before the appellate tribunal, was not even represented.

2. The appeal carried to the appellate tribunal was against an order dated December 30, 2020 passed by the Debts Recovery Tribunal, Coimbatore at the receiving stage of a petition under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

3. The petition under Section 17 of the Act was directed against a sale notice dated December 1, 2020 by which auction of the petitioner's mortgaged property was scheduled to be held on December 30, 2020.

4. There is no doubt that a loan was taken and the petitioner's immovable property was furnished as security in connection therewith. Notwithstanding the petitioner's assertion that signatures were obtained on blank paper to create the security, once so much is admitted that the petitioner's signature was obtained on blank paper, that would imply that the person who obtained the signature had the authority to use the signature for any appropriate purpose and the petitioner would have no grievance in such regard.

5. A notice was issued under Section 13 (2) of the Act on May 8, 2019 claiming a sum in excess of Rs.36.11 lakh. It does not appear that any meaningful step was taken by the borrowers, including the petitioning guarantor, following such notice. It was only upon the sale notice being issued that the petitioner approached the tribunal with a story that the tribunal, as is evident from the order dated December 30, 2020 did not give much credence to.

6. A conditional order was passed by the DRT, Coimbatore requiring the petitioner herein to deposit roughly 50 per cent of the claimed amount for the auction sale to be stayed. Accordingly, the DRT required a deposit of Rs.18 lakh to be made by the petitioner with the secured creditor out of which Rs.9 lakh was to be deposited by January 27, 2021 and the further amount of Rs.9 lakh by February 24, 2021.

7. Considering the case made out by the petitioner before the DRT, Coimbatore, it was a reasonable order. There does not appear to have been any perverse exercise of discretion in requiring the deposit to be made, particularly since the nexus between the person who obtained the credit facilities and the petitioner herein stood established before the tribunal and was recorded as such in the order dated December 30, 2020.

8. In an appeal under Section 18 of the Act of 2002, the appellate tribunal has to obtain the statutory pre-deposit to receive the appeal. In case the appellant is a borrower as defined in the Act, which includes the guarantor, 50 per cent of the claim of the secured creditor or the amount adjudged to be due by the DRT, whichever is less, is required to be put in by way of a pre-deposit. The appellate tribunal, of course, has the discretion to reduce the quantum of pre-deposit to not less than 25 percent of the amount claimed or adjudged to be due, as the case may be. However, for the purpose of the appellate tribunal exercising the discretion, a case had to be made out. That the relevant proviso to Section 18 of the Act of 2002 permits the appellate tribunal to reduce the quantum of pre-deposit does not imply that the reduction would be made for the mere asking. The discretion available to the appellate tribunal has to be exercised on the basis of the case made out and the hardship that is likely to be suffered by the appellant.

9. There appears to be little reason for the petitioner to be aggrieved by the order impugned dismissing the appeal since the petitioner has not made out any credible defence to the claim and it was apparent that the petitioner merely wanted to waste time in course of the Section 7 proceedings and that preferred the appeal to further delay the initial proceedings instituted before the DRT, Coimbatore. The appellate tribunal was justified in not exercising any discretion in favour of the petitioner herein, since the petitioner may have carried a false case to the tribunal and the only attempt on the part of the petitioner is to delay the repayment or the conduct of the sale of the relevant immovable property.

10. Since no grounds have been made out by the petitioner for interfering with the order impugned or with the order passed by the DRT, Coimbatore, W.P.No.19152 of 2021 is dismissed. However, in the interest of justice, the time to make the deposit before the DRT, Coimbatore is extended by four weeks from date. Such direction is peremptory. In the event the deposit is made within the time extended by this order, the relevant property will not be sold without the previous leave of the DRT, Coimbatore. If, however, the sum of Rs.18 lakh is not deposited within the extended time in terms of this order, there will be no embargo on the first respondent secured creditor in taking steps to sell the immovable property in accordance with law.

11. Nothing herein prejudices the first respondent secured creditor. As such, it was not necessary to issue any previous notice to the first respondent herein.

W.M.P.No.20453 of 2021 is closed. There will be no order as to costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

sra

To:

1. The Authorised Officer,
State Bank of India,
Retail Asset Central Processing Centre,
Kurinji Complex, First Floor,
State Bank Road, Coimbatore 641 018.

2. The Registrar,
Debt Recovery Appellate Tribunal,
Chennai.

3. The Registrar,
Debts Recovery Tribunal, Coimbatore.

+1cc to Mr.K.Rathinavel, Advocate, S.R.No.46093

W.P.No.19152 of 2021

SVI(CO)
CB(17/09/2021)